



**Duncanville**  
City of Champions  
www.cityofduncanville.com

**Duncanville City Council Meeting Agenda**  
City Council Briefing Room and City Council Chamber  
Duncanville City Hall  
203 E. Wheatland Road  
Duncanville, TX 75116  
(972) 780-5017

**Tuesday, November 15, 2016**  
6:00 P.M. – Work Session/Briefing/Executive Session  
7:00 P.M. – Regular Session

*City of Duncanville City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at (972)780-5017 or write 203 E. Wheatland Road, 75116, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.*

**As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purposes of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.**

**The City of Duncanville reserves the right to reconvene, recess or align the Regular Session or called Executive Session or order of business at any time prior to adjournment.**

**WORK SESSION/BRIEFING (6:00 P.M.)**

**1. DISCUSS AGENDA ITEMS**

**2. BRIEFINGS / PRESENTATIONS**

- A. Receive a presentation, discuss and give feedback to City Staff regarding formalizing a sister city relationship with Monasterolo di Savigliano.

**EXECUTIVE SESSION**

1. The City Council shall convene into Executive Session pursuant to Section 551.074 of the Texas Government Code, Personnel Matters, to interview applicants and discuss appointments to the Duncanville Community and Economic Development Corporation Board and the Planning and Zoning Commission.

**REGULAR SESSION – CONVENE INTO THE COUNCIL CHAMBERS (7:00 P.M.)**

CALL TO ORDER

INVOCATION – Chris Gutierrez, Executive Pastor, Southwest Harvest Church

PLEDGES – PLEDGE OF ALLEGIANCE; TEXAS PLEDGE OF ALLEGIANCE

**1. REPORTS**

- A. Mayor's Report.  
B. Councilmembers' Reports.  
C. City Manager's Report.

## **2. PROCLAMATIONS AND PRESENTATIONS**

- A. Presentation of the Keep Duncanville Beautiful November 2016 Business Beautification Award Plaque and Proclamation to the Duncanville Chamber of Commerce located at 300 E Wheatland Road.
- B. Proclamation recognizing November, 2016 as "Native American Heritage Month".
- C. Proclamation recognizing November 26, 2016 as "Small Business Saturday".
- D. Receive the 2016 Delinquent Tax Performance Report from Linebarger Goggan Blair & Sampson, LLP.

## **3. CITIZENS' INPUT**

*At this time, two minute comments will be taken from the audience on any topic. To address the Council, please submit a fully-completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. In accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decision at this time. Issues may be referred to City Staff for research and possible future action.*

## **4. CONSENT AGENDA**

*The following may be acted upon in one motion. A City Councilmember may request items be removed from the Consent Agenda for individual consideration.*

- A. Consider the Minutes for the October 27, 2016 Special City Council Meeting and the November 1, 2016 Regular City Council Meeting.
- B. Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the annual procurement of merchant card services with Chase Paymentech Solutions, L.L.C., in the unit amount proposed through a joint proposal through a Town of Flower Mound Cooperative Purchasing Agreement with an estimated annual expenditure amount of one hundred one thousand two hundred dollars (\$101,200); authorizing the City Manager to execute the necessary documents; and, providing an effective date.
- C. Consider a Resolution of the City Council of the City of Duncanville, Texas, amending the agreement #12-27 Alarm Permit Management Services with PMAM Corporation for an additional one-year term and for the unit amount as stated in the contract with PMAM Corporation to receive twenty-two percent (22%) of fees collected as set forth in Exhibit A, which is attached hereto and incorporated herein; authorizing the City Manager to execute Amendment 1, Exhibit A; and, providing for an effective date.

## **5. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. Consider an Ordinance of the City of Duncanville, Texas, amending the Code of Ordinances of the City of Duncanville by amending Section 19-107 ("Prohibited on Specific Streets") of Article VI ("Stopping, Standing and Parking") of Chapter 19 ("Traffic") by adding new Subsections (91) and (92) to prohibit stopping, standing and parking on certain portions of South Greenstone Lane; providing a repealing clause; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of two hundred dollars (\$200.00) for each offense; and, providing an effective date.
- B. Consider a Resolution of the City Council of the City of Duncanville, Texas, approving an agreement between the City of Duncanville and the Duncanville Chamber of Commerce, attached hereto as Exhibit "A", awarding a hotel occupancy tax grant to the Duncanville Chamber of Commerce located at 300 E. Wheatland Road in

an amount not to exceed \$5,000 for FY 16-17 to add a Visitor Center Building Sign; authorizing the City Manager to execute the agreement; and, providing an effective date.

- C. Consider a Resolution of the City Council of the City of Duncanville, Texas, supporting in principle the Texas Central High Speed Train Project from Houston to the North Texas Region.
- D. Consider a Resolution of the City Council of the City of Duncanville, Texas, adopting the City of Duncanville City Council Travel Policy, attached hereto as Exhibit "A", defining necessary expenses incurred by a City Councilmember, and providing an effective date.
- E. Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of surface soils, materials, and installation services from Masterturf Products & Service, Inc. through a TASB Buyboard Purchasing Cooperative Agreement in an amount not to exceed fifty-two thousand nine hundred and seventy eight dollars (\$52,978); authorizing the City Manager to execute the appropriate purchase orders and documents; and, providing an effective date.
- F. Take any action necessary as a result of Executive Session.

**6. STAFF AND BOARD REPORTS**

- A. Receive the Library Department Quarterly Report and Workplan Update.
- B. Receive an Update Report regarding the Duncanville Fieldhouse.

**ADJOURNMENT**

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Duncanville City Hall, a place convenient and readily accessible to the general public, as well as to the City's website [www.duncanville.com](http://www.duncanville.com) and said Notice was posted on the following date and time: **Thursday, November 10, 2016** at 5:00 P.M. and remained posted for at least two hours after said meeting was convened.

  
\_\_\_\_\_  
Mary E. Jones, City Secretary

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PURSUANT TO SECTION 30.07, PENAL CODE (TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS MEETING ROOM WITH A HANDGUN THAT IS CARRIED OPENLY.

DE CONFORMIDAD CON LA SECCIÓN 30.07 DEL CÓDIGO PENAL (PREVARICACIÓN POR LICENCIATARIO CON UNA ARMA DE MANO LLEVADA ABIERTAMENTE), UNA PERSONA CON LICENCIA BAJO EL SUBCAPÍTULO H, CAPÍTULO 411, CÓDIGO DE GOBIERNO (LEY DE LICENCIAS PARA PORTAR ARMAS), NO PUEDEN ENTRAR A LA SALA DE REUNIONES CON UNA ARMA DE MANO QUE SE PRACTICA ABIERTAMENTE.

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"PURSUANT TO SECTION 30.06, PENAL CODE (TRESPASS BY HOLDER OF LICENSE TO CARRY A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUB-CHAPTER H, CHAPTER 411, GOVERNMENT CODE (CONCEALED HANDGUN LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN"

"DE ACUERDO CON LA SECCIÓN 30.06 DEL CÓDIGO PENAL (INGRESO SIN AUTORIZACIÓN DE UN PORTADOR DE UNA LICENCIA PARA LLEVAR UN ARMA CORTA OCULTA), UNA PERSONA CON LICENCIA SEGÚN EL SUBCAPÍTULO H, CAPÍTULO 411 DEL CÓDIGO DEL GOBIERNO (LEY PARA PORTAR ARMAS CORTAS OCULTAS), NO PUEDE INGRESAR A ESTA PROPIEDAD CON UN ARMA CORTA OCULTA"



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** B-1

**TITLE:**

Discuss Agenda Items

**FY2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **Capstone 1:** Most engaged citizens in America
  - **Goal 1:** Achieve and sustain a healthy relationship between the organization's stakeholders.

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** B-2A

**TITLE:**

Receive a presentation, discuss and give feedback to City Staff on a proposition to dedicate an item of public property in recognition of the sister city relationship, as well as to expand the sister city relationship, with Monasterolo di Savigliano.

**FY 2016-2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

N/A

**STAFF REPRESENTATIVE:**

Charles Smith, Assistant City Manager

**BACKGROUND/HISTORY:**

In March 1997, a semi-formal visit to the City of Duncanville, from the City of Monasterolo di Savigliano, was hosted by Mayor Ed Purcel. This visit included the Italian Mayor of Monasterolo di Savigliano, Antonio Prochietto, and Italian dignitaries who were recognized at a reception at Duncanville City Hall.

The following year, the Duncanville City Council passed a resolution in support of the “twin-city” relationship. In July of 1998, a 13-member delegation including Mayor Glenn Repp and Texas Senator Jane Nelson visited Monasterolo di Savigliano where they participated in a ceremony instituting the relationship. A proclamation from Monasterolo di Savigliano hangs in the City Council Briefing Room, also celebrating this visit.

In 1999, a delegation of 39 Italians visited the City of Duncanville to further the relationship. A ceremony was held at City Hall on September 28<sup>th</sup> where gifts were exchanged.

Recently, in March 2016, Monasterolo di Savigliano Mayor, Marco Cavaglia, visited the City of Duncanville where both he and his wife were hosted at City Hall. Upon returning home, and during a visit by Texas Senator Jane Nelson, an area within a tower of the historic castle, which serves as Monasterolo di Savigliano’s City Hall, was named in honor of the City of Duncanville and many items acquired during Mayor Cavaglia’s visit are on display there.

The Mayor has expressed an interest in sending a delegation to Monasterolo di Savigliano, and evaluating additional steps to further enhance our sister city relationship. City Staff has evaluated some options and wishes to discuss them with City Council to receive feedback and direction.

The City of Duncanville and Monasterolo di Savigliano are not members of Sister Cities International, which was created in 1956 by President Eisenhower in order to create a network of citizens who would “champion for peace and prosperity.” Membership in Sister Cities International is not necessary, however, in order for Monasterolo di Savigliano and the City of Duncanville to enjoy a sister city relationship.

Additionally, a couple of City Council members have expressed an interest in responding to this display from our sister city, by dedicating a piece of public property in the name of Monasterolo di Savigliano. Staff has conducted some preliminary studies and wishes to approach City Council with their ideas for feedback and whether or not Council wishes staff to proceed.

**POLICY EXPLANATION:**

The policy impact of the various travel options range from minimal policy impact (ad hoc exchanges and trips to Monasterolo di Savigliano) to more significant (joining Sister Cities International). However, each choice has benefits and budgetary implications.

Depending on the nature of the dedication, policy impacts could be negligible (such as painting a mural on a wall in City Hall) to potentially significant (naming an overpass after Monasterolo di Savigliano requires TxDOT involvement).

**FUNDING SOURCE:**

General Fund

**RECOMMENDATION:**

Staff recommends receiving a presentation, discussing and giving feedback to City Staff on a proposition to dedicate an item of public property in recognition of the sister city relationship, as well as to expand the sister city relationship, with Monasterolo di Savigliano.

**ATTACHMENTS:**

B-2 2017 SCI Member Application



# 2017 Membership Application

## Annual Dues *(Please check one)*

City/County Population	Dues
<input type="checkbox"/> Under 5,000	\$180
<input type="checkbox"/> 5,000-10,000	\$295
<input type="checkbox"/> 10,000-25,000	\$425
<input type="checkbox"/> 25,000-50,000	\$590
<input type="checkbox"/> 50,000-100,000	\$780
<input type="checkbox"/> 100,000-300,000	\$990
<input type="checkbox"/> 300,000-500,000	\$1,325
<input type="checkbox"/> 500,000-1,000,000	\$1,835
<input type="checkbox"/> 1,000,000 and above	\$2,190

Please send your completed application to [info@sistercities.org](mailto:info@sistercities.org) or mail to: Sister Cities International, 915 15<sup>th</sup> Street NW, 4th Floor, Washington, DC, 20005

### Community Information

City/County \_\_\_\_\_ State \_\_\_\_\_ Population size \_\_\_\_\_

Does your city currently have a sister city? Yes No

### City Contact Information

Salutation \_\_\_\_\_ First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Title \_\_\_\_\_ Phone number \_\_\_\_\_ Email address \_\_\_\_\_

### Primary Contact Information

Salutation \_\_\_\_\_ First Name \_\_\_\_\_ Last Name \_\_\_\_\_ Title \_\_\_\_\_

Organization \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip code \_\_\_\_\_ Phone number \_\_\_\_\_ Email address \_\_\_\_\_

Are you a city employee? Yes No

*If not, please enter your city's contact information in the box above.*

### Billing information *(if different from primary contact information)*

Salutation \_\_\_\_\_ First Name \_\_\_\_\_ Last Name \_\_\_\_\_ Title \_\_\_\_\_

Organization \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip code \_\_\_\_\_ Phone number \_\_\_\_\_ Email address \_\_\_\_\_

Do you need an invoice? Yes No

Payment Method Check (make payable to Sister Cities International) Visa MasterCard American Express

Card No. \_\_\_\_\_ Expiration Date \_\_\_\_\_ CC Security Code \_\_\_\_\_ Cardholder Name \_\_\_\_\_

Cardholder Signature \_\_\_\_\_

Sister Cities International supports private citizens, local organizations, and municipal officials who conduct exchanges and activities under the umbrella of the sister cities movement. Every day, we strengthen and grow the sister cities network by providing support to our members through programs, grants, services, and networking opportunities.

## Your Switchboard to the World

- **Sister Cities Networking:** At Sister Cities International, we believe in peer-to-peer learning. Want to host a youth exchange? Lead a business delegation? We can connect you with other experienced members for an exchange of ideas to help you find solutions.
- **Connect with the Diplomatic Corps:** Sister Cities International works closely with the U.S. Department of State and its diplomats as well as foreign embassies in the U.S. Let us connect you with the right officials and help you get the answers and support you need.
- **Annual Membership Directory:** Be featured in the Annual Directory, Sister Cities International's flagship publication! This listing of all member cities and their partnerships is distributed to our entire network, municipal and federal governments, and the diplomatic community.

## Programs and Services

- **Cities Seeking Cities:** Looking for a sister city? Our Cities Seeking Cities program provides you with dedicated staff assistance and the necessary connections to municipal officials, twinning organizations, and the diplomatic community to help you find a partner city.
- **Governance and Policy Services:** Confused about how to start a sister city organization, structure your bylaws, or establish other policies to lay the foundation for a sister city program? We will guide you at every step as you establish and grow your partnerships.
- **Young Artists & Authors Showcase:** Open to all youth in member cities, the Showcase is a chance for them to submit artwork, essays, poems, short film, and photography inspired by an annual theme. Winners receive cash prizes and top entries tour the U.S.
- **High School Homestay:** This exchange program enables member cities to host high school students for a year or semester. We assist with processing exchange visas for the youth and makes it a simple and rewarding experience for students and host families.
- **Annual Awards:** The Awards highlight sister city programming excellence in a number of competitive categories and programmatic areas.

## Telling Your Story

- **Share Your Story:** Let us tell your story to the world. We publicize your success on our blog, the SCI website, social media, and press outreach.
- **Member Profiles:** Show off your sister city program with a customizable member profile as well as profiles for all of your sister city partnerships.
- **Event & Delegation Promotion:** Need help promoting an upcoming inbound or outbound delegation? We can help spread the word through targeted emails, social media, and press outreach.
- **Crisis Communications & Media Relations:** International events can catch any communications team off guard. We can guide you on how to effectively represent your program in times of crisis or controversy. Our media partnerships and media outreach can ensure that your activities get the attention they deserve.

## Providing Resources that Matter

- **Visa Consultations:** Worried about an upcoming delegation? Get pro bono consultations from immigration lawyers for questions regarding inbound delegations or visa applications.
- **Insurance:** Get access to discounted traveler's insurance for individuals or groups through Sister Cities International's partnership with Seven Corners.
- **Medical Services:** Sister Cities International has teamed up with Passport Health to provide members with discounted immunizations and other medical services.
- **Certificates:** Commemorate a new sister cities partnership or anniversary with our custom-made certificates.
- **Toolkits and Templates:** Get access to handy guidelines, templates, and best practices for exchanges, policies, and other topics relevant to sister city program development.
- **Grants Database:** Sister Cities International provides members with information on opportunities from private foundations and public organizations to help you find resources to expand your program.
- **Webinars:** Build key skills and hear from experts in our webinar series. Topics include grant-writing, fundraising, and volunteer recruitment.



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** ES-1

**TITLE:**

The City Council shall convene into Executive Session pursuant to Section 551.074 of the Texas Government Code, Personnel Matters, to interview applicants and discuss appointments to the Duncanville Community and Economic Development Corporation Board and the Planning and Zoning Commission.

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-1A

**TITLE:**

Mayor's Report.

**FY2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **Capstone 1:** Most engaged citizens in America
  - **Goal 1:** Achieve and sustain a healthy relationship between the organization's stakeholders.

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-1B

**TITLE:**

Councilmembers' Reports.

**FY2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **Capstone 1:** Most engaged citizens in America
  - **Goal 1:** Achieve and sustain a healthy relationship between the organization's stakeholders.

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-1C

**TITLE:**

City Manager's Report.

**FY2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **Capstone 1:** Most engaged citizens in America
  - **Goal 1:** Achieve and sustain a healthy relationship between the organization's stakeholders.

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-2A

**TITLE:**

Presentation of the Keep Duncanville Beautiful November 2016 Business Beautification Award Plaque and Proclamation to the Duncanville Chamber of Commerce located at 300 E Wheatland Road.

**STAFF REPRESENTATIVE:**

Timothy Hamilton, Parks Superintendent and KDB Staff Liaison

**BACKGROUND/HISTORY:**

The Keep Duncanville Beautiful (KDB) Board members are charged with the responsibility of creating and implementing programs that will encourage beautification within Duncanville. The Business Beautification Award, formerly known as the Property of the Month Award, was designed to fill this goal for commercial property recognition. Following nomination by the KDB Board, the City Council approved the Duncanville Chamber of Commerce located at 300 E. Wheatland Road as the Business Beautification Award recipient at their November 1, 2016 regular meeting, Resolution No. 2016-11014I. A representative will be present to accept the plaque and proclamation on behalf of the business.

**POLICY EXPLANATION:**

Up to one commercial building in Duncanville is recognized each quarter for significant improvements to the exterior portion of a building, landscape improvements, and/or long term maintenance of the commercial property that exemplifies high quality standards. Award recipients receive recognition at a regular City Council meeting; an article in the City newsletter, the *Champion*; and a sign to display at their place of business for the month.

The Keep Duncanville Beautiful (KDB) Board nominates the Business Beautification Award. The property must be in good standing with the City's Code Enforcement and Building Inspections Departments. Final approval by City Council is required.

The KDB Board follows the criteria identified below:

- Property must be retail/professional office/commercial/industrial or other business use.
- Property must be located within the city limits of Duncanville, Texas.
- Significant exterior improvements and/or superior maintenance of the property must be made to the property, or the property is new construction.
- Improvements can include new landscaping, repainting a building, paving a parking lot, adding awnings, new signage, etc.

**FUNDING SOURCE:**

Funds are allocated in the Economic Development/Keep Duncanville Beautiful budget for related expenditures; however, if the recipient is a non-profit the funds are allocated in the Parks budget.

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

Proclamation



**WHEREAS,** the City of Duncanville is committed to improving the physical quality of community life; and

**WHEREAS,** the *Keep Duncanville Beautiful Board* was established to promote this commitment; and

**WHEREAS,** the mission of the *Keep Duncanville Beautiful Board* is to empower Duncanville citizens and businesses to take responsibility for enhancing their community environment; and

**WHEREAS,** each quarter the *Keep Duncanville Beautiful Board* recognizes one commercial property within the City for significant improvements to the exterior portion of the property, landscape improvements, and/or long term maintenance of the property that exemplifies high quality standards; and

**WHEREAS,** the Duncanville Chamber of Commerce located at 300 E Wheatland Road has been selected as the Business Beautification Award recipient for November 2016.

**NOW, THEREFORE,** I, David L. Green, Mayor of the City of Duncanville, Texas, do hereby urge all residents to join me in congratulating the Duncanville Chamber of Commerce located at 300 E Wheatland Road and commending this business for contributing to the beautification of our City.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Duncanville to be affixed this 15th day of November, 2016.



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-2B

**TITLE:**

Proclamation recognizing November, 2016 as Native American Heritage Month.

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager

**BACKGROUND/HISTORY:**

On August 3, 1990, President George H. W. Bush declared the month of November as National American Indian Heritage Month, thereafter commonly referred to as Native American Heritage Month. This commemorative month aims to provide a platform for Native American people in the United States to share their culture, tradition, music, crafts, dance, and ways and concepts of life as well as their concerns and solutions for building bridges of understanding and friendship in the local area.

**POLICY EXPLANATION:**

The City of Duncanville recognizes various organizations, groups, and individuals for their outstanding contributions to the community by Proclamation.

**FUNDING SOURCE:**

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

Proclamation

**WHEREAS,** on August 3, 1990 President George H. W. Bush declared the month of November as National American Indian Heritage Month, thereafter commonly referred to as Native American Heritage Month; and

**WHEREAS,** the President authorized Federal, State and local Governments, groups and organizations and the people of the United States to observe such month with appropriate programs, ceremonies and activities; and

**WHEREAS,** this commemorative month aims to provide a platform for Native American people in the United States to share their culture, tradition, music, crafts, dance, and ways and concepts of life; and

**WHEREAS,** this gives Native American people the opportunity to express to their community, and to the city, county and state officials their concerns and solutions for building bridges of understanding and friendship in the local area.

**NOW, THEREFORE,** I, David L. Green, Mayor of the City of Duncanville, Texas do hereby proclaim the month of November, 2016 as

**Native American Heritage Month**

in the City of Duncanville, and I urge all citizens to support local efforts to observe such month with appropriate programs, ceremonies, and activities.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Duncanville, Texas to be affixed this 15<sup>th</sup> day of November, 2016.



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-2C

**TITLE:**

Proclamation designating November 26, 2016, as “Small Business Saturday”.

**STAFF REPRESENTATIVE:**

Jessica James, Director of Economic Development

**BACKGROUND/HISTORY:**

Small Business Saturday is an American shopping holiday held on the Saturday after Thanksgiving and during one of the busiest shopping periods of the year. First observed in Roslindale Village, Massachusetts on November 27, 2010, it is a counterpart to Black Friday and Cyber Monday, which feature big box retail and e-commerce stores respectively. By contrast, “Small Business Saturday” encourages holiday shoppers to patronize brick and mortar businesses that are small and local. It was originally created by American Express to support small business, but has since expanded into different organizations and cities across the United States in an effort to increase support for small businesses and shopping local.

The purpose of the City of Duncanville recognizing "Small Business Saturday" is to celebrate and support small businesses that create jobs, boost the economy, invigorate neighborhoods in our community, and to encourage residents to shop local.

**POLICY EXPLANATION:**

The City of Duncanville recognizes various organizations and programs that make positive contributions to the community by Proclamation.

**FUNDING SOURCE:**

There is no cost associated with this Proclamation.

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

- Proclamation

**WHEREAS,** small business is the cornerstone of our free enterprise system and since the birth of this country has represented opportunity, independence, and the fulfillment of dreams for generations of Americans; and

**WHEREAS,** small business owners who work long hours, juggling family and career responsibilities and serving as community volunteers, are integral to our country's prosperity and to the vibrancy of our community. These entrepreneurs are fundamental to our economy. Through the opportunities offered by the men and women who own and operate small businesses, many of our citizens are able to pursue their dreams of a better life; and

**WHEREAS,** to recognize "Small Business Saturday" which is Saturday, November 26, a day to celebrate and support small businesses that create jobs, boost the economy, invigorate neighborhoods in our community, and to encourage Shop Local; and

**WHEREAS,** the City of Duncanville wishes to recognize small businesses for the important role they play in keeping our local economy strong.

**NOW, THEREFORE,** I, David L. Green, Mayor of the City of Duncanville, Texas do hereby proclaim November 26, 2016 as

**SMALL BUSINESS SATURDAY**

in the City of Duncanville, and urge all our citizens to join with us in this observance, as we celebrate the accomplishments of small business owners and their employees and encourage the development of new small businesses.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Duncanville, Texas to be affixed this 15<sup>th</sup> day of November, 2016



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-2D

**TITLE:**

Receive the 2016 Delinquent Tax Performance Report from Linebarger Goggan Blair & Sampson, LLP.

**STAFF REPRESENTATIVE:**

Richard Summerlin, Finance Director

**BACKGROUND/HISTORY:**

Linebarger Goggan Blair, & Sampson, LLP is the firm the City uses for collection of delinquent property taxes. This report is a review of services provided and activity from July 2015 through September 2016. An analysis of the City's tax roll is included along with the status of City of Duncanville delinquent accounts.

**POLICY EXPLANATION:**

N/A

**FUNDING SOURCE:**

N/A

**RECOMMENDATION:**

N/A

**ATTACHMENT:**

PowerPoint by Linebarger Goggan Blair & Sampson, LLP.

# City of Duncanville

## Delinquent Tax Performance Report



Prepared for the:

Duncanville City Council and  
Kevin Hugman, City Manager



**Linebarger Goggan Blair  
& Sampson, LLP**

November 15, 2016

# About Linebarger



## National Law Firm

43 Offices Nationwide  
31 Offices in Texas



## 32-Year Presence in Dallas County

Representing Duncanville since July 2001



## 40 Years of Collecting Delinquent Governmental Receivables



## Providing Funding for Essential Public Services

# Our Services



Collecting Taxes



Mailing Collection Notices



Skip Tracing



Inbound and Outbound  
Coordinated Call Campaigns



Facilitating Payment



Working through inquiries  
and disputes



Litigation and pursuit of pre- & post-  
judgment remedies



Bankruptcy representation

## Cost-Free Program to the City

Linebarger attorney fees are legal "add-on" paid by delinquent taxpayers

## Program Activities & Results (July 2015 – September 2016)

51 Lawsuits Filed - \$149,634

38 Lawsuits Disposed - \$207,437

14 Tax Sales Set - \$64,746

119 Site Visits - \$153,427

29 Soundbite Campaigns

10 Demand Mailings – 2,154 letters

39 Accounts in Bankruptcy - \$111,965

Since July 2015,  
Linebarger has collected  
**\$460,569**  
for the City of Duncanville

Since our representation began in July 2001, we have collected  
**over \$7.6 million**  
for Duncanville

# Tax Roll Analysis & Customized Collection Program

**Current Year 2015  
Delinquent Tax Roll  
turned over to  
Linebarger**

- April 1<sup>st</sup>: Personal Property - BPP
- July 1<sup>st</sup>: All Property Types - Real, BPP & Mobile Homes

**July 2016  
Tax Roll Analysis**

- Turnover Analysis of 2015 & Prior Delinquent Tax Roll

**2016-17  
Collection Program**

- Linebarger Customizes 2016-17 Collection Program for Duncanville

# Current Year Turnover Comparison (2015 Tax Year vs. 2014 Tax Year)



■ 2015 Base Tax - \$285,061	2015 Base Tax + P&I - \$390,978
2014 Base Tax - \$281,774	2014 Base Tax + P&I - \$383,873



2015 Base Tax turned over to Linebarger increased by **\$3,287 or 1.2%**

June 30<sup>th</sup> \* Current Collection Rate:

<u>2015</u>	<u>2016</u>
<b>97.72%</b>	<b>97.71%</b>

\* 2015 BPP accounts turned over to Linebarger on April 1, 2016  
 \* 2015 Real property & Mobile Home accounts turned over to Linebarger on July 1, 2016

# Tax Roll Analysis by Size of Delinquent Accounts (as of July 1, 2016)

Distribution of Tax Roll by No. of Accounts  
(2015 & Prior Base Tax + P&I)



Total Number of Accounts Due - 1,184

Distribution of Tax Roll by Dollars Due  
(2015 & Prior Base Tax + P&I)



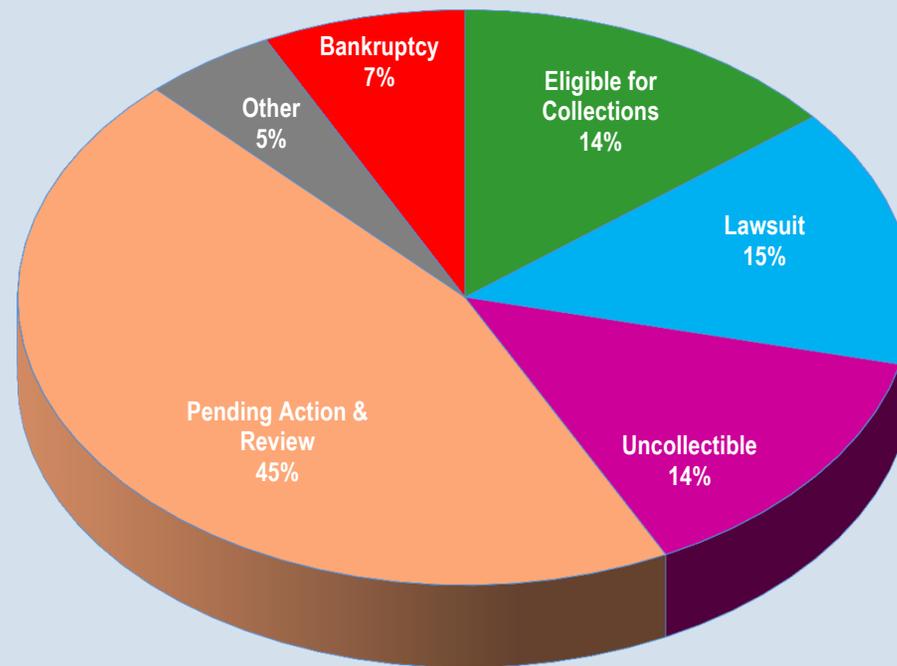
2015 & Prior Total Tax Due - \$1,634,536

Average Size of Accounts





## Status of Accounts in Duncanville (as of Oct 2016)



# Over 65/Disabled and/or Deferral Growth in Duncanville

Growth since 2004:  
**\$491,245 or 426%**



■ Percentage of Total Base Tax & P&I as of July 1st, that is in a status of Over 65/Disabled and/or Deferral.

# Being a Good Community Partner



Heart of Duncanville 5K  
Duncanville Education Foundation





## Contact Information

Bridget Moreno Lopez, Managing Partner  
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Pamela Pope Johnson, Partner  
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Sandra Tei, Client Liaison  
sandrat@lgbs.com (469) 221-5030

Peggy McCormick, Operations Manager  
peggym@lgbs.com (469) 221-5060

As always, it is a privilege to serve the  
City of Duncanville



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-3

**TITLE:**

**CITIZENS' INPUT**

*At this time, two minute comments will be taken from the audience on any topic. To address the Council, please submit a fully-completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. In accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decisions at this time. Issues may be referred to City Staff for research and possible future action.*



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-4A

**TITLE:**

Consider the Minutes for the October 27, 2016 Special City Council Meeting, and the November 1, 2016 Regular City Council Meeting.

**FY2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- Goal: N/A

**STAFF REPRESENTATIVE:**

Kevin Hugman, City Manager  
Mary E. Jones, City Secretary

**BACKGROUND/HISTORY:**

N/A

**POLICY EXPLANATION:**

Section 551.021 of the Government Code provides as follows:

- (a) A Governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.
- (b) The minutes must:
  1. State the subject of each deliberation; and
  2. Indicate the vote, order, decision or other action taken.

**FUNDING SOURCE:**

N/A

**RECOMMENDATION:**

Approve, amend, or correct the minutes of the October 27, 2016 Special City Council Meeting, and the November 1, 2016 Regular City Council Meeting.

**ATTACHMENTS:**

- October 27, 2016 DRAFT Special City Council Meeting Minutes
- November 1, 2016 DRAFT Regular City Council Meeting Minutes

**DUNCANVILLE CITY COUNCIL MEETING MINUTES  
SPECIAL TOWN HALL MEETING  
THURSDAY, OCTOBER 27, 2016  
DRAFT**

**1. Call to Order**

A Special Town Hall Meeting of the Duncanville City Council was called to order on Thursday, October 27, 2016, at 6:40 p.m. in the Parkview Room at D.L. Hopkins, Jr. Senior Center with a quorum to wit:

David L. Green	Mayor
Dennis L. Schwartz	Councilmember, District 1
Steven Rutherford	Mayor Pro Tem, District 2
Leslie Thomas	Councilmember, District 3
Ron Dotson	Councilmember, District 4
Johnette Jameson	Councilmember, District 5
Patrick Harvey	Councilmember, At-Large

**2. Receive a presentation by Larry Cline with Larry Cline Consulting, LLC and City Staff Regarding the proposed Tax Increment Financing (TIF) Reinvestment Zone for the Camp Wisdom Road / North Duncanville Road / North Main Street area.**

Mayor Green welcomed those in attendance, explained the purpose of the meeting, and introduced Economic Development (ED) Director Jessica James who introduced Larry Cline of Larry Cline Consulting, LLC. Mr. Cline and ED Director James provided a presentation regarding the proposed Tax Increment Financing (TIF) Reinvestment Zone for the Camp Wisdom Road / North Duncanville Road / North Main Street area.

**3. Questions & Answers on Presentation.**

Following the presentation, City Manager Hugman distributed and reviewed a list of commonly asked questions and answers regarding the proposed TIF and then opened the meeting for questions from those in attendance.

**4. Discussion.**

Discussion followed.

No action was taken.

The meeting adjourned at 8:36 p.m.

APPROVED:

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MAYOR

ATTEST:

---

CITY SECRETARY

**DUNCANVILLE CITY COUNCIL MEETING MINUTES  
REGULAR MEETING  
TUESDAY, NOVEMBER 1, 2016  
DRAFT**

**CALL TO ORDER**

A regular meeting of the Duncanville City Council was called to order on Tuesday, November 1, 2016, at 6:00 p.m. in the Council Briefing Room at City Hall with a quorum to wit:

David L. Green	Mayor	
Dennis L. Schwartz	Councilmember, District 1	
Steven Rutherford	Mayor Pro Tem, District 2	
Leslie Thomas	Councilmember, District 3	
Ron Dotson	Councilmember, District 4	Arrived 6:09 p.m.
Johnette Jameson	Councilmember, District 5	
Patrick Harvey	Councilmember, At-Large	

**WORK SESSION/BRIEFING ITEMS**

***Item No. B-1 Discuss Agenda Items***

Mayor Green read the item into record and City Manager Hugman reviewed each item. Discussion included: Item 4C – clarification the funds are for Tyler Technologies; Item 4D – street signs to have bolder borders around “Texas” and clarification that the street lights are owned and maintained by Oncor and none are LED; Item 4F – staff will research the duplicate location listed; Item 4G – follow-up for issues found and rotation of areas evaluated; Item 4H – access to the feedback webpage limited to the Police Department and other necessary departments; Item 4I – clarification that funds for the business plaque and sign will be out of Parks and Recreation since the recipient is a non-profit; Item 4J – cost of coating the ground storage tank will be paid by Duncanville (5/8) and Cedar Hill (3/8) due to purchasing the tank from TRA; Item 5A – the public hearing was advertised within the time limits; Item 5B – TIF alternative boundaries, projects included, development with TIF vs without, positive effect on development of Main Street, redevelopment of the Camp Wisdom Corridor, and request for Council to provide direction as to whether to go forward with the TIF, at what percentage, and final approval would be done by Ordinance; Item 5C – Chamber HOT funds agreement was budgeted for; Item 5E – request for City Council meals to be reimbursed by receipt rather than per diem and that a “guest” should be paid for local events rather than “spouse” and suggestion was made to pull the item until the next meeting.

***Item No. B-2A Discuss the December and January City Council Regular Meeting dates.***

Mayor Green read the item into record. Following discussion it was agreed that the December 20, 2016 regular City Council meeting would be limited to just one item to consider the TIF Ordinance with no additional staff reports; and that the January 3, 2017 meeting would be cancelled due to the holiday.

Mayor Green recessed the Briefing Session at 6:54 p.m. for the Council to convene into Executive Session.

**EXECUTIVE SESSION**

***Item No. ES-1 The City Council shall convene into Executive Session pursuant to Section 551.074 of the Texas Government Code, Personnel Matters, to discuss appointments to the Duncanville Community and Economic Development Corporation Board and the Planning and Zoning Commission.***

The Council closed the Executive Session and reconvened into the Briefing Session at 7:18 p.m.

The briefing session recessed at 7:18 p.m.

**REGULAR SESSION – CONVENE INTO THE COUNCIL CHAMBERS**

The City Council convened into Regular Session in the Council Chambers at 7:23 p.m. with Mayor Green presiding.

The Invocation was led by Rev. Jeff Bergeron, New Life in Christ Lutheran.

The Pledge of Allegiance and Texas Pledge were led by Mayor Green.

## **REPORTS**

### ***Item No. R-1A Mayor's Report***

Mayor Green spoke regarding the Community in Unity event held in Armstrong Park.

### ***Item No. R-1B Councilmembers' Reports***

Councilmember Thomas urged everyone to vote.

Councilmember Jameson thanked everyone for attending the City Council Special Town Hall Meeting regarding the proposed TIF.

### ***Item No. R-1C City Manger's Report***

City Manager Hugman spoke regarding the Community in Unity event and thanked the churches and pastors that organized the event.

## **PROCLAMATIONS AND PRESENTATIONS**

### ***Item No. R-2A Proclamation recognizing November 6-12, 2016 as Animal Shelter Appreciation Week.***

Mayor Green read the item into record. Councilmember Thomas presented the proclamation to Shelly Meeks of the Tri Cities Animal Shelter. Ms. Meeks expressed the Shelter's appreciation for the overwhelming support received from the tri-cities.

### ***Item No. R-2B Proclamation in recognition of Municipal Court Week, November 7-11, 2016.***

Mayor Green read the item into record. Mayor Pro Tem Rutherford presented the proclamation to several members of the Municipal Court staff and Finance Director Summerlin noted his pride in the Municipal Court staff followed by introductions of each.

### ***Item No. R-2C Proclamation designating November 4, 2016 as "Arbor Day" in Duncanville.***

Mayor Green read the item into record. Councilmember Schwartz presented the proclamation to Parks Superintendent Hamilton and Bobby Cutler Hill of the Keep Duncanville Beautiful Board.

## **CITIZENS INPUT**

***At this time, two-minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the beginning of the Citizens' Input portion of the Council meeting. In accordance with the Texas Open Meetings Act, the City Council cannot discuss issues raised or make any decision at this time. Issues may be referred to City Staff for research and possible future action.***

Mayor Green read the item into record. The following spoke during the Citizens Input Period:

Dorothy Burton, 1723 Beaver Creek Drive – Ms. Burton thanked the City Council for their support of the Christians in Public Service event held on September 6<sup>th</sup> honoring Dr. Ron Anderson, and gave each Councilmember a tribute video, and invited them to a Youth Conference on October 19, 2017.

Sharon Toups, 1219 Ridge Rock Lane – Spoke regarding the proposed TIF and upcoming rail discussions and concerns that more citizen input is needed before moving forward.

Brad Toups, 1219 Ridge Rock Lane – Spoke regarding the proposed TIF and encouraged the City Council not to extend north of I-20 at this time; support of Camp Wisdom redevelopment but not beyond.

Patricia Ebert, 115 S. Greenstone – Spoke regarding improvement to the town, and the Tax Code Chapter 311.005 referring to clean up of slums when discussing TIFs which wasn't mentioned in the proposed TIF presentation.

Nancy Bell, 938 Nature Drive – Spoke against the proposed TIF specifically her concerns regarding the rush, and belief the City's not being forthcoming, and the rail.

Wesley Jameson, 1214 Lady Lane – Spoke against the proposed TIF specifically citizens' concerns expressed at the Town Hall meeting, and not to extend north of I-20.

Monte Anderson, 100 S. Main – Spoke regarding the positive improvement of adding bike racks, Main Street development has stopped, Economic Development's lack of support for small businesses and spoke in favor of entrepreneurs.

## CONSENT AGENDA ITEMS

Mayor Green requested that City Secretary Jones read the Consent Agenda Items.

*Item No. 4A Consider the Minutes for the October 18, 2016 Regular City Council Meeting.*

*Item No. 4B Consider a Resolution of the City Council of the City of Duncanville, Texas, approving the terms and conditions of an Interlocal Agreement between the National Joint Powers Alliance "NJPA", providing for a Cooperative Purchasing Program for goods and services; designating the City Manager as official representative of the City of Duncanville relating to the program; authorizing the City Manager to execute the necessary documents; and providing an effective date.*

*Item No. 4C Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of time and attendance software from Tyler Technologies through the National Joint Powers Alliance "NJPA" cooperative purchasing program, for the amount of fifty two thousand four hundred and seventy five dollars (\$52,475); authorizing the City Manager to execute the necessary documents; and, providing for an effective date.*

*Item No. 4D Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of light-emitting diode (LED) illuminated street name signs from Consolidated Traffic Controls, Inc. through a Houston-Galveston Area Council (H-GAC) Cooperative Purchasing Agreement in the expenditure amount of ninety three thousand seven hundred seventy seven dollars and thirty six cents (\$93,777.36); authorizing the City Manager to execute the necessary documents; and, providing an effective date.*

*Item No. 4E Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of traffic signal cameras from Paradigm Traffic Systems, Inc. through the TASB BuyBoard Cooperative Purchasing Program, for the amount of one hundred thirteen thousand seven hundred sixty dollars (\$113,760.00), as set forth in the attached quote sheet, in Exhibit A; authorizing the City Manager to execute the appropriate purchase orders and other necessary documents; and, providing for an effective date.*

*Item No. 4F Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of non-visual accessible pedestrian pushbuttons from Consolidated Traffic Controls, Inc. through a Houston-Galveston Area Council (H-GAC) Cooperative Purchasing Agreement in the expenditure amount of (\$74,889.44), as set forth in the attached quote sheet, Exhibit "A"; authorizing the City Manager to execute the appropriate purchase orders and other necessary documents; and, providing an effective date.*

*Item No. 4G Consider a Resolution of the City Council of the City of Duncanville, Texas, approving the terms and conditions of a professional engineering services agreement for the 2017 Partial Sanitary Sewer Evaluation Survey–Basin EA with Burgess & Niple, Inc., in the amount not to exceed sixty thousand and thirty two dollars (\$60,032.00); authorizing the City Manager to execute such agreement which is attached as Exhibit "A"; and, providing an effective date.*

*Item No. 4H Consider a Resolution of the City Council of the City of Duncanville, Texas, approving the terms and conditions of an agreement with Network Cabling Services, which is attached as Exhibit "A", for installation of cabling, IP cameras, and all necessary equipment at the Fieldhouse and in Armstrong Park in the amount of one hundred forty four thousand nine hundred sixty two dollars and ninety seven cents (\$144,962.97); authorizing the City Manager to execute such agreement; and, providing for an effective date.*

*Item No. 4I Consider a Resolution of the City Council of the City of Duncanville, Texas, awarding the Keep Duncanville Beautiful November 2016 Business Beautification Award to the Duncanville Chamber of Commerce located at 300 E Wheatland Road; and, providing an effective date.*

*Item No. 4J Consider a Resolution of the City Council of the City of Duncanville, Texas, awarding bid number IFB 16-20 and execute contract with A&M Construction and Utilities, Inc., attached as Exhibit "A", for the Summit Ground Storage Tank Protective Coating Rehabilitation, in the amount of nine hundred and forty nine thousand nine hundred dollars (\$949,900); authorizing the City Manager to execute such agreement; and, providing an effective date.*

City Secretary Jones read the consent items into record. Councilmember Schwartz made a motion to approve the Consent Agenda Items as read. Councilmember Dotson seconded the motion. The vote was cast 7 for, 0 against.

## **INDIVIDUAL CONSIDERATION**

***Item No. 5A Hold a Public Hearing and Consider an Ordinance of the City of Duncanville, Texas, amending the Comprehensive Zoning Ordinance and Map, as heretofore amended, by repealing Ordinance No. 888, which established a planned development district, and development regulations in its entirety for the subject property only, and Ordinance No. 2195, which established a planned development district, and development regulations in its entirety; and, replace with a new planned development district and development regulations, site plan, landscape plan and elevations attached hereto as Exhibits “A” through “C”, on Lots 1R, 2R and 3, Block A, Oak Leaf Medical Offices Replat, more commonly known as 407, 411 and 415 West Daniieldale Road, respectively, in the City of Duncanville, Dallas County, Texas; providing a repealing clause; providing a savings clause; providing a severability clause; providing a penalty of a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and, providing an effective date.***

Mayor Green read the item into record. City Planner Allen presented the item including the background i.e. enlarging the building requiring smaller set back, the site map, site plan, floor plan for the medical and professional offices, and the recommended approval by Planning and Zoning Commission. Mayor Green opened the public hearing. No one spoke for or against the item. Councilmember Schwartz made a motion to close the public hearing. Councilmember Harvey seconded the motion. The vote was cast 7 for, 0 against. Councilmember Thomas made a motion to approve the Ordinance. Councilmember Schwartz seconded the motion. Confirmation was made that no responses against the change were received by staff. The vote was cast 7 for, 0 against.

***Item No. 5B Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing further development of a proposal to create a Tax Increment Financing (TIF) Reinvestment Zone on Camp Wisdom Road between Cockrell Hill Road and Duncanville Road, and on Duncanville Road between Camp Wisdom and Red Bird Lane, and on Main Street between Camp Wisdom and Red Bird Lane.***

Mayor Green read the item into record. Economic Development Director James presented the item including the history of discussions regarding the proposed TIF beginning in November 2015 with an economic impact analysis of I-20, recommended improvements, walkability and connectivity with safety improvements, redevelopment and branding benefits, and the original proposed area presented to City Council in June 2016. She presented three options as alternatives to the original proposed area including the estimated revenues and expenses for each over the 20-year life of the TIF, recommended the City participate at 100%, the assumption that County would participate at 35%, the proposed TIF projects, reduction in crime, and next steps.

Discussion included clarification that the City would be using the “pay as you go” method as the safest financially for the City, the TIF would not take away from addressing issues in the rest of the community, and importance of adopting before the new year in order to set the tax base at a lower amount in order to take advantage of the increases expected in the new year. In response to a request by Councilmember Thomas, Mary Maza noted she has power of attorney for the vacant and 84 Lumber properties located on Duncanville Road and she is not in favor of the TIF. Further discussion included the total acreage of 335 acres vs the 80 acres for potential development after right-of-ways are subtracted. Concerns discussed included increased traffic, whether it will work in a small city, unknowns and assumptions, rushing the process, need for more citizen input, and development possible without government intervention i.e. WinCo. Additional positive impact discussed included ability to walk to work, businesses and homeowners along Camp Wisdom in favor of the TIF, deterrence to homeless and drug problems, and taking advantage of I-20 as a major thoroughfare to bring in tax dollars, and keeping the tax dollars in the area.

Further discussion included the importance of the best use of the City’s 11.2 sq. miles and the importance of redevelopment and need for infrastructure improvement, and the TIF as a means to provide the funding necessary; previous development as a result of government intervention that has benefited the City i.e. Pappadeaux, HGI, Costco etc.; no increase in taxes necessary; benefits to be seen in the improvement to the area; and the overflow of redevelopment to Main Street which is another priority for redevelopment.

Following discussion, Councilmember Schwartz made a motion to approve the Resolution as presented with Option 2 reduced area and at 100% participation. Councilmember Harvey seconded the motion. The vote was cast 6 for, 1 against (Councilmember Jameson).

***Item No. 5C Consider a Resolution of the City Council of the City of Duncanville, Texas, approving a twelve month agreement between the City of Duncanville and the Duncanville Chamber of Commerce awarding a hotel occupancy tax grant to the Duncanville Chamber of Commerce located at 300 E. Wheatland Road in the amount of \$14,400 for FY 16 -17, to serve as the Official Duncanville Visitor Center; authorizing the City Manager to execute said agreement; and, providing an effective date.***

Mayor Green read the item into record. Economic Development Director James presented the item including administrative fees to perform as the City’s Visitor Center i.e. 24 hour visitor center, increasing

visitor overnight stay in Duncanville, providing welcome bags to out of town visitors, coordinating activities for out of town groups; funding details; reporting requirements; and staff's recommendation for approval. Councilmember Harvey made a motion to approve the item. Councilmember Dotson seconded the motion. The vote was cast 7 for, 0 against.

***Item No. 5D Consider a Resolution of the City Council of the City of Duncanville, Texas, adopting the revised Capstones for the organization and the community, while discontinuing the "Five Bold Steps"; and, providing an effective date.***

Mayor Green read the item into record. Assistant City Manager Smith presented the item including the history of the creation of the Capstones, which serve as the strategic policy goals and objectives for the City Council, and the Five Bold Steps in 2014 by City Council, and presented the following revised Capstones:

1. Most engaged citizens in America
2. Create high quality neighborhoods and parks
3. Be a youth sports tourism destination
4. Build a "tech forward" community
5. Create multi-modal transportation alternatives
6. Preserve the historic Main Street and City Center area

He added that additional discussions held during the City Council retreat revealed the "Five Bold Steps" were no longer a necessary component of the Work Plan, and were therefore discarded for future planning use.

Councilmember Harvey made a motion to approve the Resolution. Councilmember Dotson seconded the motion. The vote was cast 7 for, 0 against.

***Item No. 5E Consider a Resolution of the City Council of the City of Duncanville, Texas, adopting the City of Duncanville City Council Travel Policy, defining necessary expenses for spouses of City Council members, defining a local event, defining a spouse, and providing an effective date.***

Mayor Green announced that the Councilmembers had requested the item be postponed until the next regular meeting on November 15, 2016.

## **STAFF AND BOARD REPORTS**

***Item No. 6A Receive the Fire Department Quarterly Report and Workplan Update.***

Mayor Green read the item into record. Fire Chief Sam Rohde presented the Fire Department Quarterly Report and Workplan Update for the last two quarters. Items discussed included Staffing, Lifetime Silver EMS recognition, 4<sup>th</sup> of July Parade and Fireworks, recognition as "Storm Ready City", Assistance to Firefighter Grant received for wellness and fitness training, smoke detector installation in Duncanville homes with the assistance of Home Depot and the Red Cross, the new Quint has been ordered, an off-duty Firefighter saved the life of a Duncanville resident, and presented the performance indicators for quarter 3 and Quarter 4. There were not questions.

The meeting adjourned at 9:32 p.m.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-4B

**TITLE:**

Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the annual procurement of merchant card services with Chase Paymentech Solutions, L.L.C., in the unit amount proposed through a joint proposal through a Town of Flower Mound Cooperative Purchasing Agreement with an estimated annual expenditure amount of one hundred one thousand two hundred dollars (\$101,200); authorizing the City Manager to execute the necessary documents; and, providing an effective date.

**FY2016-2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

N/A

**STAFF REPRESENTATIVE:**

Richard Summerlin, C.P.A., C.G.F.O., Finance Director  
Charlie Oberrender, CPPB, Purchasing Manager

**BACKGROUND/HISTORY:**

Contract File # 12-29

The proposed item is for authorization of the annual purchase of merchant card services through RFP #20-12 issued by the Town of Flower Mound and available to the City of Duncanville through its Interlocal Cooperative Agreement with the Town of Flower Mound. The original agreement approved by the Town of Flower Mound and the City of Duncanville is a continuous term agreement and remains in effect until terminated by either party (**non-fixed term agreement which includes a 30-day termination notice without cause clause**). The Duncanville City Council originally authorized the annual purchase of merchant card services with Chase Paymentech Solutions, L.L.C., through the Town of Flower Mound Cooperative contract, at its regular July 17, 2012 meeting. The official full and complete roll-out, usage and expenses of this agreement began in December of 2012. The Duncanville City Council authorized the annual purchase of merchant card services with Chase Paymentech Solutions, L.L.C. through this same cooperative agreement at its December 3, 2013, November 18, 2014, and November 17, 2015 regular meetings. These merchant card services include the electronic processing of credit card payments made by City customers via their credit and debit cards. Examples of payments received are for court citations, alarm permits, water bills, red light enforcement citations, Fieldhouse registrations and concessions, recreation classes/reservations, and Building Inspection permits and fees. The City accepts American Express®, Master Card®, and Visa® credit cards and bank issued debit cards that have credit card brands.

The City of Duncanville originally began accepting credit cards in the late 1990's. In fiscal year 2016, the City of Duncanville processed 77,926 credit card transactions, collecting a net total of \$8,826,299 which included payments from the Internet, interactive voice response/telephone system (**IVR**), and walk-in payments for water bills, court citations, red light enforcement citations, Scofflaw payments, etc.

The highlights of the Town of Flower Mound Cooperative term bid include:

- Terms - Ongoing
- Termination - without cause with thirty day prior notice
- .03% - .04% processing fees plus \$.04-\$.09 cents per transaction
- .05% - 1.80% interchange rate fees

**POLICY EXPLANATION:**

The City of Duncanville provides a convenient customer service offering to its paying patrons by accepting payments from merchant cards (**credit cards**) and providing this service at no cost to its customers in most cases. City of Duncanville customers, either over the Internet or by walk-in, are not assessed any convenience fees; however the exception are customers who call in to a City Utility Accounting Representative that can process the merchant card payments over the phone with an added convenience fee of fifteen dollars (**\$15.00**) per transaction. The City Council approved funding for a new Automated Interactive Voice Response (**IVR**) system in FY15 for Utility Accounting and Municipal Court to accept payments via this automated phone system which will allow staff to recommend the elimination of the convenience fee now in place. The City's average net credit card transaction for FY15 was \$100.92 with 56% of its transactions from the Visa® brand credit card.

Under terms of the original agreement, the City pays processing fees ranging from .03%-.04% plus \$.04-\$.09 cents per transaction. The City pays an interchange rate to the credit card issuing firm, ranging between .05% and 1.80% of each transaction plus assessment fees. Interchange rate fees are the processor's cost for each settled transaction paid to the financial institution that issued the credit card. Dues and assessments are fees paid to Visa® and MasterCard® based on volume of sales. Fees are slightly higher than budgeted primarily due to higher than anticipated credit card transactions related to the increased summer camp and after school programs at the Duncanville Fieldhouse.

The merchant card services are available from Chase Paymentech Solutions, L.L.C through a Town of Flower Mound Cooperative. Local Government Code Section 271.102 provides for the voluntary participation in cooperative purchasing programs with another local government or a local cooperative and satisfies any state law requiring competitive bids.

**FUNDING SOURCE:**

\$102,600 is allocated in the FY 17 budget for this expenditure: General Fund/Non-Departmental (\$9,600), Utility Fund/Utility Accounting (\$85,000) and Fieldhouse Fund/Administrative (\$8,000).

**RECOMMENDATION:**

Staff recommends approval of a Resolution of the City Council of the City of Duncanville, Texas, authorizing the annual procurement of merchant card services with Chase Paymentech Solutions, L.L.C., in the unit amount proposed through a joint proposal through a Town of Flower Mound Cooperative Purchasing Agreement with an estimated annual expenditure amount of one hundred one thousand two hundred dollars (\$101,200); authorizing the City Manager to execute the necessary documents; and, providing an effective date.

**ATTACHMENTS:**

- Attachment 1 - Original Proposal Evaluation Tabulation Sheet
- Attachment 2 - Resolution

**RFP No. 20-12-A**  
**Merchant Card Services**

<b>EVALUATION MATRIX</b>		<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>
<b>Evaluation Criteria</b>	<b>Weighting</b>	<b>Automated Merchant Systems, Inc.</b>		<b>Branch Banking and Trust (BB&amp;T)</b>		<b>(Chase) Paymentech, LLC</b>	
Financial Capability	<b>20%</b>	3.00	0.20	13	0.87	20.00	1.33
Technical Compliance	<b>20%</b>	7.00	0.47	15.00	1.00	19.00	1.27
Relevant Experience	<b>20%</b>	13.00	0.87	13.00	0.87	17.00	1.13
Additional Services	<b>10%</b>	8.00	0.27	7.00	0.23	6.00	0.20
Price	<b>30%</b>	7.32	2.20	8.67	2.60	10.00	3.00
<b>TOTAL</b>	<b>100%</b>		<b>4.00</b>		<b>5.57</b>		<b>6.93</b>



# Merchant Application and Agreement

If you make any corrections, you **MUST** initial each change.

<b>THIS SECTION IS FOR INTERNAL USE ONLY</b>		<b>Rev. NAPSTAND 01/2012</b>	
Application ID:		Sales Rep:	
Rep Fax:		Rep Phone:	

## 1. Merchant Business (Federal regulations require us to collect and retain information verifying a merchant's identity.)

### "Doing Business As" (DBA) Information

Merchant DBA Name			Date Business Started (MM/YYYY)
DBA Street Address (No PO Box or Paid Mail Box)			Telephone #
City	State	Zip Code	Fax #
Name of Primary Contact		Merchant DBA Email Address	

### Legal Information (If you are an Individual/Sole Proprietor, fill in this section with your personal information)

Merchant Legal Name	State of Formation	Federal Tax ID/EIN (sole prop use SSN)
---------------------	--------------------	--

Complete this section if different from DBA Information.

Legal Street Address			Telephone #
City	State	Zip Code	Fax #
Legal Email Address			

### Business and IRS Information (Please check the type of business and how it is taxed)

<input type="checkbox"/> LLC	→	<b>taxed as</b> <input type="checkbox"/> S Corporation <input type="checkbox"/> C Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Disregarded Entity <sup>1</sup>
<input type="checkbox"/> Individual/Sole Proprietor	→	<sup>1</sup> A <i>Disregarded Entity</i> is a business that is separate from its owner for legal purposes but the owner chooses to "disregard" that separation for federal income tax purposes. If an individual owns a Disregarded Entity, it is treated as a sole proprietor. If another legal entity owns it, it is treated as a branch or division of the owner.
<input type="checkbox"/> Partnership		
<input type="checkbox"/> Private Corporation <b>or</b> <input type="checkbox"/> Public Corporation	→	<b>taxed as</b> <input type="checkbox"/> S Corporation <input type="checkbox"/> C Corporation
<input type="checkbox"/> Government Agency <b>or</b> <input type="checkbox"/> Non-Profit <sup>2</sup>	→	<b>check if</b> <input type="checkbox"/> Exempt from IRS backup withholding

<sup>2</sup> Non-profit companies need to submit form 501C and, if exempt from sales tax, should also submit their state tax exempt certificate.

## 2. Merchant Profile

Is your business home-based? <input type="checkbox"/> Yes <input type="checkbox"/> No	Has business ever been in bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" above, where is the inventory located?	What is your type of business?
What merchandise do you sell or services do you provide?	<input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Auto Rental <input type="checkbox"/> Cash Advance <input type="checkbox"/> Convenience Store/Gas <input type="checkbox"/> Other: <input type="checkbox"/> Internet (You are <b>required</b> to list <b>all</b> website addresses): www.
Is your business seasonal? <input type="checkbox"/> Yes <input type="checkbox"/> No	

## 3. Delivery of Statements, Chargeback Requests, and Retrieval Requests

<b>Statements</b> (Select <b>one</b> delivery method and <b>one</b> address only)		<b>Chargeback and Retrieval Requests</b> (Select <b>one</b> address only)	
<input type="checkbox"/> <b>Email</b> statements to	<input type="checkbox"/> <b>Mail</b> statements to (see pricing)	Mail requests to	To have <b>retrievals</b> faxed instead of mailed, provide fax number below:
<input type="checkbox"/> Legal email address	<input type="checkbox"/> Legal address	<input type="checkbox"/> Legal address	
<input type="checkbox"/> DBA email address	<input type="checkbox"/> DBA address	<input type="checkbox"/> DBA address	



### 7. Payment and Processing Information

If you have previously accepted payment cards, please include your three (3) most recent monthly processing statements.

Please check all payment methods you wish to accept: <input type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> Discover/JCB <input type="checkbox"/> PIN Debit <input type="checkbox"/> Voyager <input type="checkbox"/> Wright Express <input type="checkbox"/> Gift Card	Estimated Total Annual Visa/MC/Discover Sales Volume	\$
	Estimated Total Annual PIN Debit Sales Volume	\$
Current Payment Processor	Estimated Average Ticket Amount	\$
	Estimated Highest Transaction Amount	\$
	Has Merchant ever had a breach involving lost card data or received a notification for any violation of the Payment Brand Rules? <input type="checkbox"/> Yes <input type="checkbox"/> No	

### 8. American Express®

#### A. American Express Service Establishment Number (SE#)

If you have an American Express SE#, please provide it here:

Only Complete Section B if you do not have an American Express SE# and would like Chase Paymentech to request one for you.

#### B. Application for American Express Service Establishment Number (SE#)

Estimated Total Annual American Express Sales Volume	\$	Estimated Average American Express Transaction Amount	\$
<p><b>American Express Fees</b> – Unless otherwise indicated in this Section 8B, Merchant shall be charged industry-specific American Express Discount Rate listed to the right.</p> <p>If Merchant operates within one of the following categories, or fails to activate their American Express account, Merchant will not be charged the American Express Discount Rate. Instead, Merchant will be charged a flat monthly fee of <b>\$7.95</b>.</p> <ul style="list-style-type: none"> <li>• Internet / Physical Delivery Merchant</li> <li>• Mail Order / Telephone Order</li> <li>• Home-based Business</li> </ul> <p>If Merchant is charged a flat monthly fee of \$7.95, that fee will continue until Merchant's American Express volume exceeds \$4,999 in a 12-month period.</p>		<p>American Express Discount Rate</p> <p>At such time American Express will begin charging Merchant the applicable industry-specific American Express Discount Rate.</p> <p>Also, based on Merchant's MCC and American Express's grouping of MCCs, the following additional fees will be applied to each American Express Transaction:</p> <ul style="list-style-type: none"> <li>• Business to Business MCCs: <b>\$0.15</b></li> <li>• Retail MCCs: <b>\$0.10</b></li> <li>• Services, Wholesale, All Other MCCs not otherwise categorized: <b>\$0.15</b></li> <li>• Restaurant: <b>\$0.05 (+ 0.30%</b> for hand-keyed or card not present transactions)</li> </ul> <p>All American Express fees are subject to change by American Express.</p>	
<p><b>FOR PAYMENTECH TO REQUEST AN AMERICAN EXPRESS NUMBER ON BEHALF OF THE MERCHANT THROUGH THE AMEX ESA PROGRAM:</b></p> <p>By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete and accurate. I authorize Paymentech and American Express Travel Related Services Company, Inc. ("American Express") and American Express's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agents, subcontractors, Affiliates, and other parties for any purpose permitted by law. I authorize and direct Paymentech and American Express and American Express's agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize American Express to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon American Express's approval of the application, the entity will be provided with the Agreement and materials welcoming it to American Express's Card acceptance program. In addition, by signing this form, you authorize American Express and its agents and Affiliates to send you account information and exclusive offers and savings for your business via the information that you have provided, which includes your business email address. For information on how we use your information and protect your privacy, please visit us at <a href="http://www.americanexpress.com/privacy">www.americanexpress.com/privacy</a>.</p>			
<p><b>X</b> _____ Signature</p>		<p>_____ Date</p>	

### 9. Site Visit

If your business is selected for a site visit, Chase Paymentech, or a third party representing Chase Paymentech, will contact you at the number provided. You **MUST** assist with the site visit and Chase Paymentech **MUST** approve the results of the site visit.

The site visit includes, but is not limited to,

- an interview with you regarding the nature of your business, **and**
- photographs of your business operation.

If the site visit is not completed or the results of the site visit are not approved, Chase Paymentech may,

- decline your application for a merchant account
- withhold your funds, **or**
- terminate your Agreement with Chase Paymentech **and** close your Merchant account.

To help expedite the process, we **require** the following information:

Best phone # to contact you:	Preferred language: <input type="checkbox"/> English <input type="checkbox"/> Spanish
Best time to reach you:	<input type="checkbox"/> Other:

### 10. IRS Certification

**Under penalty of perjury, I certify that:**

1. The number shown on this form (Section 1) is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest in dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person.

**Certification Instructions**

You must cross out and initial #2 above if you have been notified by the IRS that you are currently subject to backup withholding. IRS Form W-9 instructions available upon request.

**11. Authorized Representative(s)**

The first four pages of this document are the Merchant’s Application to establish a Merchant account with Paymentech, LLC (“Chase Paymentech”) and JPMorgan Chase Bank, N.A. (“Member”). Once submitted, the Application belongs to Chase Paymentech and Member. Any set up fee paid by Merchant is non-refundable. The Application is subject to approval by Chase Paymentech and Member. If the Application is approved, Chase Paymentech will establish one or more Merchant account(s). All Merchant accounts will be governed by the entire Agreement, which includes: the Application, the Terms and Conditions, Schedule A (pricing), and any amendments, supplements or modifications provided to you.

As a person who submits the Application on behalf of Merchant and who signs this document on behalf of Merchant, I, the undersigned, certify that

- I am an owner, partner, officer or other authorized representative of the Merchant (“Authorized Representative”)
- I have been duly authorized to
  - submit the Application, and all information contained therein, on behalf of the Merchant
  - sign the Application and Agreement on behalf of Merchant
  - legally bind the Merchant to the Agreement.

Through its Authorized Representative(s), Merchant

- represents and warrants that all information contained within the Application as well as any information submitted in conjunction with the Application is true, complete, and not misleading
- represents and warrants that it owns the bank account provided in Section 6
- represents and warrants that it has received a complete copy of the Agreement, including the Terms and Conditions for Merchant Agreement and Schedule A
- agrees to be legally bound by the Agreement
- understands that any unilateral changes to the pre-printed text of any part of the Agreement may result in Chase Paymentech declining Merchant’s Application or terminating the Agreement
- agrees that Chase Paymentech, Member, or their designees, may
  - investigate and verify the credit and financial information of Merchant
  - obtain consumer and commercial credit reports on Merchant and its owner(s) from time to time
  - use consumer and commercial credit reports on Merchant and its owner(s) in connection with the establishment and maintenance of Merchant’s account and Agreement
- agrees that Member and Chase Paymentech may share credit, financial information about Merchant and Chase Paymentech.

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding. (See Section 10 above).

Authorized Representative: Signer’s name must appear in Section 5A, 5B, or 5C

**X** \_\_\_\_\_  
 Signature Print Name Date

Authorized Representative: Signer’s name must appear in Section 5A, 5B, or 5C

**X** \_\_\_\_\_  
 Signature Print Name Date

**12. Individual Guarantor(s)**

The person(s) acting as individual guarantor(s) must have an ownership interest in Merchant and must be listed in Section 5 of this Application. As an individual(s) who agrees to be personally responsible for Merchant’s account with Chase Paymentech (a “Guarantor”), I

- certify I have received and reviewed a complete copy of the Agreement, including the Application, Terms and Conditions, and Schedule A
- certify I have read the Agreement, including, without limitation, the “Personal Guaranty” section at the end of the Terms and Conditions
- agree to be bound as a Guarantor of the Merchant’s obligations under the Agreement in accordance with the “Personal Guaranty” section of the Terms and Conditions
- certify that I have an ownership interest in Merchant
- agree that Chase Paymentech, Member, or their designees, may investigate and verify the credit and financial information about me and may obtain consumer credit reports on me from time to time
- agree that Chase Paymentech, Member, or their designees, may use such consumer credit reports in connection with establishing and maintaining the Merchant’s account and Agreement
- agree that all business references, including financial institutions, may share my credit and financial information with Chase Paymentech

Guarantor:

**X** \_\_\_\_\_  
 Signature Print Name Date

Guarantor:

**X** \_\_\_\_\_  
 Signature Print Name Date

**If any of the information provided in this Merchant Application and Agreement changes, you must notify Chase Paymentech of such change(s) as soon as possible.**

Internal Use Only: Approved by Paymentech, LLC for itself and on behalf of JPMorgan Chase Bank, N.A.

\_\_\_\_\_  
 Signature Title Date

## TERMS AND CONDITIONS

### 1. MERCHANT'S ACCEPTANCE OF PAYMENT INSTRUMENTS

**1.1 Exclusivity.** During the term of this Agreement, Chase Paymentech shall be Merchant's exclusive provider of all Transaction processing services (including, without limitation, the authorization, conveyance and settlement of Transactions), and Merchant shall not use the services of any bank, corporation, entity or person other than Paymentech for such services. Merchant shall submit to Chase Paymentech Transaction Data generated from all of its Transactions via electronic data transmission according to Chase Paymentech's formats and procedures throughout the term of this Agreement.

### 1.2 Certain Payment Acceptance Policies and Prohibitions.

- (a) Each Transaction must be evidenced by its own Transaction Receipt completed in accordance with Payment Brand Rules.
- (b) Merchant shall not require the Customer to pay the fees payable by Merchant under this Agreement.
- (c) Merchant shall never issue Refunds for Transactions by cash or a cash equivalent (e.g., check) unless required by law or permitted by the Payment Brand Rules.
- (d) Unless permitted by the Payment Brand Rules, Merchant shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of any Payment Brand relative to any other Payment Brand.
- (e) Except where expressly permitted by law or the Payment Brand Rules, Merchant shall not set a dollar amount above or below which Merchant refuses to honor otherwise valid Payment Instruments.
- (f) Merchant shall examine each Payment Instrument physically presented at the point of sale to determine that the Payment Instrument presented is valid and has not expired. Merchant shall exercise reasonable diligence to determine that the authorized signature on any Payment Instrument physically presented at the point of sale corresponds to the Customer's signature on the Transaction Receipt.
- (g) With respect to any Transaction for which a Customer is not physically present at the point of sale, such as in any on-line, mail, telephone, pre-authorized or recurring Transaction, Merchant must (i) have notified Chase Paymentech on its Application, or otherwise obtained Chase Paymentech's prior written approval, of Merchant's intention to conduct such Transactions; and (ii) have appropriate procedures in place to ensure that each Transaction is made to a purchaser who actually is the Customer. Merchant acknowledges that under certain Payment Brand Rules, Merchant cannot rebut a Chargeback where the Customer disputes making the purchase and Merchant does not have an electronic record (e.g., "swiping" or "tapping" a Payment Instrument) or physical imprint of the Payment Instrument.
- (h) Merchant agrees to accept all categories of Visa and MasterCard Payment Instruments (i.e., debit and credit cards), unless Merchant has notified Chase Paymentech on its Application or otherwise in writing of its election to accept one of the following "limited acceptance" options: (i) all Visa and MasterCard consumer credit cards and Visa and MasterCard commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (but no credit cards). Notwithstanding the election of one of the foregoing limited acceptance options, Merchant must honor all foreign bank-issued Visa or MasterCard Payment Instruments. If Merchant elects one of the limited acceptance categories: (Y) Merchant must display appropriate signage to indicate the limited acceptance category; and (Z) Chase Paymentech, at its option, may process any Transactions submitted to Chase Paymentech outside of the limited acceptance category, in which case such Transactions will be assessed the applicable interchange fees plus any additional fees/surcharges assessed by Chase Paymentech or the Payment Brands.
  - (i) Merchant shall not split a single Transaction into two or more Transactions to avoid or circumvent authorization limits or monitoring programs.
  - (j) Merchant shall not accept Payment Instruments for the purchase of scrip.
- (k) Merchant shall not require a Customer to complete a postcard or similar device that includes the Customer's Payment Instrument account number, expiration date, or any other account data in plain view when mailed.
- (l) Merchant shall not add any tax or surcharge to Transactions, unless applicable law expressly requires a Merchant be permitted to impose the tax or surcharge. If any tax or surcharge amount is allowed, such amount shall be included in the Transaction amount and shall not be collected separately.
- (m) Merchant shall not request or use a Payment Instrument account number for any purpose except as payment for its goods or services, unless required by the Payment Brand Rules in order to support specific services offered by the Payment Brands.

**1.3 Payment Brand Rules.** Merchant agrees to comply with (a) all Payment Brand Rules as may be applicable to Merchant and in effect from time to time; and (b) such other procedures as Chase Paymentech may from time to time prescribe for the creation or transmission of Transaction Data.

**1.4 Requirements for Certain Transactions.** As to all Transactions, Merchant represents and warrants that, to the best of its knowledge:

- (a) The Transaction Data (i) represents a payment for or Refund of a bona fide sale or lease of the goods, services, or both, which Merchant has provided in the ordinary course of its business, as represented in its Application; and (ii) is not submitted on behalf of a third party.
- (b) The Transaction Data represents an obligation of the Customer for the amount of the Transaction.
- (c) The Transaction is not for any purpose other than payment for the current Transaction. The Transaction does not represent the collection of a dishonored check or the collection or refinancing of an existing debt. The Transaction does not represent payment for a previous Transaction or charge incurred at the Merchant or a Transaction that was previously charged back by the Customer, irrespective of Customer consent or approval.
- (d) Except as specifically stated in Merchant's Application or otherwise approved in writing by Chase Paymentech in advance, with respect to any prepayment for services or full prepayment for custom-ordered merchandise manufactured to the Customer's specifications, at the time Merchant accepts a Payment Instrument for any goods or services, the goods have been provided or shipped or the services actually rendered to the Customer. For approved prepayments, Merchant must advise the Customer (i) that payment is being made in advance of the shipment or provision of goods or services; and (ii) the time when shipment or provision of the goods or services is expected.
  - (e) The Transaction Data is free from any material alteration not authorized by the Customer.
  - (f) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
  - (g) Merchant has not disbursed or advanced any cash to the Customer (except as authorized by the Payment Brand Rules) or itself or to any of its representatives, agents, or employees in connection with the Transaction, nor has Merchant accepted payment for effecting credits to a Customer.
  - (h) The goods or services related to each Transaction are Merchant's property or Merchant has the legal right to sell them.
  - (i) Merchant has made no representation or agreement for the issuance of Refunds except as stated in Merchant's Refund Policy, which has been previously submitted to Chase Paymentech in writing as provided in Section 3, and which is available to the Customer.
  - (j) Any Transaction submitted to Chase Paymentech to credit a Customer's account represents a Refund for a Transaction previously submitted to

Chase Paymentech.

(k) Merchant has no knowledge or notice of information that would lead Merchant to believe that the enforceability or collectibility of the Transaction is in any manner impaired. Merchant has originated the Transaction and Transaction Data in compliance with this Agreement, applicable laws and all applicable Payment Brand Rules.

(l) Unless specifically stated in its Application or otherwise approved in writing by Chase Paymentech in advance, Merchant shall not accept Payment Instruments in connection with installment plans. If the Customer pays in installments or on a deferred payment plan, as previously approved by Chase Paymentech, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the dates the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to Chase Paymentech for processing, shall be deemed to be a part of the original Transaction.

(m) Merchant has not submitted any Transaction that Merchant knows or should have known to be either fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Customer or otherwise in violation of any provision of this Agreement, applicable law, or Payment Brand Rules.

(n) For recurring Transactions, Merchant must (i) obtain the Customer's consent to periodically charge the Customer on a recurring basis for the goods or services purchased; (ii) retain this permission for the duration of the recurring services and provide it upon request to Chase Paymentech or the issuing bank of the Customer's Payment Instrument; and (iii) retain written documentation specifying the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not submit any recurring transaction after receiving: (i) a cancellation notice from the Customer; or (ii) notice from Chase Paymentech or any Payment Brand (via authorization code or otherwise) that the Payment Instrument is not to be honored. Merchant shall include in its Transaction Data the electronic indicator that the Transaction is a recurring Transaction.

**1.5 Stored Value Card Transactions.** As to all Stored Value Card Transactions, if any, in addition to any representations and warranties previously made, Merchant agrees to:

(a) comply with all applicable laws relating to Stored Value Card Transactions, and indemnify and hold Chase Paymentech harmless from any loss, damage, or claim relating to or arising out of any failure to comply with applicable laws in connection therewith;

(b) be responsible for ensuring that all Stored Value Cards require activation at the point of sale;

(c) provide immediate written notification to Chase Paymentech of any Stored Value Card fraud losses immediately;

(d) be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from Merchant's Stored Value Card Transactions;

(e) discourage transportation of groups of sequentially numbered gift cards;

(f) deactivate or otherwise remove all value from Stored Value Cards that have been compromised; and

(g) be responsible for any fraudulent transactions involving Merchant's Stored Value Cards, including, without limitation, the unauthorized activation of Stored Value Cards, reloading of existing Stored Value Cards (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized replication of Stored Value Cards or Stored Value Card data for fraudulent Transactions.

**2. AUTHORIZATIONS.** Merchant is required to obtain an authorization code through Chase Paymentech, in accordance with this Agreement, for each Transaction. Merchant acknowledges that authorization of a Transaction indicates that the Payment Instrument (a) contains a valid account number; and (b) has an available credit balance sufficient for the amount of the Transaction; but, it does not constitute a representation from Chase Paymentech, a Payment Brand, or a card issuing bank that a particular Transaction is in fact a valid or undisputed Transaction entered into by the actual Customer. Chase Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant unless it includes a proper authorization.

### **3. REFUND AND ADJUSTMENT POLICIES AND PROCEDURES; PRIVACY POLICIES.**

**3.1 Refund Policy.** Merchant is required to maintain a Refund Policy and to disclose such Refund Policy to Chase Paymentech and Customers. Any material change in Merchant's Refund Policy must be submitted to Chase Paymentech, in writing, not less than 14 days prior to the effective date of such change. Chase Paymentech reserves the right to refuse to process any Transactions made subject to a revised Refund Policy of which Chase Paymentech has not been notified in advance. To the extent that Merchant operates an electronic commerce website through which Transaction Data is generated, Merchant must include its Refund Policy on the website in accordance with Payment Brand Rules.

**3.2 Procedure for Refund Transactions.** If, under Merchant's Refund Policy, Merchant allows a Refund, Merchant shall prepare and deliver to Chase Paymentech Transaction Data reflecting any such Refund within three (3) days of approving the Customer's request for such Refund. The amount of a Refund cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Customer for shipping charges that the Customer paid to return merchandise. Merchant shall not accept any payment from a Customer as consideration for issuing a Refund. Merchant shall not give cash (or cash equivalent) refunds to a Customer in connection with a Transaction, unless required by law or permitted by the Payment Brand Rules.

**3.3 Customer Data Protection Policies.** To the extent that Merchant operates an electronic commerce website through which Transaction Data is generated, in addition to any requirements otherwise set forth in this Agreement, Merchant shall display the following on its website: (a) its Customer data privacy policy; (b) a description of its security capabilities and policy for transmission of Payment Instrument Information; and (c) the address of Merchant's fixed place of business (regardless of website or server locations). Furthermore, Merchant must offer its Customers a data protection method such as 3-D Secure or Secure Sockets Layer (SSL).

### **4. SETTLEMENT.**

**4.1 Submission of Transaction Data.** Failure to transmit Transaction Data to Chase Paymentech within one (1) business day following the day that such Transaction originated could result in higher interchange fees and other costs, as well as increased Chargebacks. Unless Merchant has notified Chase Paymentech on its Application or Chase Paymentech has otherwise agreed in writing in advance, Merchant shall not submit Transactions for processing until (a) the Transaction is completed; (b) the goods are delivered or shipped; (c) the services are performed; or (d) Merchant has obtained the Customer's consent for a recurring Transaction. Chase Paymentech may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. Chase Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant if Chase Paymentech reasonably believes that the Transaction may be uncollectible from the Customer or was prepared in violation of any provision of this Agreement, applicable law, or the Payment Brand Rules. For all Transactions, Chase Paymentech will submit Merchant's Transaction Data to the applicable Payment Brands.

**4.2 Merchant's Settlement Account.** In order to receive funds from Chase Paymentech, and to the extent not already designated within the Application, Merchant must designate and maintain one or more accounts used primarily for business purposes at a bank that is a member of the Automated Clearing House system or the Federal Reserve wire system (collectively referred to as "Settlement Account"). During the term of this Agreement, and thereafter until Chase Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full, Merchant shall not close its Settlement Account without giving Chase Paymentech at least five (5) days' prior written notice and substituting another Settlement Account. Merchant is solely liable for all fees, costs, and overdrafts associated with the Settlement Account. Merchant authorizes Chase Paymentech to initiate electronic credit and debit entries and adjustments to the Settlement Account at any time without regard to the source of any monies in the Settlement Account, and this authority will remain in full force and effect until Chase Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full. Chase Paymentech will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by the Payment Brands or Merchant's bank.

**4.3 Conveyed Transactions.** For Conveyed Transactions Merchant shall have a valid agreement in effect with the applicable Payment Brand. If Merchant submits Conveyed Transactions to Chase Paymentech and Merchant does not have a valid agreement with the applicable Payment Brand, Chase Paymentech may, but shall not be obligated to, submit such Transaction Data to the applicable Payment Brand and to share with them information about Merchant (from the Application or otherwise) as may be required to approve Merchant's acceptance of the Payment Brand's Payment Instrument. Payment of proceeds due Merchant for Conveyed Transactions shall be governed by the agreement Merchant has with the applicable Payment Brand, and Chase Paymentech does not bear any responsibility for their performance thereunder, including, without limitation, the funding and settlement of Merchant's Conveyed Transactions.

**4.4 Transfer of Transaction Settlement Funds.** Subject to Section 4.3, for all Transactions, Chase Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Chase Paymentech receives funds for Settled Transactions from the Payment Brands, Chase Paymentech will provisionally fund the Settlement Account. The proceeds payable to Merchant shall be equal to the amounts submitted by Merchant in connection with its Transaction Data minus the sum of the following: (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay; (b) all Refunds and Chargebacks; (c) all Reserve Account (as defined in Section 4.6) amounts; (d) all fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on Chase Paymentech or Member from time to time by the Payment Brands and all related costs and expenses incurred by Chase Paymentech. Merchant agrees that all amounts are due and payable as provided in this Agreement. In the event Chase Paymentech does not deduct such amounts from Merchant's proceeds when such amounts are due and payable, Merchant agrees to pay all such amounts to Chase Paymentech immediately without any deduction or offset. Additionally, Chase Paymentech may debit the Settlement Account or Merchant's Reserve Account for such amounts at any time.

**4.5 Negative Amounts.** Merchant shall maintain sufficient funds in the Settlement Account to prevent the occurrence of a negative balance. In the event that the proceeds from Merchant's Settled Transactions or the balance of Merchant's Settlement Account are not sufficient to pay amounts due under this Agreement, in addition to any other rights and remedies Chase Paymentech may have under this Agreement, Chase Paymentech may pursue one or more of the following options:

- (a) demand and receive immediate payment for such amounts;
- (b) debit the Settlement Account for the amount of the negative balance;
- (c) apply funds held in the Reserve Account against the negative amount; and
- (d) withhold all or some of Merchant's Settlement funds and apply them against the negative amount.

Furthermore, if the amount represented by Merchant's Transaction Data in any day is negative due to Refunds or credits being submitted by Merchant in excess of its proceeds from Transactions, Merchant shall immediately provide Chase Paymentech with sufficient funds to prevent the occurrence of a negative balance.

**4.6 Reserve Account.** At any time and from time to time Chase Paymentech may temporarily suspend or delay payments to Merchant and/or designate an amount of funds that Chase Paymentech must maintain in order to protect itself against anticipated risks, including, without limitation, risks associated with Chargebacks, fines, fees or penalties assessed against Chase Paymentech or Member by any of the Payment Brands arising out of or relating to Merchant's Transactions, Chargebacks or failure to comply with the Payment Brand Rules or the Security Standards (all such risks herein referred to as "Anticipated Risks" and such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Section 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus Chase Paymentech's estimated exposure based on reasonable criteria for Chargebacks, Refunds, unshipped goods and/or unfulfilled services, and all additional Anticipated Risks. Chase Paymentech may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to Merchant against, the satisfaction of any amounts which are or may become due from Merchant pursuant to this Agreement. Funds in the Reserve Account will be held and controlled by Chase Paymentech, will not bear interest, and may be commingled with other funds. Effective upon Chase Paymentech's establishment of a Reserve Account, Merchant irrevocably grants to Chase Paymentech a security interest in any interest Merchant may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in the Reserve Account and that would otherwise be payable to Merchant pursuant to the terms of this Agreement. Merchant agrees to execute and deliver to Chase Paymentech such instruments and documents that Chase Paymentech may reasonably request to perfect and confirm the security interest in the Reserve Account funds. Upon (i) satisfaction of all of Merchant's obligations under this Agreement; and (ii) Merchant's execution of documents reasonably requested by Chase Paymentech in connection with the return of any Reserve Account funds, Chase Paymentech will pay to Merchant any funds then remaining in the Reserve Account.

**5. ACCOUNTING.** Chase Paymentech will supply a detailed statement reflecting the activity of Merchant's account(s) by online access (or otherwise if agreed to by both parties) and Merchant shall ensure that any online access to such statements is secure. If Merchant believes any adjustments should be made with respect to Merchant's Settlement Account, Merchant must notify Chase Paymentech in writing within 90 days after any such adjustment is or should have been effected.

**6. RETRIEVAL REQUESTS.** In order to comply with Retrieval Requests, Merchant shall store and retain Transaction Data and Transaction Receipts in compliance with the Payment Brand Rules, including any time frames set forth therein. Within seven (7) days (or such shorter time as the Payment Brand Rules may require) of Chase Paymentech sending Merchant a Retrieval Request, Merchant must provide to Chase Paymentech, via certified or overnight mail or by confirmed fax, (a) written resolution of Merchant's investigation of such Retrieval Request; and (b) legible copies of any supporting documentation requested or required by the Retrieval Request. Merchant acknowledges that failure to fulfill a Retrieval Request timely and in accordance with Payment Brand Rules may result in an irreversible Chargeback.

**7. CHARGEBACKS.**

**7.1 Chargeback Reasons.** Merchant has full liability for all Chargebacks. Following are some of the most common reasons for Chargebacks:

- (a) Merchant fails to issue a Refund to a Customer upon the return or non-delivery of goods or services;
- (b) A required authorization/approval code was not obtained;
- (c) The Transaction Data was prepared incorrectly or fraudulently;
- (d) Chase Paymentech did not receive Merchant's response to a Retrieval Request in accordance with Section 6;
- (e) The Customer disputes the Transaction or the authenticity of the signature on the Transaction Receipt, or claims that the Transaction is subject to a set-off, defense, or counterclaim;
- (f) The Customer refuses to make payment for a Transaction because, in the Customer's opinion, a claim or complaint has not been resolved or has been resolved in an unsatisfactory manner; or
- (g) The credit or debit card comprising the Payment Instrument was not actually presented at the time of the Transaction or Merchant failed to obtain an electronic record or physical imprint of such Payment Instrument, and the Customer denies making the purchase.

**7.2 Response to Chargebacks.** If Merchant has reason to dispute or respond to a Chargeback, then Merchant must do so by the date provided on the applicable Chargeback notice. Chase Paymentech will not investigate or attempt to obtain a reversal or other adjustment to any Chargeback if Merchant has not timely responded to the notice.

**7.3 Excessive Chargebacks.** If Merchant is receiving an excessive amount of Chargebacks, as determined by the Payment Brands from time to time, in addition to Chase Paymentech's other remedies under this Agreement, Chase Paymentech may take one or more of the following actions: (a) review Merchant's internal procedures relating to acceptance of Payment Instruments and notify Merchant of new procedures Merchant should adopt in order to avoid future Chargebacks; (b) notify Merchant of a new rate Chase Paymentech will charge to process Merchant's Chargebacks; or (c) establish a Reserve Account. Merchant also agrees to pay any and all penalties, fees, fines, and costs assessed against Merchant, Chase Paymentech, and/or Member relating to Merchant's violation of this Agreement or the Payment Brand Rules with respect to Merchant's acceptance of Payment Instruments, its Transactions, or with respect to excessive Chargebacks under this Section.

**7.4 Claims of Customers.** Following a Chargeback, Merchant may resubmit applicable Transaction Data for a second presentment, but only in accordance with Payment Brand Rules. To the extent Chase Paymentech has paid or may be called upon to pay a Chargeback or Refund for or on the account of a Customer and Merchant does not reimburse Chase Paymentech as provided in this Agreement, then for the purpose of Chase Paymentech obtaining reimbursement of such sums paid or anticipated to be paid, Chase Paymentech has all of the rights and remedies of such Customer under applicable federal, state, or local laws and Merchant authorizes Chase Paymentech to assert any and all such claims in its own name for and on behalf of any such Customer individually or all such Customers as a class.

**8. DISPLAY OF PAYMENT BRAND MARKS.** Merchant is prohibited from using the Payment Brand Marks, as defined below (sometimes referred to herein as "Marks"), other than as expressly authorized by Chase Paymentech in writing or by the Payment Brands. Payment Brand Marks mean the brands, emblems, trademarks and/or logos that identify a Payment Brand. Additionally, Merchant shall not use the Payment Brand Marks other than to display decals, signage, advertising, and other forms depicting the Payment Brand Marks that are provided to Merchant (a) by the Payment Brands; (b) by Chase Paymentech pursuant to this Agreement; or (c) as otherwise approved in writing by Chase Paymentech. Merchant may use the Payment Brand Marks only to promote the services covered by the Marks by using them on decals, indoor and outdoor signs, advertising materials, and marketing materials; provided, that all such uses by Merchant must be approved by Chase Paymentech and consistent with Payment Brand Rules. Merchant shall not use the Payment Brand Marks in any way that Customers could believe that the goods or services offered by Merchant are sponsored, endorsed, or guaranteed by the owners of the Payment Brand Marks. Merchant recognizes that it has no ownership rights in the Payment Brand Marks. Merchant shall not assign the rights to use the Payment Brand Marks to any third party. Merchant's right to use the Payment Brand Marks hereunder terminates with the termination of this Agreement.

**9. FEES; ADJUSTMENTS.**

**9.1 Schedule A.** Merchant shall pay all applicable fees for all Transactions, which shall be calculated and payable pursuant to this Agreement. Merchant acknowledges that the fees stated in Schedule A are based upon the assumption that Merchant's Transactions will qualify for certain interchange rates as determined in each case by the applicable Payment Brand. If any of Merchant's Transactions fail to qualify for such interchange rates, Chase Paymentech shall process each such Transaction at the applicable interchange rate determined by the applicable Payment Brand. Unless otherwise indicated on Schedule A, Merchant shall be solely responsible for all communication expenses required to facilitate the transmission of all Transaction Data to Chase Paymentech. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent.

**9.2 Price Adjustments.** Fees set forth in this Agreement are based upon Merchant's annual volume, average Transaction size, and other information provided by Merchant or contained in this Agreement. Chase Paymentech may modify the pricing provisions in this Agreement with 30 days' prior written notice to Merchant. Furthermore, the fees set forth on Schedule A and any additional pricing supplements may be adjusted to reflect increases by Payment Brands in interchange, assessments, or other Payment Brand fees, additional fees imposed by the Payment Brands, or increases in third party fees identified in this Agreement. Merchant shall pay all such fees, as so adjusted. Each such adjustment shall become effective upon the date the corresponding increase or additional fee is implemented by the Payment Brand or third party provider.

**10. TERMINATION.**

**10.1 Term.** This Agreement takes effect on the date it is accepted and agreed to by Chase Paymentech (by signature or otherwise; the "Effective Date") and shall continue until terminated by either party as provided herein.

**10.2 Merchant Termination.** Subject to the terms of this Section 10.2, Merchant may terminate this Agreement at any time by providing thirty (30) days prior notice to Chase Paymentech. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF MERCHANT TERMINATES THE AGREEMENT WITHIN TWENTY FOUR (24) MONTHS OF THE EFFECTIVE DATE, MERCHANT MAY BE OBLIGATED TO REPAY, AS APPLICABLE, ANY PROMOTIONAL CONSIDERATION, WHICH SHALL BE DEFINED AS: (A) A PRORATED PORTION OF ANY SIGNING BONUS; (B) THE ESTIMATED RETAIL VALUE OF ANY FREE POINT OF SALE TERMINAL OR OTHER EQUIPMENT PROVIDED TO MERCHANT IN PROMOTION OF THIS AGREEMENT; AND (C) THE AMOUNT OR VALUE OF ANY OTHER PROMOTION EXTENDED TO MERCHANT IN CONSIDERATION OF THIS AGREEMENT. IN THE EVENT MERCHANT'S PAYMENT OF SUCH PROMOTIONAL CONSIDERATION IS LIMITED BY APPLICABLE LAW, THE AMOUNT PAYABLE TO CHASE PAYMENTECH PURSUANT TO THIS SECTION SHALL BE LIMITED TO THE MAXIMUM AMOUNT PERMITTED UNDER APPLICABLE LAW. ALL AMOUNTS OWED UNDER THIS SECTION 10.2 WILL BE FUNDED, TO THE EXTENT POSSIBLE, ACCORDING TO THE SAME METHODS FOR COLLECTING AMOUNTS DUE UNDER THIS AGREEMENT.

**10.3 Chase Paymentech Termination.** Chase Paymentech may terminate this Agreement at any time upon notice to Merchant as a result of any of the following events:

- (a) any transfer or assignment in violation of Section 15.3 of this Agreement;
- (b) irregular Transactions by Merchant, excessive Chargebacks, or any other circumstances which, in Chase Paymentech's discretion, may increase Chase Paymentech's or Member's exposure for Merchant's Chargebacks or otherwise present an Anticipated Risk to Chase Paymentech;
- (c) any representation or warranty in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made;
- (d) Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve Account, as detailed in Section 4.6;
- (e) material breach of Section 1.1;
- (f) Merchant fails in any material respect in performance or observance of any term, covenant, condition, or agreement contained in this Agreement, including, without limitation, compliance with Payment Brand Rules and Security Standards;
- (g) a case or other proceeding shall be commenced by or against Merchant in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Merchant, or of all or any substantial part of the assets, domestic or foreign, of Merchant, and such case or proceeding shall continue undismissed or unstayed for a period of 60 consecutive days, or an order granting the relief requested in such case or proceeding against Merchant (including, without limitation, an order for relief under the Bankruptcy Code) shall be entered;
- (h) Chase Paymentech, in its sole reasonable discretion, deems Merchant to be financially insecure;
- (i) any Payment Brand (i) notifies Chase Paymentech or Member that it is no longer willing to accept Merchant's Transaction Data; or (ii) requires Chase Paymentech or Member to terminate or limit this Agreement;
- (j) Merchant or any person owning or controlling Merchant's business is listed in one or more databases of terminated or high risk merchants maintained by the Payment Brands;
- (k) Merchant engages in conduct that creates or could tend to create harm or loss to the goodwill of any Payment Brand, Chase Paymentech, or Member;
- (l) for a period of more than 60 consecutive days, Merchant does not transmit Transaction Data to Chase Paymentech; or
- (m) Merchant fails to comply with Section 15.15.

Furthermore, Chase Paymentech may terminate this Agreement at anytime and for any reason upon thirty (30) days notice to Merchant. In addition to the remedies above and any rights Chase Paymentech may have under this Agreement, Chase Paymentech may suspend the processing of some or all of Merchant's Transactions upon: (a) receipt by Chase Paymentech of notice that a Payment Brand intends to impose any fine or penalty as a result of excessive Chargebacks or Merchant's acts or omissions; or (b) receipt by Chase Paymentech of objections or concerns expressed by a Payment Brand which render Chase Paymentech's continued processing of Merchant's Transactions unduly burdensome, impractical, or risky. If this Agreement is terminated by Chase Paymentech for Merchant's default hereunder, Merchant acknowledges that Chase Paymentech may be required to report Merchant's business name and the names and other identification of its principals to the Payment Brands. Merchant expressly agrees and consents to such reporting in the event Merchant is terminated for any reason specified, and Merchant agrees to waive and hold Chase Paymentech harmless from and against any and all claims which Merchant may have as a result of such reporting.

**10.4 Active Account.** Furthermore, Merchant hereby agrees that if Chase Paymentech determines, in its sole discretion, that Merchant is not maintaining an Active account with Chase Paymentech (as defined herein), Chase Paymentech reserve the right to terminate this Agreement and, if such termination occurs within twenty four months of the Effective Date, collect from Merchant the PROMOTIONAL CONSIDERATION set forth in Section 10.2. For purposes of the foregoing sentence, a merchant account is considered "Active" if, among other things, Merchant continues to make on-time payments of all amounts owed under the Agreement. If Merchant goes more than 90 consecutive days without making an on-time payment of all amounts owed under the Agreement, Chase Paymentech reserves the right to deem Merchant's account as not Active.

**10.5 Account Activity After Termination; Termination Reserve.** The provisions governing processing and settlement of Transactions, all related adjustments, fees and other amounts due from Merchant, and the resolution of any related Chargebacks, disputes, or other issues involving Transactions, will continue to apply even after termination of this Agreement, with respect to all Transactions made prior to such termination or after such termination, as described below. After termination of this Agreement for any reason whatsoever, Merchant shall continue to bear total responsibility for all Chargebacks, fees, fines, assessments, credits, and adjustments resulting from Transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to Chase Paymentech under this Agreement or which may be due to Chase Paymentech before or after such termination to either Chase Paymentech or Member. If Merchant submits Transaction Data to Chase Paymentech after the date of termination, Chase Paymentech may, at its sole discretion and without waiving any of its rights or remedies under this Agreement, process such Transaction Data in accordance with and subject to all of the terms of this Agreement.

Upon notice of termination of this Agreement, Chase Paymentech may estimate the aggregate dollar amount of anticipated Chargebacks, Refunds and Anticipated Risks that Chase Paymentech reasonably anticipates subsequent to termination, and Merchant agrees to immediately deposit such amount in its Settlement Account, or Chase Paymentech may withhold such amount from Merchant's settlement funds in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

**11. INDEMNIFICATION.** Merchant agrees to indemnify Chase Paymentech, Member, the Payment Brands, and their respective affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, Chase Paymentech's costs, expenses, and reasonable attorneys' fees) arising out of (a) Chase Paymentech's reliance on the information provided by Merchant, or Merchant's Authorized Representative, on the Application or in conjunction with the Application (including any information with respect to Merchant's financial condition); and (b) any claim, complaint, or Chargeback (i) made or claimed by a Customer with respect to any Transaction or Transaction Data submitted by Merchant; (ii) caused by Merchant's noncompliance with this Agreement or the Payment Brand Rules (including without limitation any breach of a representation or warranty made by Merchant or Merchant's failure to comply with the Security Standards); (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant; or (iv) related to Merchant's placement or the placement of any person owning or controlling Merchant's business in one or more databases of terminated or high risk merchants maintained by the Payment Brands. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Chase Paymentech's own negligence or willful misconduct. The indemnification provided under this Section 11 shall survive the termination of this Agreement.

**12. TRANSACTION DATA AND PAYMENT INSTRUMENT INFORMATION; PAYMENT CARD INDUSTRY COMPLIANCE.**

**12.1** Merchant financial information, information related to Merchant's Transactions, and other information that Merchant provides to Chase Paymentech may be shared by Chase Paymentech with its affiliates. Chase Paymentech will not otherwise disclose or use such information other than (i) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (ii) to detect, prevent, reduce, or otherwise address fraud, security, or technical issues; (iii) to enhance or improve Chase Paymentech's products and services generally; or (iv) as required or permitted by the Payment Brands or applicable law. Chase Paymentech may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Chase Paymentech's customers or specific segments of Chase Paymentech's customers.

**12.2 Payment Card Industry Compliance.** Merchant acknowledges and understands the importance of compliance with the Security Standards, such as those relating to the storage and disclosure of Transaction Data and Payment Instrument Information. Therefore, Merchant shall exercise reasonable care to prevent disclosure or use of Payment Instrument Information, other than (a) to Merchant's agents and contractors for the purpose of assisting Merchant in completing a Transaction; (b) to the applicable Payment Brand; or (c) as specifically required by law. Furthermore, Merchant acknowledges and understands that its use of any fraud mitigation or security enhancement solution (e.g. an encryption product or service), whether provided to Merchant by Chase Paymentech or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.

Merchant is allowed by the Payment Brand Rules to store only certain Payment Instrument Information (currently limited to the Customer's name, Payment Instrument account number, and expiration date) and is prohibited from storing additional Payment Instrument Information, including, without limitation, any security code data, such as CVV2, CVC2, and PIN data, and any magnetic stripe track data. Merchant shall store all media containing Payment Instrument Information in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only. Prior to either party discarding any material containing Payment Instrument Information, the party will render the account numbers unreadable in accordance with the requirements of the Security Standards. If at any time Merchant determines or suspects that Payment Instrument Information has been compromised Merchant must notify Chase Paymentech immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as Chase Paymentech otherwise reasonably deems necessary.

Merchant agrees to comply with all Security Standards, as defined in Section 17. Merchant further agrees to provide Chase Paymentech, upon its request, with such tests, scans, and assessments of Merchant's compliance with Security Standards as may from time to time be required by the Payment Brands.

Merchant must immediately notify Paymentech of its use of any Service Provider. Merchant shall ensure that, to the extent required by each Payment Brand, its Service Providers are (w) compliant with all applicable Security Standards; and (x) appropriately registered with, or otherwise recognized as being compliant with the Security Standards, by all applicable Payment Brands. To the extent required by each Payment Brand, all Payment Applications, or software involved in processing, storing, receiving, or transmitting of Payment Instrument Information, shall be (y) compliant with all Security Standards applicable to such Payment Applications or software; and (z) registered with and/or recognized by such Payment Brand(s) as being so compliant.

Merchant understands that its failure, or the failure of any of its Service Providers, to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any of Payment Instrument Information (whether such Payment Instrument Information is under the control of Merchant or its Service Provider), may result in assessments, fines, and/or penalties by the Payment Brands, and Merchant agrees to indemnify and reimburse Chase Paymentech immediately for any such assessment, fine, or penalty imposed on Chase Paymentech or the Member and any related loss, cost, or expense incurred by Chase Paymentech or the Member. If Chase Paymentech, in its sole discretion based on information provided by the Payment Brands or Payment Instrument issuers, or any Payment Brand requires a forensic examination of Merchant or any of Merchant's Service Providers due to a Data Compromise Event or suspected event, Merchant agrees to cooperate with, and cause all applicable Service Providers to cooperate with, such forensic examination within the time frame dictated by Chase Paymentech or the Payment Brand and until it is completed, including, without limitation, the engagement of an examiner acceptable to Chase Paymentech and/or the relevant Payment Brand. Notwithstanding the foregoing, the Payment Brands may directly, or demand that Chase Paymentech, engage an examiner on behalf of the Merchant or Merchant's Service Provider in order to expedite the investigation of the Data Compromise Event or suspected event. In either scenario, Merchant agrees to (aa) pay for all costs and expenses related to such forensic examination (including all of Chase Paymentech's reasonable attorneys' fees and other costs relating to such forensic examination), (bb) take all actions necessary to achieve compliance in accordance with the results set forth in the forensic report and in the timeframe dictated by Chase

Paymentech and/or the Payment Brand, and (cc) thereafter, take all actions necessary to maintain compliance with Payment Brand Rules and Security Standards.

By executing this Agreement, Merchant represents that, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, Merchant shall not sell, transfer, or disclose to third parties any materials that contain Transaction Data or Payment Instrument Information. Upon request, Merchant must return such information to Chase Paymentech or provide Chase Paymentech with acceptable proof of its destruction.

### **13. INFORMATION ABOUT MERCHANT AND MERCHANT'S BUSINESS.**

**13.1 Additional Financial Information.** Upon five (5) days' written notice at any time, Merchant and each Guarantor (if any) agrees to furnish to Chase Paymentech all reasonable financial statements and information as Chase Paymentech may request relating to Merchant and each Guarantor, as well as their parents, subsidiaries and affiliated entities.

**13.2 Audit Rights; Site Visit; Website Inspection.** With prior notice and during Merchant's normal business hours, Chase Paymentech's duly authorized representatives may visit Merchant's business premises and may examine Merchant's books and records that pertain to Merchant's Transactions or Merchant's compliance with this Agreement. Furthermore, Merchant may be contacted by Chase Paymentech or a third party contracted by Chase Paymentech who will need to gain access to Merchant's business operation to perform a site visit and inspection (the "Site Visit") in compliance with Payment Brand Rules. The Site Visit shall include, among other things, an interview with Merchant regarding the nature of Merchant's business, as well as photographs of Merchant's business operation. If Merchant is unavailable for the Site Visit as scheduled, Chase Paymentech may suspend the settlement of Merchant's Transactions until a Site Visit can be completed and approved by Chase Paymentech. If Merchant operates an ecommerce website, Chase Paymentech is obligated under the Payment Brand Rules to investigate the contents of such website, either directly or through review of screen shots presented to Chase Paymentech by Merchant (the "Website Inspection"). Chase Paymentech may suspend the settlement of Merchant's Transactions until a Website Inspection can be completed and approved by Chase Paymentech. In the event that Merchant fails to reasonably cooperate with the required Site Visit and/or Website Inspection, or in the event the results of the Site Visit or the Website Inspection are not approved by Chase Paymentech, Chase Paymentech may terminate this Agreement immediately upon notice to Merchant.

**13.3 Other Information.** Merchant agrees to provide Chase Paymentech at least 30 days' prior written notice of its intent to change current product lines or services, Merchant's trade name, or the manner in which Merchant accepts Payment Instruments. If Chase Paymentech determines such a change is material to its relationship with Merchant, Chase Paymentech may refuse to process Transaction Data made subsequent to the change or terminate this Agreement. Merchant agrees to provide Chase Paymentech with prompt written notice if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's signature on this Agreement authorizes Chase Paymentech to perform any credit check deemed necessary with respect to Merchant. Merchant will also provide Chase Paymentech with prompt written notice of (i) any adverse change in Merchant's financial condition, (ii) any planned or anticipated liquidation or substantial change the basic nature of Merchant's business, (iii) any transfer or sale of any substantial part (25% or more in value) of Merchant's total assets, or (iv) if Merchant or Merchant's parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of Merchant or Merchant's parent. Merchant will also notify Chase Paymentech of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Merchant's total assets not later than three days after Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

**14. DISCLAIMER; LIMITATION OF DAMAGES.** Subject to Section 5, Chase Paymentech will, at its own expense, correct any Transaction Data to the extent that such errors have been caused by Chase Paymentech or by malfunctions of Chase Paymentech's processing systems. Under no circumstances will Chase Paymentech's financial responsibility for its failure of performance under this Agreement exceed the total fees paid to Chase Paymentech under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, penalties, and fines) for the six months prior to the time the liability arose. **EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, AND EXCEPT WITH RESPECT TO MERCHANT'S FAILURE TO COMPLY WITH THE SECURITY STANDARDS, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OR ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. ANY FINES, FEES, PENALTIES OR ASSESSMENTS IMPOSED BY THE PAYMENT BRANDS RELATED TO MERCHANT'S ACCEPTANCE OF PAYMENT INSTRUMENTS SHALL NOT BE DEEMED TO BE CONSEQUENTIAL DAMAGES. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND CHASE PAYMENTECH AND MEMBER HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.**

### **15. MISCELLANEOUS.**

**15.1 Taxes.** Unless Merchant is otherwise exempt, and, if applicable, provides a valid exemption certificate, Merchant agrees to pay any taxes imposed on the services, equipment, supplies, and other property provided under this Agreement, and Merchant authorizes Chase Paymentech to increase the amount collected from Merchant to reflect any and all assessments or increases in the sales, use, occupational, property, lease, or other taxes imposed on such sale or lease of services, tangible property, intellectual property, equipment, supplies, and other goods purchased.

**15.2 Section Headings.** The section headings of this Agreement are for convenience only and do not define, limit, or describe the scope or intent of this Agreement.

**15.3 Assignment.** Any transfer or assignment of this Agreement by Merchant, by operation of law, merger, or otherwise without Chase Paymentech's prior written consent is null and void. In the event of such transfer or assignment, the party to whom the Agreement was transferred or assigned shall be bound to the terms and conditions of this Agreement to the same extent as if Chase Paymentech, Member and such assignee or transferee, as the case may be, entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. Furthermore, Merchant shall indemnify and hold Chase Paymentech and Member harmless from all liabilities, Chargebacks, expenses, costs, fees, and fines arising in connection with

the submission of Transaction Data to Chase Paymentech by such transferee or assignee. For purposes of this Agreement any transfer of voting control of Merchant or its parent, or the sale of all or substantially all of Merchant's assets, shall be considered an assignment or transfer hereof. Upon notice to Merchant, another Payment Brand member may be substituted for Member under whose sponsorship this Agreement is performed and for whom Chase Paymentech is acting as agent hereunder. Subject to Payment Brand Rules, Chase Paymentech may assign or transfer this Agreement and its rights and obligations hereunder and may delegate its duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to or consent of Merchant. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

**15.4 Parties; Independent Contractor.** This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, administrators, representatives, and permitted successors and assigns. Merchant agrees that it is responsible for its employees' actions. In providing services to Merchant, Chase Paymentech will not be acting in the capacity of agent, partner, or joint venturer; Chase Paymentech is acting solely as an independent contractor.

**15.5 Representations.** Merchant represents and warrants that statements made on its Application are true as of the date of this Agreement. Merchant represents and warrants that its execution of and performance under this Agreement (a) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including, without limitation, its corporate charter or similar document or any agreement between Merchant and any third party or any affiliated entity; (b) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (c) that the person signing this Agreement on behalf of Merchant is an Authorized Representative. Merchant shall perform its obligations under this Agreement in compliance with all applicable laws.

**15.6 Publicity.** Each party agrees that any other party may publicly disclose, through press releases or otherwise, the existence of the business relationship that is the subject of this Agreement. Any such disclosure may identify the parties by name but shall not, without the prior written consent of the non-disclosing party, include any of the terms of this Agreement.

**15.7 Severability.** Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule, or regulation, including any Payment Brand Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

**15.8 Waivers.** No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

**15.9 Entire Agreement.** The Payment Brand Rules, Application, Terms and Conditions, taxpayer identification and certification documentation, and all schedules, supplements, and attachments are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant and Chase Paymentech with respect to the matters contained herein and supersedes any prior agreements between the parties. Merchant agrees that in entering into this Agreement it has not relied on any statement of Chase Paymentech or its representatives. This Agreement shall prevail over any conflicting terms of any agreement governing the Settlement Account.

**15.10 Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, mailed first class, postage prepaid, sent via electronic mail transmission, or sent via overnight courier (and will be deemed to be given when so delivered or mailed) to Merchant's legal address set forth in the Application, to Chase Paymentech at: Attn: Legal Department, 14221 Dallas Parkway, Dallas, Texas 75254, or to such other address as either party may from time to time specify to the other party in writing.

**15.11 Governing Law; Waiver of Right to Contest Jurisdiction; Waiver of Jury Trial; Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of law provisions. Any action, proceeding, arbitration hearing or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in Dallas County, Dallas, Texas. **PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY CLAIM MAY BE RESOLVED BY BINDING ARBITRATION. WITH BINDING ARBITRATION MERCHANT ACKNOWLEDGES AND AGREES THAT (i) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM ALLEGED AGAINST CHASE PAYMENTECH, MEMBER, OR RELATED THIRD PARTIES; (ii) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY CLAIM ALLEGED AGAINST CHASE PAYMENTECH, MEMBER OR RELATED THIRD PARTIES; (iii) MERCHANT IS GIVING UP ITS RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT OR ARBITRATION FILED AGAINST CHASE PAYMENTECH, MEMBER AND/OR RELATED THIRD PARTIES.** Any claim, dispute, or controversy ("Claim") by either Merchant, Chase Paymentech or Member against the other, or against the officers, directors, employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents, successors, or assigns of the other, arising from or relating in any way to this Agreement or to the relationship formed between the parties as a result of this Agreement, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association ("AAA"). All Claims are subject to arbitration, no matter what theory they are based on. This includes Claims based on contract, tort (including intentional tort), fraud, agency, Merchant, Chase Paymentech's or Member's negligence, statutory or regulatory provisions, or any other source of law. Claims and remedies sought as part of a class action, private attorney general, or other representative action are subject to arbitration on an individual (non-class, non-representative) basis only, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. Merchant and Chase Paymentech will agree on another arbitration forum if the AAA ceases operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between Merchant and Chase Paymentech and/or Member. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The prohibition against class action contained in this Section shall be non-severable from the remainder of this Section. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the AAA in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the AAA may be obtained and Claims may be filed at any AAA office, www.adr.org, or 335 Madison Avenue, New York, NY 10017, telephone 1-800-778-7879. Any arbitration hearing at which Merchant appears will take place at a location within Dallas County, Dallas,

Texas. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, MERCHANT AND CHASE PAYMENTECH MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

**15.12 Force Majeure.** Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, nonperformance of Chase Paymentech's vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 15.12 will affect or excuse Merchant's liabilities and obligations for Chargebacks, refunds, or unfulfilled goods and services.

**15.13 Amendment.** Except as otherwise set forth in this Agreement, the Agreement may be amended at any time by Chase Paymentech upon thirty (30) days' notice to Merchant. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the Payment Brand Rules or any third party with jurisdiction over the matters described herein, such amendment will be effective immediately. Merchant's electronic signature or continued submission of Transactions to Chase Paymentech following such notice will be deemed to be Merchant's acceptance of such amendment.

**15.14 Counterparts and Electronic Signature.** This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

**15.15 Merchant Taxpayer Certification and Chase Paymentech Reporting Obligations.** Pursuant to 26 USC 6050W, Chase Paymentech is a "payment settlement entity", obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant shall provide Chase Paymentech with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant shall promptly notify Chase Paymentech if there are any changes in this information. Chase Paymentech may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under Applicable Law. Chase Paymentech may, in accordance with Applicable Law and from time to time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of Chase Paymentech hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Chase Paymentech.

**16. SURVIVAL.** The provisions of Sections 4.2, 4.4, 4.5, 4.6, 5, 6, 7, 9, 10.2, 10.3, 10.4, 10.5, 11, 12, 14, 15, 16, 17 and Personal Guaranty shall survive the termination of this Agreement.

## 17. DEFINITIONS.

**"Application"** means a statement of Merchant's financial condition, a description of the characteristics of Merchant's business or organization, and related information Merchant or its Authorized Representative(s), has previously or concurrently submitted to Chase Paymentech, including credit, financial and other business related information, to induce Chase Paymentech to enter into this Agreement with Merchant and that has induced Chase Paymentech to process Merchant's Transactions under the terms and conditions herein.

**"Authorized Representative"** means an owner, partner, officer or other agent of the Merchant that is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements

**"Chargeback"** means a reversal of a Transaction Merchant previously presented to Chase Paymentech pursuant to Payment Brand Rules.

**"Chase Paymentech"** or "Paymentech" means Paymentech, LLC, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254.

**"Conveyed Transaction"** means any Transaction conveyed to a Payment Brand for settlement by such Payment Brand directly to Merchant.

**"Customer"** means the person or entity to whom a Payment Instrument is issued or who is otherwise authorized to use a Payment Instrument.

**"Data Compromise Event"** means an occurrence that results, or could result, directly or indirectly, in the unauthorized access to or disclosure of Transaction Data and/or Payment Instrument Information.

**"Effective Date"** means the date the Agreement takes effect pursuant to Section 10.1.

**"Merchant"** means the legal entity identified in the Application and on the first and signature pages of this Agreement.

**"Member"** means JPMorgan Chase Bank, N.A. or other entity providing sponsorship to Chase Paymentech as required by all applicable Payment Brands. Member is a principal party to this Agreement and Merchant's acceptance of Payment Brand products is extended by the Member.

**"Payment Application"** means a third party application used by merchant that is involved in the authorization or settlement of Transaction Data.

**"Payment Brand"** means any payment method provider whose payment method is accepted by Chase Paymentech for processing, including, without limitation, Visa Inc., MasterCard International, Inc., Discover Financial Services, LLC, and other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers. Payment Brand also includes the Payment Card Industry Security Standards Council.

**"Payment Brand Rules"** means all bylaws, rules, programs, and regulations, as they exist from time to time, of the Payment Brands.

**"Payment Instrument"** or **"Payment Card"** means an account, or evidence of an account, authorized and established between a Customer and a Payment Brand, or representatives or members of a Payment Brand that Merchant accepts from Customers as payment for a good or service. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts.

**"Payment Instrument Information"** means information related to a Customer or the Customer's Payment Instrument, that is obtained by Merchant from the Customer's Payment Instrument, or from the Customer in connection with his or her use of a Payment Instrument (e.g., a security code, a PIN number, credit limits, account balances, or the customer's zip code when provided as part of an address verification system). Without limiting the foregoing, such

information may include a the Payment Instrument account number and expiration date, the Customer's name or date of birth, PIN data, security code data (such as CVV2 and CVC2), and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Instrument Information shall be treated according to their corresponding meanings as "cardholder data" and "sensitive authentication data" as such terms are used in the then current PCI DSS.

**"Refund"** means any refund or credit issued for any reason, including, without limitation, for a return of merchandise or cancellation of services, and any adjustment of a Transaction.

**"Refund Policy"** means a written policy with regard to Refunds.

**"Retrieval Request"** means a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction.

**"Security Standards"** means all rules, regulations, standards, or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Payment Instrument Information, including, without limitation, the Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program ("CISP"), Discover's Information Security & Compliance Program, American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program ("SDP"), Visa's Payment Application Best Practices ("PABP"), the Payment Card Industry's Payment Application Data Security Standard ("PA DSS"), MasterCard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program (PCI PTS), in each case as they may be amended from time to time.

**"Service Provider"** means any party that processes, stores, receives, transmits, or has access to Payment Instrument Information on Merchant's behalf, including, without limitation, its agents, business partners, contractors, and subcontractors.

**"Settled Transaction"** means a Transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant for the purchase of a good or service or the Refund of such purchase and the value for such Transaction is settled by the Payment Brand through Chase Paymentech to the Merchant.

**"Stored Value Card Transaction"** means a Transaction in which a Customer adds or redeems value to or from a stored value card, gift card, or loyalty Payment Instrument issued by or on behalf of Merchant.

**"Transaction"** means a transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant.

**"Transaction Data"** means the written or electronic record of a Transaction, including, without limitation, an authorization code or settlement record, which is submitted to Chase Paymentech

**"Transaction Receipt"** means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer.

**Personal Guaranty.** Each Guarantor whose name and signature appears in the Application (individually a "Guarantor" and collectively the "Guarantors") hereby, jointly and severally, unconditionally and irrevocably, guarantee the full, timely and continuing performance of each and every representation, warranty, covenant, agreement and obligation of Merchant now or hereafter arising under or in connection with the Agreement, including, without limitation, any indebtedness and other liabilities of Merchant created, at any time, under or in connection with the Agreement (the "Guaranteed Obligations"). Each Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Merchant and is familiar with the value of any and all collateral intended to be created as security for the payment of the Guaranteed Obligations. However, no Guarantor is relying on such financial condition or collateral, including, without limitation, the existence of a Reserve Account (if any) as an inducement to enter into this Personal Guaranty. Each Guarantor hereby unconditionally and irrevocably waives any and all notices, demands and other formalities, of every kind and description, including, without limitation, any (i) notice of acceptance of this Personal Guaranty, (ii) notice of the incurrence of any Guaranteed Obligation, (iii) notice of the occurrence of any breach or default relating to or in connection with the Agreement or (iv) demand for performance or payment, presentment, protest, notice of protest or proof of breach or default. This is an unconditional, irrevocable and continuing guaranty of payment and not a guaranty of collection. Each Guarantor hereby acknowledges and agrees that such Guarantor is liable for the Guaranteed Obligations as primary obligor and Chase Paymentech, Member or any other beneficiary of the Agreement, as the case may be, may exercise their respective rights and remedies hereunder against one or more Guarantors, whether or not first or ever exercising their respective rights and remedies hereunder or otherwise against Merchant or any other guarantor or obligor or enforcing or collecting any present or future collateral securing the Guaranteed Obligations. Each Guarantor hereby acknowledges and agrees that such Guarantor's obligations and liabilities pursuant to this Personal Guaranty shall in no way be discharged, released or in any way affected by (i) any action taken under or in connection with the Agreement or the Guaranteed Obligations, including, without limitation, any assignment, renewal, extension, compromise, indulgence, forbearance, waiver, acceleration, modification, amendment or other change granted to Merchant or any guarantor or obligor or otherwise related thereto, (ii) the taking, holding, exchange, enforcement, waiver or release of any security for the performance of the Guaranteed Obligations or this Personal Guaranty, (iii) the release, in whole or in part, of Merchant or any other guarantor or obligor from any obligation or liability, (iv) the substitution of any one or more of the Guarantors or the acquisition of additional guarantors, (v) any insolvency, bankruptcy or similar proceedings involving or affecting Merchant or any other guarantor or obligor, (vi) the death, dissolution or ceasing to exist (whether voluntary or involuntary) of Merchant or any other guarantor or obligor or (vii) any other act, omission or circumstance whatsoever that may in any manner vary the risks of such Guarantor or might otherwise constitute a legal or equitable defense or discharge of such Guarantor or any other guarantor or obligor. Each Guarantor hereby waives all defenses based on occurrences of the types described in clauses (i) through (vii) above. Each Guarantor hereby represents and warrants that such Guarantor has received, or will receive, direct or indirect benefit from the making of this Personal Guaranty and that the Guaranteed Obligations and such benefit has a value reasonably equivalent to or greater than the obligations and liabilities incurred pursuant to this Personal Guaranty. This Personal Guaranty shall be binding on each Guarantor and such Guarantor's heirs, administrators, legal representatives, successors and assigns, and shall inure to the benefit of Chase Paymentech, Member and any other beneficiary of the Agreement, as the case may be, and their respective heirs, administrators, legal representatives, successors, and assigns. Neither Guarantor may, without the prior written consent of Chase Paymentech, assign any of its rights, powers, duties, or obligations hereunder. The Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Chase Paymentech in the enforcement of this Personal Guaranty.

**RESOLUTION NO. 2016-11154B**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, AUTHORIZING THE ANNUAL PROCUREMENT OF MERCHANT CARD SERVICES WITH CHASE PAYMENTECH SOLUTIONS, L.L.C., IN THE UNIT AMOUNT PROPOSED THROUGH A JOINT PROPOSAL THROUGH A TOWN OF FLOWER MOUND COOPERATIVE PURCHASING AGREEMENT WITH AN ESTIMATED ANNUAL EXPENDITURE AMOUNT OF ONE HUNDRED ONE THOUSAND TWO HUNDRED DOLLARS (\$101,200); AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS; AND, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, it is necessary to provide effective, efficient, and convenient merchant card services for the City's patrons; and

**WHEREAS**, the City of Duncanville has entered into an Interlocal Cooperative Purchasing Agreement with the Town of Flower Mound for products and services; and

**WHEREAS**, the Town of Flower Mound has taken joint competitive sealed proposals for merchant card services; and

**WHEREAS**, as a result of the submittal of the best value proposal, a contract was awarded to Chase Paymentech Solutions, L.L.C.

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

**Section 1:** That the City Council of the City of Duncanville hereby approves the annual procurement of merchant card services with Chase Paymentech Solutions, L.L.C., through a joint proposal with the Town of Flower Mound Cooperative in the unit amount proposed with an estimated annual expenditure of \$101,200.

**Section 2:** That the City Council of the City of Duncanville hereby authorizes the City Manager, or his designee, to execute the appropriate and necessary documents and/or purchase orders.

**Section 3:** This Resolution shall become effective immediately upon its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Duncanville, Texas,  
on the 15<sup>th</sup> day of November, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**APPROVED:**

---

David L. Green, Mayor

**ATTEST:**

---

Mary E. Jones, City Secretary

**APPROVED AS TO FORM:**

---

Robert E. Hager, City Attorney



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-4C

**TITLE:**

Consider a Resolution of the City Council of the City of Duncanville, Texas, amending the agreement #12-27 Alarm Permit Management Services with PMAM Corporation for an additional one-year term and for the unit amount as stated in the contract with PMAM Corporation to receive twenty-two percent (22%) of fees collected as set forth in Exhibit A, which is attached hereto and incorporated herein; authorizing the City Manager to execute Amendment 1, Exhibit A; and, providing for an effective date.

**FY 2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **Goal:** NA

**STAFF REPRESENTATIVE:**

Robert D. Brown, Jr. Chief of Police

Richard Summerlin, C.P.A., C.G.F.O., Finance Director

Charlie Oberrender, CPPB, Purchasing Manager

**BACKGROUND/HISTORY:**

Request for Competitive Sealed Proposals were released in September of 2012 for a two-year contract for alarm permit management services. The Duncanville City Council approved a two-year contract with PMAM Corporation for alarm permitting management services at its November 6, 2012 meeting (**attachment #1**). The original contract had two one-year renewal options available. The Duncanville City Council approved the renewal options at its October 21, 2014 and October 20, 2015 regular meetings, respectively. The final one-year renewal option expires this December 2, 2016. In order to provide adequate time to solicit and evaluate a new contract, staff requests amending the existing contract to add an additional one-year term, taking the contract through December 2, 2017 (**attachment #2**). Staff has been very pleased with the performance of PMAM Corporation and wishes to continue the service while soliciting a new contract.

**POLICY EXPLANATION:**

Prior to the spring of 2005, police department staff were responsible for the administration of the alarm permit program which included the processing of alarm permit applications, sending renewal notices, monitoring alarm activity, and assessing false alarm service charges. The City initiated the “outsourced” alarm permit function in an effort to maintain net revenue levels and to achieve a 10% reduction in false alarms. The primary objectives of this “outsourced” solution are to drive down the number of false alarms, utilize the most advanced technology and processes to drive up compliance and maximize revenue all while providing a positive experience for citizens. The reduction in false alarm calls results in efficiency savings for the Duncanville Police Department; reducing the number of false alarms allows police patrol staff to reallocate time saved on responding to false alarms to time on “frontline” public safety functions, including patrol and responding to service calls.

Under the existing contract, PMAM Corporation collects the revenue and retains 22% and remits the remaining 78% of the revenue collected to the City. The services include, but are not limited to: deployment of a software package that maintains and tracks false alarm data and generates related report; distribution of alarm permit applications for renewals

and “unregistered” users; download “call data” on a daily basis; distribution of letters, notices, and invoices to residences and businesses for false alarms as per the ordinance; collect fees; and provision and management of City of Duncanville website portal allowing Citizens to apply for and manage alarm permit activity.

PMAM collects the permit fee and remits to the City less their 22% service fee, which through 11 months for FY16 is \$22,497 and the estimated total for FY16 is \$24,600. The service fee for FY17 is estimated to be \$25,949.

PMAM Corporation is headquartered in Dallas, Texas and is the current alarm permit management services firm for the cities of Allen, Colleyville, Haltom City, Houston, McKinney, Richardson, Richland Hills, and Rowlett. PMAM Corporation has been the City’s alarm permit management provider for over ten years (**Since April of 2005**).

**FUNDING SOURCE:**

\$92,000 is allocated in the FY17 General Fund revenue budget for this activity.

**RECOMMENDATION:**

Staff recommends approval of a Resolution of the City Council of the City of Duncanville, Texas, amending the agreement #12-27 Alarm Permit Management Services with PMAM Corporation for an additional one-year term and for the unit amount as stated in the contract with PMAM Corporation to receive twenty-two percent (22%) of fees collected as set forth in Exhibit A, which is attached hereto and incorporated herein; authorizing the City Manager to execute Amendment 1, Exhibit A; and, providing for an effective date.

**ATTACHMENTS:**

Attachment 1 - Amendment Signed

Attachment 2 - Original Proposal Evaluation Tabulation

Attachment 3 - Resolution

AMENDMENT #1  
TO THE AGREEMENT BETWEEN  
THE CITY OF DUNCANVILLE AND  
PMAM CORPORATION  
FOR

RFP# 12-27 CONTRACT FOR ALARM PERMIT MANAGEMENT SERVICES

This Amendment ("Amendment") is made as of the date of the last signature contained herein to the Contract for Alarm Permit Management Services (the "Agreement") executed on or about December 3, 2012 between PMAM Corporation ("PMAM"), a Texas Corporation with offices located at 105 Decker Court, Suite 675, Irving, TX 75062 and Duncanville, Texas, a municipal corporation with offices at 203 Wheatland Road, Duncanville, TX, 75116 (the "Customer" or "City"), individually the "Party" and collectively referred to as the "Parties".

RECITALS

**WHEREAS**, PNAM has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and technical processes related to the managing alarm permits; and

**WHEREAS**, the original proposal terms and conditions were solicited under RFP #12-27 Contract for Alarm Permit Management Services;

**WHEREAS**, the Customer desires to continue to engage the services of PNAM to provide alarm permit management services for the City; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows; Article II, Term now read as follows:

**SECTION 1.** That Article II, Term, is hereby amended to read as follows:

**ARTICLE II - TERM**

"The contract term will be for one year from December 3, 2016 to December 2, 2017."

**SECTION 2.** Except as expressly amended in writing in this Amendment, the terms and conditions of the Agreement dated December 3, 2012, and any and all amendments, thereto, and incorporated herewith by reference shall be unchanged and shall remain enforceable and in full force and effect.

**SECTION 3.** This Amendment shall inure to the benefit of and be binding upon the assigns and successors of the respective Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as set forth below.

Approved as to form, content and legality:

The City of Duncanville, TX:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PMAM Corporation

  
\_\_\_\_\_

Name: Pankaj Kumar

Title: C.E.O.

Date: 11/02/2016

**CITY OF DUNCANVILLE  
ALARM PERMIT MANAGEMENT SERVICES  
RFCSP EVALUATION**

NAME OF COMPANY	% OF COLLECTIONS RETAINED	% OF COLLECTIONS RETAINED BY PROPOSER - MAX. 35 POINTS	ABILITY TO SATISFY FUNCTIONAL REQUIREMENTS - MAX. 20 POINTS	ABILITY TO DELIVER - MAX. 20 POINTS	ABILITY TO SATISFY TECHNICAL REQUIREMENTS MAX. 25 POINTS	TOTAL-MAX. 100 POINTS
PMAM Corporation	22.00	35.0	20.0	20.0	20.0	95.0
AOT Public Safety Corporation	22.50	34.0	19.0	18.0	20.0	91.0

**RESOLUTION NO. 2016-11154C**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, AMENDING THE AGREEMENT #12-27 ALARM PERMIT MANAGEMENT SERVICES WITH PMAM CORPORATION FOR AN ADDITIONAL ONE-YEAR TERM AND FOR THE UNIT AMOUNT AS STATED IN THE CONTRACT WITH PMAM CORPORATION TO RECEIVE TWENTY-TWO PERCENT (22%) OF FEES COLLECTED AS SET FORTH IN EXHIBIT A, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT 1, EXHIBIT A; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, it is desired to provide billing and collection services for City of Duncanville alarm permits; and

**WHEREAS**, competitive sealed proposals were obtained per RFCSP# 12-27; and

**WHEREAS**, the term of the contract is two-years with two one-year renewal options if both parties mutually agree; and

**WHEREAS**, both of the renewal options of the contract have been performed satisfactorily; and

**WHEREAS**, the Contractor and City staff have expressed interest to amend the agreement for an additional one year term; and

**WHEREAS**, the City Council of the City of Duncanville, Texas desires to amend the agreement for an additional one year term for alarm permit management services.

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

**Section 1:** That the City Council of the City of Duncanville does hereby approve the amendment of the alarm permit management services with PMAM Corporation in the unit amount proposed, as contained in the contract, with PMAM Corporation to receive twenty two percent (22%) of fees collected to add an additional one year term, as set forth in Exhibit A, which is attached hereto and incorporated herein.

**Section 2:** That the City Council of the City of Duncanville hereby authorizes the City Manager, or his designee, to execute Amendment 1, Exhibit A.

**Section 3:** That this Resolution shall become effective immediately upon its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Duncanville, Texas,  
on the 15<sup>th</sup> day of November, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**APPROVED:**

---

David L. Green, Mayor

**ATTEST:**

---

Mary E. Jones, City Secretary

**APPROVED AS TO FORM:**

---

Robert E. Hager, City Attorney



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-5A

**TITLE:**

Consider an Ordinance of the City of Duncanville, Texas, amending the Code of Ordinances of the City of Duncanville by amending Section 19-107 (“Prohibited on Specific Streets”) of Article VI (“Stopping, Standing and Parking”) of Chapter 19 (“Traffic”) by adding new Subsections (91) and (92) to prohibit stopping, standing and parking on certain portions of South Greenstone Lane; providing a repealing clause; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of Two hundred Dollars (\$200.00) for each offense; and providing an effective date.

**FY 2016-2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN: N/A**

- **CAPSTONE:** Create high quality neighborhoods and parks

**STAFF REPRESENTATIVE:**

Michael J. Hasler, P.E., Director of Public Works

**BACKGROUND/HISTORY:**

Residents located on the streets emptying into the 600 to 800 blocks of South Greenstone Lane have recently requested "No Parking" signs be implemented due to lack of visibility when leaving their alleyways during sports tournament and game parking on the weekends at Byrd Middle School. Vehicles park on both sides of South Greenstone Lane from West Wheatland Road to Huntington Drive and along the side streets of Coventry Lane, Redman Drive and Wellington Drive. There is an existing "No Parking" area on the east side of South Greenstone Lane from West Wheatland Road to a point 350 feet south. However, during tournaments, cars park up to the intersections in violation of the required distance from STOP signs and have been seen angled on the corners and partially blocking alleys.

The proposed ordinance repeals and replaces Chapter 19, Traffic, Article VI, Stopping, Standing and Parking, Section 19-107, Prohibited on Specific Streets, of the Code of Ordinances, to add two new subsections to prohibit parking on the east side of South Greenstone Lane from Huntington Drive to 145 feet north, and on the west side of South Greenstone Lane from West Wheatland Road to Huntington Drive on Saturdays and Sundays (**Attachment 1**).

**POLICY EXPLANATION:**

By placing and enforcing existing and new "No Parking" limits, residents will have unimpeded access on South Greenstone Lane, creating a much safer ingress and egress from the alleyways. Council approval is required to amend the Code of Ordinances to allow this change to take place.

**FUNDING SOURCE:**

Funds are available in the Traffic Operations Fund balance to make the required signage.

**RECOMMENDATION:**

Staff recommends approval of an Ordinance of the City of Duncanville, Texas, amending the Code of Ordinances of the City of Duncanville by amending Section 19-107 (“Prohibited on Specific Streets”) of Article VI (“Stopping, Standing and Parking”) of Chapter 19 (“Traffic”) by adding new Subsections (91) and (92) to prohibit stopping, standing and parking on certain portions of South Greenstone Lane; providing a repealing clause; providing a savings clause; providing

a severability clause; providing a penalty of fine not to exceed the sum of Two hundred Dollars (\$200.00) for each offense; and providing an effective date.

**ATTACHMENTS:**

Attachment 1 - Proposed "No Parking" Exhibit

Attachment 2 - Ordinance



Existing NO PARKING Limits

Proposed NO PARKING Limits



Duncanville  
City of Champions

# PROPOSED NO PARKING

S. GREENSTONE LANE ( 600-800 BLOCK)



**ORDINANCE NO. 2293**

**AN ORDINANCE OF THE CITY OF DUNCANVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DUNCANVILLE BY AMENDING SECTION 19-107 (“PROHIBITED ON SPECIFIC STREETS”) OF ARTICLE VI (“STOPPING, STANDING AND PARKING”) OF CHAPTER 19 (“TRAFFIC”) BY ADDING NEW SUBSECTIONS (91) AND (92) TO PROHIBIT STOPPING, STANDING AND PARKING ON CERTAIN PORTIONS OF SOUTH GREENSTONE LANE; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS:**

**SECTION 1.** That Section 19-107 (“Prohibited on Specific Streets”) of Article VI (“Stopping, Standing and Parking”) of Chapter 19 (“Traffic”) shall be and is hereby amended to prohibit stopping, standing and parking on certain portions of South Greenstone Lane; which shall hereinafter read as follows:

**“CHAPTER 19**

**TRAFFIC**

.....

**ARTICLE VI**

**STOPPING, STANDING AND PARKING**

.....

**Sec. 19-107 PROHIBITED ON SPECIFIC STREETS**

It shall be unlawful and an offense for the driver or owner, or for the owner to suffer or permit the driver of any vehicle to stop, stand or park a vehicle at any time upon the streets described herein as follows, when signs are erected or curbs are painted on such streets giving notice thereof:

.....

(91) On the east side of South Greenstone Lane, from the point of its intersection with Huntington Drive to a point 145 feet north of Huntington Drive on Saturdays and Sundays.

(92) On the west side of South Greenstone Lane, from the point of its intersection with West Wheatland Road to its point of intersection with Huntington Drive on Saturdays and Sundays.”

**SECTION 2.** That all ordinances of the City of Duncanville in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Duncanville not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 4.** That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

**SECTION 5.** That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Duncanville, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two hundred dollars (\$200.00) for each offense.

**SECTION 6.** This ordinance shall take effect from and after its passage and the publication of the caption as the law and Charter in such cases provide.

**DULY PASSED** by the City Council of the City of Duncanville, Texas, on the 15<sup>th</sup> day of November, 2016.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-5B

**TITLE:**

Consider a Resolution of the City Council of the City of Duncanville, Texas, approving an agreement between the City of Duncanville and the Duncanville Chamber of Commerce, attached hereto as Exhibit "A", awarding a hotel occupancy tax grant to the Duncanville Chamber of Commerce located at 300 E. Wheatland Road in an amount not to exceed \$5,000 for FY 16-17 to add a Visitor Center Building Sign; authorizing the City Manager to execute the agreement; and, providing an effective date.

**FY 2016-2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

1. **CAPSTONES: 1. Most engaged citizens in America; 3. Be a youth sports tourism destination**

**STAFF REPRESENTATIVE:**

Jessica James, Economic Development Director

**BACKGROUND/HISTORY:**

The Duncanville Chamber of Commerce has requested grant funding to assist them with the purchase of a Visitor Center Sign to their building as they are serving as the Official Visitor Center for the City of Duncanville. This will create more visibility for the Visitor Center.

**POLICY EXPLANATION:**

Chapter 351 of the Texas Tax Code states that Hotel Occupancy Taxes can be used for the operation of visitor information center.

**FUNDING SOURCE:**

This item was not budgeted for in the approved FY 16-17 City Budget and would take a budget amendment; however funds are available in the Hotel Motel Tax Fund for this grant.

**RECOMMENDATION:**

Staff recommends approval of a Resolution of the City Council of the City of Duncanville, Texas, approving an agreement between the City of Duncanville and the Duncanville Chamber of Commerce, attached hereto as Exhibit "A", awarding a hotel occupancy tax grant to the Duncanville Chamber of Commerce located at 300 E. Wheatland Road in an amount not to exceed \$5,000 for FY 16-17 to add a Visitor Center Building Sign; authorizing the City Manager to execute the agreement; and, providing an effective date.

**ATTACHMENTS:**

- Grant Application
- Agreement
- Resolution



**Duncanville**  
City of Champions

**Hotel Occupancy Funding Application**

Date: 10-31-16

**Organization Information**

Name of Organization: Duncanville Chamber of Commerce

Address: 300 E Wheatland Rd

City, State, Zip: Duncanville, TX 75116

Contact Name: Steve Martin Contact Phone Number: 972-780-4990

Web Site Address for Event or Sponsoring Entity: duncanvillechamber.org

Non-Profit or For-Profit Status:  Tax ID #: 75-1097267

Entity's Creation Date: 1955

Purpose of your organization: To promote business and community prosperity - Serve as City of Duncanville Visitor Center

**Event Information**

Name of Event or Project: Visitor Center Sign on Building

Date of Event or Project: ASAP

Primary Location of Event or Project: Chamber Building 300 E. Wheatland Rd

Amount Requested: \$ 5,000

How will the funds be used: Install Sign on Chamber Building  
(see attached) Sign - 4,800 permits Electrician \$ 200

Primary Purpose of Funded Activity/Facility:

To show that the Chamber Building is also the  
Visitor Center For Duncanville

**Percentage of Hotel Tax Support of Related Costs**

\_\_\_\_\_ Percentage of Total **Event Costs** Covered by Hotel Occupancy Tax

\_\_\_\_\_ Percentage of Total **Facility Costs** Covered by Hotel Occupancy Tax for the Funded Event

\_\_\_\_\_ Percentage of **Staff Costs** Covered by Hotel Occupancy Tax for the Funded Event

If staff costs are covered, estimate percentage of time staff spends annually on the funded event(s) compared to other activities \_\_\_\_\_%

***Which Category or Categories Apply to Funding Request, and Amount Requested Under Each Category:***

- a) Convention Center or Visitor Information Center:** construction, improvement, equipping, repairing, operation, and maintenance of convention center facilities or visitor information centers, or both. Amount requested under this category: \$ 5,000
- b) Registration of Convention Delegates:** furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants. Amount requested under this category: \$ \_\_\_\_\_
- c) Advertising, Solicitations, Promotional programs to attract tourists and convention delegates** or registrants to the municipality or its vicinity. Amount requested under this category: \$ \_\_\_\_\_
- d) Promotion of the Arts that Directly Enhance Tourism and the Hotel & Convention Industry:** the encouragement, promotion, improvement, and application of the arts that can be shown to have some direct impact on tourism and the hotel/convention industry. The impact may be that the art facility or event can show hotel nights that are booked due to their events or that guests at hotels attend the arts event. Eligible forms of art include instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture photography, graphic and craft arts, motion picture, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms: \$ \_\_\_\_\_
- e) Historical restoration and preservation projects or activities or advertising and conducting solicitation and promotional programs to encourage tourists and convention**

delegates to visit preserved historic sites or museums. Amount requested under this category:  
\$ \_\_\_\_\_

- f) Expenses including promotional expenses, directly related to a sporting event in which the majority of participants are tourists. The event must substantially increase economic activity at hotels within the city or its vicinity. Amount requested under this category:  
\$ \_\_\_\_\_

How many individuals are expected to participate in the sporting related event? \_\_\_\_\_

How many of the participants at the sporting related event are expected to be from another city or county? \_\_\_\_\_

Quantify how the sporting related event will substantially increase economic activity at hotels within the city or its vicinity?

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- g) Funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations: 1) the commercial center of the city; 2) a convention center in the city; 3) other hotels in or near the city; and 4) tourist attractions in or near the city. Amount requested under this category: \$ \_\_\_\_\_

What sites or attractions will tourists be taken to by this transportation? \_\_\_\_\_

Will members of the general public (non-tourists) be riding on this transportation? \_\_\_\_\_

What percentage of the ridership will be local citizens? \_\_\_\_\_

- h) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality. Amount requested under this category: \$ \_\_\_\_\_

What tourist attractions will be the subject of the signs?

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***Questions for All Funding Request Categories:***

1. How many years have you held this Event or Project: 60+

2. Expected Attendance: \_\_\_\_\_
3. How many people attending the Event or Project will use Duncanville hotels? \_\_\_\_\_  
 Number of rooms rented for your event: \_\_\_\_\_
4. Did you reserve a room block for this event at an area hotel and if so, for how many rooms and at which hotels: \_\_\_\_\_

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5. List other years (over the last three years) that you have hosted your Event or Project with amount of assistance given from HOT and the number of hotel rooms used:

Month/Year Held	Assistance Amount	Number of Hotel Rooms Used
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. How will you measure the impact of your event on area hotel activity (e.g.; room block usage information, survey of hoteliers, etc.)? \_\_\_\_\_

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7. Please list other organization, government entities, and grants that have offered financial support to your project: \_\_\_\_\_

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8. Will the event charge admission? Do you anticipate a net profit from the event? If there is a net profit, what is the anticipated amount and how will it be used?

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9. Please list all promotion efforts your organization is coordinating and the amount financially committed to each media outlet:

Newspaper: \$ \_\_\_\_\_  
Radio: \$ \_\_\_\_\_  
TV: \$ \_\_\_\_\_  
Other Paid Advertising: \$ \_\_\_\_\_

Number of Press Releases/Media Alerts sent to the Media: \_\_\_\_\_

Number of Direct Mailings to out-of-town recipients: \_\_\_\_\_

Other Promotions: \_\_\_\_\_

10. Will you include a link to the City/CVB or other source on your promotional handouts and in your website for booking hotel nights during this event? \_\_\_\_\_

11. Will you negotiate a special rate or hotel/event package to attract overnight stays?  
\_\_\_\_\_

12. What new marketing initiatives will you utilize to promote hotel and convention activity for this event?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. What geographic areas does your advertising and promotion reach? \_\_\_\_\_  
\_\_\_\_\_

14. How many individuals will your proposed marketing reach that are located in another city or county? \_\_\_\_\_

15. If the funding requested is related to a permanent facility (e.g. museum, visitor center):

Expected Attendance Monthly/Annually: N/A \_\_\_\_\_

Percentage of those in attendance that are staying at area hotels/lodging facilities: \_\_\_\_\_%

**Please Submit To:** Jessica James, Director of Economic Development

Mail To:  
P.O. Box 38028  
Duncanville, TX 75138-0280

Drop Off:  
Economic Development  
203 E. Wheatland Rd  
Duncanville, TX 75138

**For questions, please call 972.780.4997.**





1136 Fletcher St.  
Dallas, TX 75223

# QUOTATION

Phone # 214-824-3695  
Fax # 214-826-6010  
**License #18089**

Date	Quote Number
10/5/2016	7041

Name / Address
Duncanville Chamber of Commerce Steve Martin 300 E. Wheatland Duncanville, TX 75116

Ship To

P.O. No.	Terms	Rep	Project
	50%/50% CMP	KAS	

Order Qty	Part Number	Description	U/M	Rate	Total
1	Reverse lighted ...	Custom reverse channel letter sign consisting of: 10" Reverse channel letters with brushed aluminum faces and 3" brushed aluminum returns, internally illuminated with white LEDs, mounted to 22" x 200" x 2" deep aluminum pan face painted to match building.		4,025.00	4,025.00
1	200 - Installatio...	Installation of sign onto building directly below existing sign.		575.00	575.00
1	Permit Acquisiti...	Permit Acquisition Fees		200.00	200.00
1	Permits	Permit - Will be billed at cost TBD by City of Duncanville and added to final invoice		0.00	0.00

All Acme Sign Company products are warranted one (1) year parts/90 day labor. LED Message Centers five (5) year parts/1 year labor.

Customer is responsible for providing dedicated proper amp circuit within 6' of sign. This quotation is valid for 30 days.

Delivery: 4-6 weeks after contract is signed, deposit is received and permit is secured. LED Message Centers: 10-12 week delivery.

Terms: "Customer" promises to pay the above stated amount as the purchase price and agrees to the following terms: 50% down and balance due upon completion. LED Message Centers may require 60% deposit and 40% upon completion. A 1.5% per month service charge will be charged on all past due invoices.

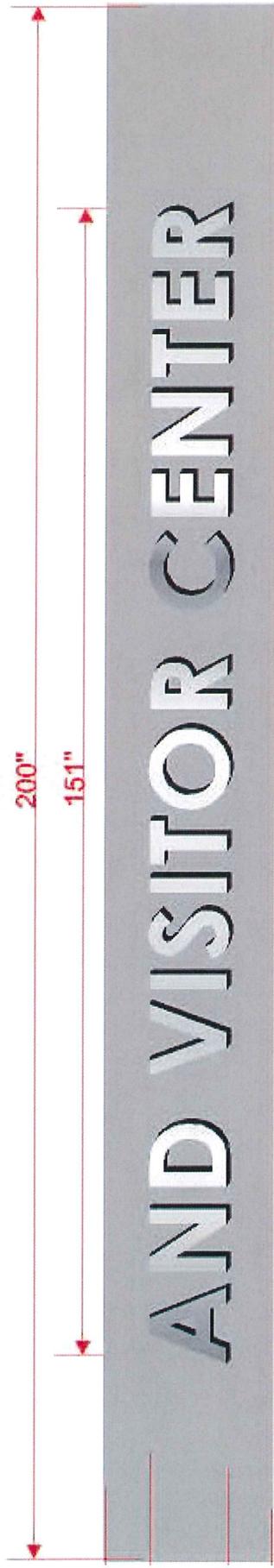
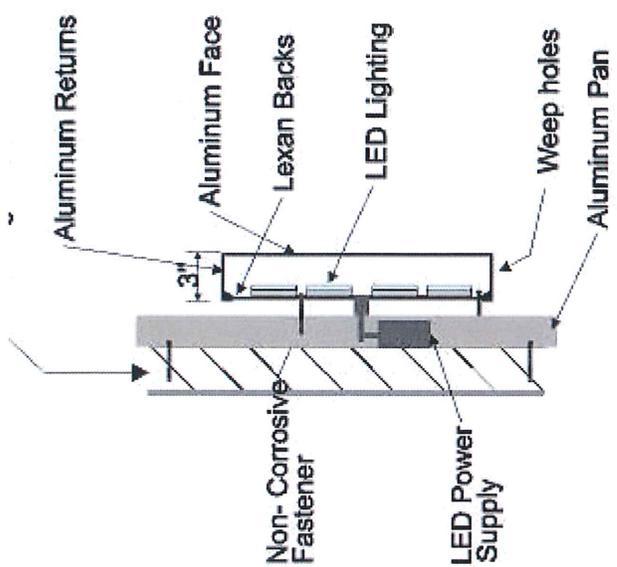
<b>Subtotal</b>	\$4,800.00
<b>Sales Tax (0.0%)</b>	\$0.00
<b>Total</b>	\$4,800.00
Web Site	acmesign.com
E-mail	lynn@acmesign.com

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

License #18089



## Reverse Lit Channel Letters



Brushed Aluminum Faces  
 Letters reading "AND VISITOR CENTER"  
 illuminated with White LED's  
 200" W x 2" Deep painted  
 reverse non-illuminated  
 returns,  
 on approx 1"

**PLEASE NOTE!** UP TO 2 REVISIONS INCLUDED IN INITIAL DESIGN. ANY ADDITIONAL CHANGES WILL INCUR STANDARD DESIGN CHARGE OF \$60.00 PER HOUR, BILLING IN 1/4 HR INCREMENTS. PLEASE CAREFULLY PROOFREAD! CHECK ALL SPELLING, PUNCTUATION, PHONE NUMBERS, SIZES, AND COLORS BEFORE APPROVING. ANY CHANGES MADE AFTER APPROVAL WILL INCUR ADDITIONAL CHARGES.

**FINAL ELECTRICAL CONNECTION BY CUSTOMER**

STATE OF TEXAS §

COUNTY OF DALLAS §

**HOTEL OCCUPANCY TAX FUNDING AGREEMENT BETWEEN THE CITY OF  
DUNCANVILLE, TEXAS AND THE DUNCANVILLE CHAMBER OF COMMERCE  
FOR EXPENDITURE OF HOTEL OCCUPANCY TAX FUNDS**

This Hotel Tax Funding Agreement (AGREEMENT) is made and entered into by and between the City of Duncanville, Texas (CITY) and the Duncanville Chamber of Commerce (ORGANIZATION).

**WHEREAS**, the Duncanville Chamber of Commerce has requested a Hotel Occupancy Tax grant to purchase a Visitor Center building sign to positively promote Duncanville and the Visitor Center to out-of-town visitors; and

**WHEREAS**, the City of Duncanville has considered the request and believes that the Duncanville Visitor Center, provided by the Duncanville Chamber of Commerce, directly enhances and promotes tourism in the city; and

**WHEREAS**, the goal of this AGREEMENT is to assist visitors to the City of Duncanville, thus Directly enhancing and promoting tourism as outlined in Chapter 351 of the State of Texas Tax Code; and

**NOW, THEREFORE**, it is mutually agreed upon by and between the CITY and the Duncanville Chamber of Commerce as follows:

**GENERAL PROVISIONS**

**Section 1. Purpose.** The purpose of this AGREEMENT is for the Duncanville Chamber of Commerce to utilize City of Duncanville Hotel Occupancy Taxes to purchase a Visitor Center sign in order to promote the Official Duncanville Visitor Center to out-of-town visitors.

**Section 2. Obligation of the ORGANIZATION.** The ORGANIZATION shall use all of the awarded funds provided by the CITY in accordance with Chapter 351 of the Texas Tax Code and the ORGANIZATION'S funding application by purchasing a Visitor Center building sign consisting of the words Visitor Center matching the same size and construction of the current Chamber of Commerce letters on the Chamber of Commerce building which is generally depicted in attached Exhibit 1; and all work must be completed in compliance with City, State, and Federal Laws.

**Section 3. Reporting Requirements of the ORGANIZATION.** The ORGANIZATION shall deliver a Post Event Form with the following within fifteen (15) business days after the sign is completed and prior to September 29, 2017:

- a. copies of all canceled checks for the project including from the sign company and electrician; and
- b. a copy of the approved City of Duncanville sign permit; and
- c. before and after pictures of the building.

City Hotel Occupancy Funds shall be exclusively used for the purchase of the Visitor Center sign as covered under this AGREEMENT. Those funds not used in accordance with this AGREEMENT must be repaid in full to the City of Duncanville. A completed Post Event Form must be submitted in order for

the Chamber to be eligible for consideration of future grants. A partial or incomplete form will not be accepted.

**Section 4. Authorization of Payment.** Subject to the ORGANIZATION'S satisfactory performance and compliance with the terms of this AGREEMENT, the CITY agrees to pay the grant made herein to the ORGANIZATION in an amount not to exceed \$5,000 from Hotel Occupancy Tax funds. The payment will be made within thirty (30) days of providing the approved Post Event Form with copies of the invoices from the contractors for completed work and the City of Duncanville approved sign permit receipt.

**Section 5. Appeal Process.** If the ORGANIZATION wishes to make any appeal of the decisions of the CITY regarding the grant made herein, the ORGANIZATION must present their appeal in writing within ten (10) business days of funding denial to the City Manager.

**Section 6. Rights.** The City of Duncanville has the right, at any time, to inspect the books or records of the ORGANIZATION that may relate to the performance of this AGREEMENT. The CITY, at its sole expense, has the right to conduct an audit of the ORGANIZATION, event, or project.

**Section 7. Term.** The AGREEMENT shall become effective as of December 1, 2016, and the AGREEMENT shall terminate on September 30, 2017, or once the terms have been met, whichever occurs first. Either party does hereby reserve the right to terminate this agreement without cause upon ten (10) days written notice. Termination and notice shall constitute final payment without any further obligation of either parties past the date of termination.

**Section 8. Recapture Provision.** In the event the Duncanville Chamber of Commerce does not comply with the terms of this AGREEMENT, is otherwise in default, or fails to appropriately spend the funds in accordance with State law, or falsifies any documents required under this agreement as provided herein, the Duncanville Chamber of Commerce, pursuant to the provisions herein shall refund the CITY an amount equal to the sum of the Grant Payments actually paid by the CITY to the Duncanville Chamber of Commerce immediately preceding the date of such termination. If the payment is not refunded within 30 days of termination, interest on the refund amount, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the CITY) as its prime or base commercial lending rate, from the date of termination until paid.

**Section 9. Indemnification.** The ORGANIZATION agrees to defend, indemnify and hold harmless the CITY, City Council, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the ORGANIZATION's breach of any of the terms or provisions of this AGREEMENT, or by any negligent act or omission of the ORGANIZATION, its officers, agents, servants, employees, contractors, or subcontractors, in the performance of this AGREEMENT; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the ORGANIZATION and the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Both parties expressly agree that this AGREEMENT does not assign any responsibility for civil liability to the CITY that may arise by virtue of this AGREEMENT.

**Section 10. Default.** The CITY reserves the right to terminate this AGREEMENT if the ORGANIZATION fails to comply with any term of the AGREEMENT, including the inability of the

ORGANIZATION to conform to any change required by federal, and state or local laws or regulations. The CITY shall provide written notification to the ORGANIZATION of the termination of this AGREEMENT within thirty (30) days before the effective date of termination. The CITY may terminate the AGREEMENT for breach of any provision of this AGREEMENT, upon written notice of the breach and the ORGANIZATION shall have ten (10) days after receipt of the written notice in which to cure the breach to the satisfaction of the CITY.

**Section 11. Notice.** All notices required or permitted under this AGREEMENT shall be in writing and shall be delivered in person or mailed as follows:

To the CITY at:

City of Duncanville  
Attn.: Kevin Hugman, City Manager  
203 E. Wheatland Rd.  
Duncanville, TX 75116

To the ORGANIZATION at:

Duncanville Chamber of Commerce  
Attn.: Steve Martin  
300 E. Wheatland Rd  
Duncanville, TX 75116

## MISCELLANEOUS

**Section 12. Entire Agreement.** This AGREEMENT constitutes the entire agreement of the parties regarding the subject matter contained herein. The parties may not modify or amend this AGREEMENT, except by written agreement approved by the governing bodies of each party and duly executed by both parties.

**Section 13. Approval.** This AGREEMENT has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.

**Section 14. Assignment.** Except as otherwise provided in this AGREEMENT, a party may not assign this AGREEMENT or subcontract the performance of services without first obtaining the written consent of the other party.

**Section 15. Non-Waiver.** A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this AGREEMENT does not preclude the exercise of another right or remedy. Rights and remedies under this AGREEMENT are cumulative and are not exclusive of other rights or remedies provided by law.

**Section 16. Paragraph Headings.** The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this AGREEMENT or any section thereof.

**Section 17. Attorney Fees.** In any lawsuit concerning this AGREEMENT, the prevailing party shall be entitled to recover reasonable attorney's fees from the nonprevailing party, plus all out-of-pocket expenses such as deposition costs, telephone calls, travel expenses, expert witness fees, court costs, and their reasonable expenses, unless otherwise prohibited by law.

**Section 18. Severability.** If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this AGREEMENT are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this AGREEMENT shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 19. Venue.** The parties agree that all disputes that arise of this AGREEMENT are governed by the laws of the State of Texas and venue for all purposes herewith shall be in Dallas County, Texas.

**IN WITNESS WHEREOF,** the CITY and ORGANIZATION make and execute this AGREEMENT to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**ORGANIZATION**

\_\_\_\_\_  
Kevin Hugman  
City Manager

\_\_\_\_\_  
Steve Martin  
Duncanville Chamber of Commerce

ATTEST:

\_\_\_\_\_  
Mary E. Jones  
City Secretary

**RESOLUTION NO. 2016-11155B**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, APPROVING AN AGREEMENT BETWEEN THE CITY OF DUNCANVILLE AND THE DUNCANVILLE CHAMBER OF COMMERCE, ATTACHED HERETO AS EXHIBIT "A", AWARDING A HOTEL OCCUPANCY TAX GRANT TO THE DUNCANVILLE CHAMBER OF COMMERCE LOCATED AT 300 E. WHEATLAND ROAD IN AN AMOUNT NOT TO EXCEED \$5,000 FOR FY 16-17, TO ADD A VISITOR CENTER BUILDING SIGN; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City is authorized by Chapter 351 of the Texas Property Tax Code to levy a hotel occupancy tax to be used to directly enhance and promote tourism and the convention and hotel industry; and

**WHEREAS**, the City has, by ordinance, imposed a local hotel occupancy tax; and

**WHEREAS**, the Duncanville Chamber of Commerce has requested a Hotel Occupancy Tax grant to promote the official Duncanville Visitor Center through a Visitor Center Sign to positively promote Duncanville to out-of-town visitors; and

**WHEREAS**, the City of Duncanville has considered the request and believes that the Duncanville Visitor Center, provided by the Duncanville Chamber of Commerce, directly enhances and promotes tourism in the city.

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

**Section 1:** That the City of Duncanville, Texas hereby approves an agreement between the City of Duncanville and the Duncanville Chamber of Commerce attached hereto as Exhibit "A" awarding a Hotel Occupancy Tax Grant in an amount not to exceed \$5,000 to the Duncanville Chamber of Commerce for a Visitor Center Building Sign.

**Section 2:** That the City Council of the City of Duncanville hereby authorizes the City Manager to execute the necessary documents to conform to this resolution as appropriate.

**Section 3:** This Resolution shall become effective immediately upon its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Duncanville, Texas, on the 15<sup>th</sup> day of November, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**APPROVED:**

---

David L. Green, Mayor

**ATTEST:**

---

Mary E. Jones, City Secretary

**APPROVED AS TO FORM:**

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Robert E. Hager, City Attorney



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-5C

**TITLE:**

Consider a Resolution of the City Council of the City of Duncanville, Texas, supporting in principle the Texas Central High Speed Train Project from Houston to the North Texas Region.

**FY 2016-2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **CAPSTONE 5:** Create multi-modal transportation alternatives

**STAFF REPRESENTATIVE:**

Charles Smith, Assistant City Manager

**BACKGROUND/HISTORY:**

On November 3, 2016, Mayor David Green received a request from Mr. David Arbuckle of Texas Central Partners, LLC, requesting the City of Duncanville consider passing a resolution in favor of the development of a high-speed rail corridor in Texas. Texas Central Partners is a private company developing a high-speed rail line between Dallas/Fort Worth and Houston. It plans to use proven technology based on that used by the Central Japan Railway Company, their partner in the project. Formerly, in 2009, they were known as Lone Star High Speed Rail.

The company plans to use trains that are based on the N700 Series Shinkansen, and has indicated that the journey time would be less than 90 minutes, as opposed to a minimum 4 hours by car. Some studies suggest by the year 2035, congestion along the Interstate 45 corridor will result in vehicular travel of approximately 6.5 hours between Dallas/Fort Worth and Houston. Texas Central Partners has indicated that service on the line could start as early as 2020.

The Federal Railroad Administration (FRA) and TxDOT are working with the Texas Central Partners on their Environmental Impact Statement, required by the National Environmental Policy Act. TxDOT will provide technical assistance with study efforts and help coordinate public and stakeholder involvement. Constructing track between Dallas and Houston would cost an estimated \$10 billion in private investor funding with no public funds expected.

In addition to completing their Environmental Impact Statement, Texas Central Partners is engaged in offering up-front payments to property owners, along the specified route, for purchase options that give them until December 2019 to complete the purchase of the property and pay the owners the remainder owed.

In June 2016, the North Central Texas Council of Government's Regional Transportation Council (NCTCOG-RTC) passed a resolution, approving a memorandum of understanding with Texas Central Partners high-speed rail initiative, calling on close coordination of member counties, its 230+ member governments, and other transportation industries in order to "maximize the opportunities for connectivity for the benefit of generations of Texans." Likewise, in September 2016, the City of Irving, Texas, also passed a resolution in support of the high-speed rail project.

High-speed rail offers the promise of quick, efficient, safe, and economical transportation between the Dallas/Fort Worth Metroplex and the Houston area. Duncanville and the other southern sector cities are primed to benefit from Texas

Central's efforts to establish the first, true high-speed train in the Western Hemisphere. With a terminal in South Dallas near the South East corner of the intersection of Interstates 35 and 30, anyone traveling from there will find Duncanville convenient.

**POLICY EXPLANATION:**

As stated in an article from The Texas Tribune, dated July 26, 2016, the Federal Surface Transportation Board ruled recently it did not need to grant approval for the project to Texas Central Partners, because the project lay outside its jurisdiction (because it is totally within the State of Texas). This clears the path for the project to be controlled in its entirety by the State of Texas Legislature.

While there are no plans for the line to cross into the borders of the City of Duncanville, the project will have county, regional, and statewide impacts for many years, therefore, affecting our citizens. According to the article, "the project has strong support from local officials and residents in both Houston and Dallas, but residents of the rural counties along the planned route remain staunchly opposed. State lawmakers who represent those communities tried last session to pass measures blocking the project, but they were unsuccessful." Besides issues regarding eminent domain as well as the fundamental change to the appearance of prime grazing and pasture land, some believe the high-speed rail project will ultimately be subsidized in the long-term by Texas taxpayers.

When Texas Central Partners submitted their petition to the Federal Surface Transportation Board, "several U.S. Representatives from Texas also submitted comments to the Board, with Democrats Eddie Bernice Johnson of Dallas and Gene Green of Houston joining Republican Blake Farenthold of Corpus Christi in support of Texas Central's petition, and Republicans Joe Barton of Ennis, Kevin Brady of The Woodlands and Bill Flores of Bryan against the firm's claims."

During the 2015 Texas legislative session, several attempts were put forward to stop the project including restricting Texas Central Partners from utilizing eminent domain to gain access to private lands as well as a budget rider to prevent TxDOT from spending any state funds in assistance of the project. Both efforts failed.

**FUNDING SOURCE:**

None

**RECOMMENDATION:**

Consider approving a Resolution of the City Council of the City of Duncanville, Texas, supporting in principle the Texas Central High Speed Train Project from Houston to the North Texas Region.

**ATTACHMENTS:**

High-Speed-Low-impact Factsheet.pdf

Train Technology.pdf

Resolution



# High Speed, Low Impact

This state-of-the-art high-speed rail project will connect North Texas and Houston in less than 90 minutes, using the most efficient and environmentally friendly mass transportation system in the world.

The Series N700-I Bullet is an electric “bullet train” that has been refined over a 50-year history of service in Japan to consume 1/8th less energy per seat and expend 1/12th of the carbon per passenger mile, as compared to a typical commercial jet. With significantly lower emissions per passenger mile, this train provides an eco-friendly transportation option for those traveling between Texas’ top two economic powerhouses. Plus, fewer cars on the road means fewer contaminants from highway runoff flowing into streams and other bodies of water.

Once constructed, this train will be the first high-speed railway in the entire Western Hemisphere, setting an economic precedent for environmentally friendly mass transportation projects in the future.

## AT A GLANCE

High-speed rail will help Texas efficiently handle growth, while relieving stress on the environment.

### CONSIDER THIS:

- The populations of North Texas and Houston are projected to roughly double by 2035.
- Auto traffic between the two regions is expected to increase by about 100% by 2035.
- High-speed rail will provide an attractive alternative to hundreds of thousands of auto passengers every year.
- Fewer cars on the road mean less emissions and contaminants that harm air and water quality.
- In Japan, bullet trains emit just 1/12th the amount of carbon as a typical commercial jet.\*
- This HSR technology is entirely electric.

\*Data based on a Tokyo to Osaka line.

## RESPECT FOR THE LAND, COMMUNITIES AND WILDLIFE

To minimize the impact on the surrounding communities and environment, current plans are for the train to run mainly on elevated tracks and berms along existing right of ways. These design features will make it easier for builders to avoid negatively impacting streams, wetlands, floodplains and other natural and cultural features, while still allowing for the free movement of wildlife, pedestrians and vehicles.

During construction, there will be silt fences and straw bales installed to minimize runoff into any nearby bodies of water, wetlands, roads or other sensitive areas. And, at completion, the vegetation will be restored along with other erosion control measures, as needed.

## CONSTRAINING NOISE POLLUTION

Through decades of applied research, this technology has evolved into one of the quietest railways in the world. It currently operates in dense urban environments in Japan—where noise pollution regulations are strict compared to other parts of the world.

Tell your elected officials that you support moving Texas forward with high-speed rail’s eco-friendly technology:

[www.TimeToRideTX.com/environment/](http://www.TimeToRideTX.com/environment/)

# Texas Central: 21st Century Transportation Technology

21st Century transportation is coming to the Lone Star State. Texas Central is developing a high-speed rail system, which will provide a safer and more efficient way for Texans to move between Dallas and Houston – in less than 90 minutes.

Texas Central works closely with Central Japan Railway Company (JRC) in the development of this project and the N700-I Bullet train system, which is based on fifth-generation Shinkansen technology.

The Tokaido Shinkansen has been in operation in Japan since 1964. Today, JRC operates 323 high-speed trains and transports an average of 424,600 passengers each day between Tokyo, Nagoya and Osaka. Their average annual “delay” is less than one minute.

Because the N700 is less susceptible to service interruptions than other modes of travel, high-speed rail will be an all-of-the-time transportation alternative. Further, because trains in Texas will not be a part of a national system, service will not suffer from spillover problems elsewhere in the national transportation system.

JRC’s technologies and practices have a safety record unmatched by any other system in the world—over *fifty* years of service without a **single** loss-of-life accident during operation.

This level of safety directly reflects JRC’s commitment to safety, including:

- Adoption of a total system approach that seamlessly integrates signaling, infrastructure design, track work, communications, power supply, operations, maintenance, rolling stock and the system safety plan into a coherent whole.
- A completely separated track system that is dedicated solely to high-speed rail service, thereby precluding any possible encounter with freight traffic, motor vehicles, wildlife or pedestrians.
- Use of JRC’s state of the art and proprietary Automatic Train Control (ATC) system, which will provide equivalent or better safety-levels than those in use in the U.S. today.



Photo of the N700 used under permission of JR Central

**RESOLUTION NO. 2016-11155C**

**A RESOLUTION OF SUPPORT OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, SUPPORTING IN PRINCIPLE THE TEXAS CENTRAL HIGH SPEED TRAIN PROJECT FROM HOUSTON TO THE NORTH TEXAS REGION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** the passenger rail station will be built south of downtown Dallas, complementing and helping to accelerate the growth in South Dallas and the Best Southwest communities; and

**WHEREAS,** a strong transportation system is fundamental to the region's quality of life and economic vitality, attracting new businesses and generating new jobs; and

**WHEREAS,** the project is estimated to create 10,000 full-time construction jobs each year during the anticipated four-year construction period, and 1,000 full-time jobs after the system goes into revenue service; and

**WHEREAS,** strong economic growth and increased populations are projected in Texas over the next 30 years and much of the new growth will occur within the Best Southwest communities, North Texas and Houston regions; and

**WHEREAS,** traffic congestion in North Texas and Houston is expected to double by the year 2035; and

**WHEREAS,** the existing, plus committed, infrastructure for highway modes will be inadequate to address the increased interaction between Texas cities as a result of this growth; and

**WHEREAS,** the implementation of the high speed passenger train provides an efficient, safe and cost-efficient mode of transportation, shifting a significant volume off existing and committed highways, and

**WHEREAS,** the train project by Texas Central will connect North Texas and Houston in under 90 minutes at speeds in excess of 200 miles per hour; and

**WHEREAS,** the train tracks will be grade separated, thereby ensuring there are no intersections with roadways or rail tracks; and

**WHEREAS,** the project provides an alternative to additional taxpayer-funded construction and reduces carbon emissions; and

**WHEREAS,** the project is projected to generate a direct impact of \$36 billion to the Texas economy over the next 25 years; and

**WHEREAS,** taxing entities along the proposed route will receive an estimated \$2.5 billion in property taxes over 25 years from Texas Central; and

**WHEREAS,** the North Texas to Houston high-speed train project will be privately developed and will not take public money for its operations; and

**WHEREAS,** the project will be good for the Best Southwest communities, the region and the state.

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

**SECTION 1:** That the City of Duncanville, Texas supports in principle the Texas Central High-Speed Train Project from Houston to the North Texas Region.

**SECTION 2:** That this Resolution shall take effect from and after its final date of passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Duncanville, Texas, on the 15<sup>th</sup> day of November, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**APPROVED:**

\_\_\_\_\_  
David L. Green, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary E. Jones, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert Hager, City Attorney



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-5D

**TITLE:**

Consider a Resolution of the City Council of the City of Duncanville, Texas, adopting the City of Duncanville City Council Travel Policy, attached hereto as Exhibit "A", defining necessary expenses incurred by a City Councilmember, and providing an effective date.

**FY 2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

N/A

**STAFF REPRESENTATIVE:**

Charles Smith, Assistant City Manager

**BACKGROUND/HISTORY:**

The City Council regularly attends various functions within the Metroplex as part of their official duties. If a City Councilmember wishes to have a guest attend the event, the cost of admission and any meal served in conjunction with the event for the guest is borne by the City Councilmember.

During the September 13<sup>th</sup> and November 1<sup>st</sup> briefing sessions, City Council expressed an interest in having a policy permitting reimbursement for expenses incurred for admission and meal, for a City Councilmember's guest attending a local event with them. The City Council also indicated they wished to have this reimbursement policy apply only to local events, typically attended by the City Council as a whole.

Finally, the City Council wishes their travel policy to reflect reimbursement for meals and expenses incurred during travel, upon presentation of receipts, as opposed to receiving a daily per diem.

**POLICY EXPLANATION:**

Article II, Section 2.03 (Compensation) states, "Members of the Council shall serve without pay or compensation, provided, however, they shall be entitled to reimbursement of necessary expenses incurred in the performance of their official duties when approved by the Council."

The attached policy defines "necessary expenses" as the cost of admission and meal incurred by the City Councilmember, for a guest, while attending a local event with them. The policy further defines a local event, as well as provides a definition for a guest. Finally, the policy is designed to reimburse City Councilmembers for meals and expenses incurred during travel, upon presentation of receipts, as opposed to receiving a daily per diem.

**FUNDING SOURCE:**

General Fund

**RECOMMENDATION:**

Staff recommends approval of a Resolution of the City Council of the City of Duncanville, Texas, adopting the City of Duncanville City Council Travel Policy, attached hereto as Exhibit "A", defining necessary expenses incurred by a City Councilmember, and providing an effective date.

**ATTACHMENTS:**  
Council Travel Policy  
Resolution

**RESOLUTION NO. 2016-11155D**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, ADOPTING THE CITY OF DUNCANVILLE CITY COUNCIL TRAVEL POLICY, ATTACHED HERETO AS EXHIBIT "A", DEFINING NECESSARY EXPENSES INCURRED BY A CITY COUNCILMEMBER AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Charter of the City of Duncanville, Article II, Section 2.03 (Compensation) states, in part, City Councilmembers "shall be entitled to reimbursement of necessary expenses incurred in the performance of their official duties when approved by Council", and

**WHEREAS**, the City Council wishes to adopt a formal travel policy defining the process of reimbursement for necessary expenses incurred while traveling during their official duties, and

**WHEREAS**, the City Council finds that in many cases, City Councilmembers are accompanied by a guest when attending local events and functions, the whole of City Council typically attends in an official capacity, and

**WHEREAS**, the City Council finds these local events typically charge for admission and the cost of a meal, in conjunction with the event, and

**WHEREAS**, the City Council finds the cost of admission and the accompanying meal served in conjunction with a local event, for a guest of a City Councilmember attending the event with the City Councilmember, is a necessary expense incurred in the performance of their official duties.

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

**Section 1:** That the City of Duncanville City Council formally adopts the City of Duncanville, City Council Travel Policy, attached hereto as Exhibit "A", which outlines the process of reimbursement for necessary expenses incurred while traveling during their official duties.

**Section 2:** That the City of Duncanville City Council finds the cost of admission and an accompanying meal, for a guest of the City Councilmember while attending the event with the City Councilmember, a necessary expenses subject to reimbursement or prepayment by the City.

**Section 3:** That the City of Duncanville City Council permits reimbursement for only those necessary expenses incurred by a City Councilmember, for a guest, attending a local event, as defined within the policy.

**Section 4:** This Resolution shall become effective immediately upon its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Duncanville, Texas, on the 15<sup>th</sup> day of November, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**APPROVED:**

\_\_\_\_\_  
David L. Green, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary E. Jones, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

# **CITY OF DUNCANVILLE**

## **CITY COUNCIL TRAVEL POLICY**

### **I. Transportation and Mileage Reimbursement**

- A. Mileage will be reimbursed at the current standard rate recommended by the Internal Revenue Service as of January 1<sup>st</sup> and will be adjusted periodically based on Internal Revenue Service guidelines.
- B. Reimbursable mileage is the shortest round trip distance of :
  - 1. Normal work location to travel destination or
  - 2. Home to travel destination.
- C. Travel arrangements including airfare, hotel, etc. should be coordinated through the City Secretary.
- D. For transportation expenses, the lesser expense of airfare plus ground transportation (i.e. taxi, shuttle service) or actual mileage will be reimbursed.

### **II. Meals and Receipts**

- A. Meal expenses shall only be reimbursed if travel requires an overnight stay or is outside the 6 county area (Dallas, Tarrant, Denton, Collin, Ellis or Johnson counties).
- B. The City Council member should attach all receipts to the Expense Report. All expenses must have an itemized receipt attached or they may not be reimbursed (except mileage costs). Detailed receipts are required to verify that all individual items purchased are reimbursable. Total only receipts do not provide sufficient transparency.
- C. Only the City Council member's meal cost will be reimbursed. City Council members, who travel with others, cannot include another's meal cost for reimbursement, except as permitted in Section IV, "Necessary Expenses for Guests of City Council Members."

### **III. Prohibited Items**

- A. Items not reimbursed include, but are not limited to, the following:
  - 1. Alcoholic beverages
  - 2. Break item snacks such as soft drinks, candy, etc.
  - 3. In-hotel pay television or videos
  - 4. Movies
  - 5. Golf
  - 6. Sporting events

#### IV. Expense Reports

- A. City Council members who use City funds for authorized trips should submit an individual Travel Expense Report to the City Secretary within 30 days of completing the trip.
- B. All amounts expended should be listed on the Expense Report, whether paid for by the City Council member, through a travel advance, on a City credit card, or by the City. The City Council member should list all prepaid transportation, prepaid lodging, prepaid registration, City credit card charges, travel advance received and personal expenses, and then subtract these amounts from the “Total Expenses” to arrive at the “Amount Due Employee” or “Amount Due City”. If using the Travel Expense Report form in Excel, these amounts will be calculated for you automatically.
- C. The City Council member should attach all receipts to the Expense Report. All expenses should have a detailed receipt attached or they may not be reimbursed (other than mileage costs). Airline receipts and detailed hotel receipts should be included, even if prepaid by the City.
- D. The Expense Report shall be assembled by the City Secretary, signed by the City Council member and forwarded to the City Manager or Assistant City Manager for final review.
- E. After the final review by the City Manager or Assistant City Manager, the Expense Report shall be forwarded to the Finance Department. The Finance Department shall verify all itemized receipts are attached, verify all math calculations, and prepare a receipt for returned money, if any. The Director of Finance shall review all the documentation for completeness.

#### V. Necessary Expenses for Guests of City Council Members

- A. Necessary expenses incurred by a City Council member for a guest, who attends a local event with the City Council member, will be reimbursed.
  - 1. A local event is defined as one that City Council normally participates in as a whole, and held within Dallas, Tarrant, Denton, Collin, Ellis or Johnson Counties.
  - 2. A guest is defined as an individual whom the City Council member invites to the event.
- B. Necessary expenses defined under this section are admission and meal costs, if any, incurred by a City Council member for a guest attending a local event, with the City Council member.
- C. If the admission and meal costs are prepaid by the City of Duncanville, no additional reimbursement is permitted.



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-5E

**TITLE:**

Consider a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of field surface soils, materials, and installation services from MasterTurf Products & Service, Inc. through a TASB Buyboard Purchasing Cooperative Agreement in an amount not to exceed fifty-two thousand nine hundred and seventy eight dollars (\$52,978); authorizing the City Manager to execute the appropriate purchase orders and documents; and, providing an effective date.

**FY2016-2017 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

**Goal 2.56:** Implement park improvements as approved in the FY17 Budget including field improvements at Harrington Park, fencing at Lakeside and Lions parks, and post and cabling at Harrington Park.

**STAFF REPRESENTATIVE:**

Bart Stevenson, Parks & Recreation Director  
Charles Oberrender, Purchasing Manager

**BACKGROUND/HISTORY:**

The current infield mixture at the Harrington Park baseball fields is largely clay with some sand and Turface that we have added over the years. We tend to lag behind other Best Southwest cities in playability because of the extremely poor draining characteristics of an infield with such a high clay percentage. As such, it is very difficult to maintain the proper moisture levels which results in significant maintenance challenges, especially during the spring rainy season.

Benefits of the products used in the proposed reconditioning of the infields include a dramatically reduced number of games/practices rained out. Two products will be the proprietary ingredients that achieve this performance. MasterSeal Conditioner is an organic topsoil compound that will absorb more water to reduce game rain outs and firm up loose playing surfaces which increases player safety. MasterSeal Infield Mix is a specially blended formula designed to deliver the highest quality baseball and softball surfaces. Pre-mixed with conditioner, this product will last twice as long as traditional clay ball field products. In addition, this infield mix will reduce on-going maintenance issues, enable us to control surface water absorption, and prevent costly wind and rain erosion. With proper drainage characteristics and improved overall playability of our fields, youth baseball leagues and tournaments will benefit our citizens as well as encourage future visitors to our community and support the Council's capstone of encouraging youth sports tourism in Duncanville.

**POLICY EXPLANATION:**

Staff obtained a proposal from MasterTurf Products and Services, Inc. of North Richland Hills, TX for material and labor to perform the renovation (**Attachment 1**). This proposal is priced in accordance with their contract #447-14 awarded by the TASB BuyBoard purchasing cooperative. The City is a member of this cooperative. A purchase made through this cooperative is compliant with requirements in Chapter 271.102 of the Texas Local Government Code.

**FUNDING SOURCE:**

\$48,000 has been allocated in the Innovation Fund for this project through the adoption of the FY2017 budget by City Council on September 20, 2016. The excess of \$4,978 will be covered by potential savings in other Parks Innovation Fund projects or FY 2016 General Fund balance savings.

**RECOMMENDATION:**

Staff recommends approval of a Resolution of the City Council of the City of Duncanville, Texas, authorizing the procurement of field surface soils, materials, and installation services from MasterTurf Products & Service, Inc. through a TASB Buyboard Purchasing Cooperative Agreement in an amount not to exceed fifty two thousand nine hundred and seventy eight dollars (\$52,978); authorizing the City Manager to execute the appropriate purchase orders and documents; and, providing an effective date.

**ATTACHMENTS:**

Attachment 1 - Quotation

Attachment 2 - Resolution

# MasterTurf Products and Service, Inc.

1852 Norwood Plaza Suite 201 Hurst, TX 76054 Office (817) 494-3222 Cell (817) 929-0166 Fax (817) 494-3322

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November 4, 2016

## Baseball Fields at Harrington Park: BuyBoard Contract 447-14

### Field 1

<u>Est. Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Extended Price</u>
180 lbs.	Masterseal Conditioner	\$ 2.50	\$ 450.00
40 tons	Masterseal Infield Mix	\$ 48.60	\$ 1,944.00
40 tons	Freight for Infield Mix	\$ 40.40	\$ 1,616.00
1	Tilling and Laser Grading	\$ 3,500.00	\$ 3,500.00
24	Labor (Hrs.)	\$ 47.3333	\$ 1,136.00
<b>Total:</b>			<b>\$ 8,646.00</b>

### Field 2

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Extended Price</u>
180 lbs.	Masterseal Conditioner	\$ 2.50	\$ 450.00
50 tons	Masterseal Infield Mix	\$ 48.60	\$ 2,430.00
50 tons	Freight for Infield Mix	\$ 40.40	\$ 2,020.00
1	Tilling and Laser Grading	\$ 3,500.00	\$ 3,500.00
27.2112	Labor (Hrs.)	\$ 47.3333	\$ 1,288.00
<b>Total:</b>			<b>\$ 9,688.00</b>

### Field 3

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Extended Price</u>
270 lbs.	Masterseal Conditioner	\$ 2.50	\$ 675.00
75 tons	Masterseal Infield Mix	\$ 48.60	\$ 3,645.00
75 tons	Freight for Infield Mix	\$ 40.40	\$ 3,030.00
1	Tilling and Laser Grading	\$ 3,500.00	\$ 3,500.00
14.33	Labor (Hrs.)	\$ 47.3333	\$ 678.00
<b>Total:</b>			<b>\$ 11,528.00</b>

### Field 4

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Extended Price</u>
270 lbs.	Masterseal Conditioner	\$ 2.50	\$ 675.00
75 tons	Masterseal Infield Mix	\$ 48.60	\$ 3,645.00

75 tons	Freight for Infield Mix	\$ 40.40	\$ 3,030.00
1	Tilling and Laser Grading	\$ 3,500.00	\$ 3,500.00
14.33	Labor (Hrs.)	\$ 47.3333	\$ 678.00
<b>Total:</b>			<b>\$ 11,528.00</b>

**Field 5**

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Extended Price</u>
270 lbs.	Masterseal Conditioner	\$ 2.50	\$ 675.00
75 tons	Masterseal Infield Mix	\$ 48.60	\$ 3,645.00
75 tons	Freight for Infield Mix	\$ 40.40	\$ 3,030.00
1	Tilling and Laser Grading	\$ 3,500.00	\$ 3,500.00
15.5915	Labor (Hrs.)	\$ 47.3333	\$ 738.00
<b>Total:</b>			<b>\$ 11,588.00</b>

**Total Estimated Cost** **\$52,978.00**

**RESOLUTION NO. 2016-11155E**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS, AUTHORIZING THE PROCUREMENT OF FIELD SURFACE SOILS, MATERIALS, AND INSTALLATION SERVICES FROM MASTERTURF PRODUCTS & SERVICE, INC. THROUGH A TASB BUYBOARD PURCHASING COOPERATIVE AGREEMENT IN AN AMOUNT NOT TO EXCEED FIFTY TWO THOUSAND NINE HUNDRED AND SEVENTY EIGHT DOLLARS (\$52,978); AUTHORIZING THE CITY MANAGER TO EXECUTE THE APPROPRIATE PURCHASE ORDERS AND DOCUMENTS; AND, PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, it is necessary to maintain a safe, efficient, playing surface at our baseball fields;  
and

**WHEREAS**, the TASB BuyBoard, has taken sealed bids for Grounds Maintenance Equipment & Irrigation Parts, Supplies & Installation; and

**WHEREAS**, Contract #447-14 under the TASB BuyBoard was awarded to MasterTurf Products & Service, Inc.

**WHEREAS**, the City of Duncanville has entered into an Interlocal Cooperative Purchasing Agreement with the TASB BuyBoard, for products and services; and

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

**Section 1:** That the City Council of the City of Duncanville hereby approves the procurement of field surface soils, materials, and installation services with MasterTurf Products & Service, Inc., through a TASB BuyBoard, in an amount not to exceed fifty two thousand nine hundred seventy eight dollars (\$52,978) for field improvements at Harrington Park.

**Section 2:** That the City Council of the City of Duncanville hereby authorizes the City Manager, or his designee, to execute the appropriate purchase orders and documents.

**Section 3:** This Resolution shall become effective immediately upon its passage.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Duncanville, Texas,  
on the 15<sup>th</sup> day of November, 2016.

**CITY OF DUNCANVILLE, TEXAS**

**APPROVED:**

---

David L. Green, Mayor

**ATTEST:**

---

Mary E. Jones, City Secretary

**APPROVED AS TO FORM:**

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Robert E. Hager, City Attorney



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-5F

**TITLE:**

Take any action necessary as a result of Executive Session.



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-6A

**TITLE:**

Receive the Parks and Recreation Quarterly Report and Workplan Update.

**FY 2015-2016 CITY COUNCIL ORGANIZATIONAL WORKPLAN:**

- **CAPSTONE 1:** Most engaged citizens in America
  - **Goal 1:** Achieve and sustain a healthy relationship between the organization's stakeholders

**STAFF REPRESENTATIVE:**

Bart Stevenson, Parks and Recreation Director

**BACKGROUND/HISTORY:**

N/A

**POLICY EXPLANATION:**

N/A

**FUNDING SOURCE:**

N/A

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

N/A



# STAFF REPORT

**MEETING DATE:** November 15, 2016

**AGENDA ITEM:** R-6B

**TITLE:**

Receive an Update Report regarding the Duncanville Fieldhouse.

**STAFF REPRESENTATIVE:**

Bart Stevenson, Director of Parks and Recreation

Craig Brasfield, General Manager of the Duncanville Fieldhouse

**POLICY EXPLANATION:**

Craig Brasfield, General Manager of the Duncanville Fieldhouse will provide an update to the City Council regarding the recent activities and upcoming events at the Fieldhouse.

**FUNDING SOURCE:**

N/A

**RECOMMENDATION:**

N/A

**ATTACHMENTS:**

N/A