

**Commissioners Court -- JULY 11, 2023  
NOTICE OF A MEETING OF THE  
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS**



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNONS TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on JULY 11, 2023, in the Hays County Courthouse, Room 301, San Marcos, Texas. An Open Meeting will be held concerning the following subjects:

**A. CALL TO ORDER**

**B. INVOCATION**

**C. PLEDGE OF ALLEGIANCE - Pledge of Allegiance to the American Flag & Pledge of Allegiance to the Texas Flag**

**D. ROLL CALL**

**E. PUBLIC COMMENTS**  
At this time 3-MINUTE comments will be taken from the audience on Non-Agenda related topics. To address the Court, please submit a Public Participation/ Witness Form to the County Clerk. Please Complete the Public Participation/ Witness Form in its Entirety.  
**NO ACTION MAY BE TAKEN BY THE COURT DURING PUBLIC COMMENTS .**

**F. PRESENTATIONS & PROCLAMATIONS**

1. Recognition of the Texas Historical Commission's Distinguished Service Award to the Hays County Historical Commission for the 2022 year of service. **BECERRA**
2. Presentation and Update on the Hays County Center for Pet Resources, Education, and Research by Austin Pets Alive! **BECERRA/INGALSBE**

**G. CONSENT ITEMS**  
The following may be acted upon in one motion.  
A Commissioner, the County Judge, or a Citizen may request items be pulled for separate discussion and/or action.

1. Approve payments of County invoices. **VILLARREAL-ALONZO**
2. Approve the payment of Juror checks. **TENORIO**
3. Approve the payment of United Healthcare claims. **VILLARREAL-ALONZO**
4. Approve Commissioners Court Minutes of June 6, 2023 and June 20, 2023. **BECERRA/CARDENAS**
5. Approve the payment of the July 15, 2023 payroll disbursements in an amount not to exceed \$3,700,000 effective July 15, 2023 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized. **BECERRA/DORSETT**

6. Approve and confirm the appointment of Courtney Gamble as a regular full-time Deputy Constable in the Hays County Constable's Precinct 1 Office. **INGALSBIE/PETERSON**
7. Authorize the Hays County Veterans Service Office to occupy the office space within the Hays County Courthouse. **BECERRA**
8. Receive and Ratify the finalized Parks Bond Agreement: the Diligence Funding Agreement with Wimberley Independent School District (WISD) and Wimberley Youth Sports Association (WYSA) and amend the budget accordingly. **SHELL**
9. Authorize a waiver to the purchasing policy for the Constable Pct. 4 Office to purchase one (1) Motor Kit, Freedom Wireless, Portable Only Operation on Harley-Davidson Motor with PA Interface valued at \$854.00 from PVP Communication and amend the budget accordingly. **SMITH/HOOD**
10. Authorize a waiver to the purchasing policy for the Constable Pct. 4 Office to purchase one (1) Freedom Speakermic with Wireless System Control valued at \$534.00 from PVP Communication and amend the budget accordingly. **SMITH/HOOD**
11. Authorize the Transportation Department to purchase one replacement Dell Latitude 5540 laptop computer and wireless mouse in the amount of \$1,431.04 and amend the budget accordingly. **SHELL/BORCHERDING**
12. Authorize the acceptance of a cash match contribution from Cedar Oaks Mesa Water Supply Corporation, as a grant requirement, in the amount of \$17,500.00 and amend the budget accordingly. **SHELL/T.CRUMLEY**
13. Ratify the submission of a grant application to the Bulletproof Vest Partnership in the amount of \$20,628.32. **INGALSBIE/T.CRUMLEY**
14. Authorize a budget amendment transfer of \$5,000.00 to continuing education funds within the County Clerk's Records Management Fund and amend the budget accordingly. **BECERRA/CARDENAS**
15. Authorize Payment to Card Service Center in the amount of \$894.99 for repairs done to the Kyle/Buda Community Emergency Response Team (CERT) trailer in which no purchase order was issued per the county purchasing policy and amend the budget accordingly. **BECERRA/MIKE JONES**
16. Accept the Fiscal Year 2022 Hays County Emergency Services District #1 Audit Report per Texas Health and Safety Code 775.082. **SMITH/SHELL/VILLARREAL-ALONZO**
17. Accept the Fiscal Year 2022 Hays County Emergency Services District #2 Audit Report per Texas Health and Safety Code 775.082. **SMITH/COHEN/VILLARREAL-ALONZO**
18. Accept the Fiscal Year 2022 Hays County Emergency Services District #3 Audit Report per Texas Health and Safety Code 775.082. **SHELL/INGALSBIE/VILLARREAL-ALONZO**
19. Accept the Fiscal Year 2022 Hays County Emergency Services District #6 Audit Report per Texas Health and Safety Code 775.082. **SMITH/SHELL/VILLARREAL-ALONZO**
20. Accept the Fiscal Year 2022 Hays County Emergency Services District #8 Audit Report per Texas Health and Safety Code 775.082. **SMITH/COHEN/VILLARREAL-ALONZO**
21. Approve specifications for IFB 2023-B09 Sawyer Ranch Road - Remove and Replace Hot Mix and authorize Purchasing to solicit for bids and advertise. **SMITH/BORCHERDING**
22. Approve specifications for IFB 2023-B17 Jack Rabbit Lane - Remove and Replace Hot Mix and authorize Purchasing to solicit for bids and advertise. **COHEN/BORCHERDING**
23. Authorize the Sheriff's Office to use existing funds of \$771.96 to purchase law enforcement equipment for the Jail Division for training purposes. **SHELL/CUTLER**



24. Authorize the Sheriff's Office to use existing funds to purchase four Glock 17 training pistols with supplies valued at \$3,497.00 for training purposes. **SHELL/CUTLER**
25. Authorize the Sheriff's Office to use existing funds to purchase a vehicle partition valued at \$1,392.00 for the transport unit. **SHELL/CUTLER**
26. Authorize the Sheriff's Jail Division to use savings of \$28,439.00 from FY 2023 capital improvements to cover additional expenses for replacement A/C units approved in the FY 2023 budget process and amend the budget accordingly. **INGALSBE/CUTLER**
27. Authorize an amendment for the Sheriff's Office to purchase law enforcement equipment and supplies from Sheriff Drug Forfeiture Funds. **INGALSBE/CUTLER**
28. Authorize payment to Drippin' Towin' Service, Inc. of \$500.00 for two invoices where no purchase order was in place as per the County Purchasing Policy. **INGALSBE/CUTLER**
29. Approve specifications for IFB 2023-B16 Centerpoint Road and authorize Purchasing to solicit for bids and advertise. **INGALSBE/BORCHERDING**
30. Approve specifications for RFP 202-P02 Bank Depository and authorize Purchasing to solicit for proposals and advertise. **BECERRA/TENORIO**
31. Authorize the Hays County Commissioners Court to submit a request for funds to the Texas Comptroller's Office for unclaimed capital credits pursuant to the Texas Property Code, Section 74.602. **BECERRA/DORSETT**
32. Approve Utility Permits. **COHEN/SMITH/BORCHERDING**
33. Authorize the execution of a renewal Letter Agreement with the Community Supervision and Corrections Department (CSCD) related to the FY 2024 Veteran's Services - Veteran's Treatment Court Grant for Adult Probation Services. **INGALSBE/JOHNSON**
34. Authorize the County Judge to execute an Amendment Order Form with Flock Group, Inc. for the Constable Pct. 4 Office to purchase a software subscription for one Falcon Flex LPR Camera System under the Sheriff's Office Master Agreement; authorize a purchasing waiver to the purchasing policy. **SMITH/HOOD**
35. Authorize the Sheriff's Office to use existing funds of \$1,108.00 to purchase law enforcement equipment for SWAT and amend the budget accordingly. **SHELL/CUTLER**
36. Authorize an amendment for expenditures related to DR-4705 Winter Storm Mara related to debris removal and cleanup operations and amend the budget accordingly. **BECERRA/MIKE JONES**
37. Ratify the authorization of Cornerstone Detention Products, Inc. to conduct emergency repairs to the intercom system located in the Hays County Jail pursuant to the GSA Contract GA-07-269AA and our Service Agreement and authorize a discretionary exemption pursuant to Texas Local Government Code 262.024 (a)(7)(D) for all open market items. **SHELL/CUTLER**

H.	<b>ACTION ITEMS</b>
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I.	<b>ROADS</b>
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1. Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement between Hays County and Freese & Nichols, Inc regarding inspection of MS4 facilities as required by the City of San Marcos and authorize a discretionary exemption pursuant to Texas Local Government Code Chpt. 262.024(a)(4). **INGALSBE/SHELL/BORCHERDING**
2. Discussion and possible action to authorize the Court to execute a Contract Amendment No. 4 in the amount of \$346,000.00 to the Professional Services Agreement between Hays County and American Structurepoint, Inc. for additional design services on the RM 3237 Phase 1 Intersection improvements project in Precinct 3, as part of the Hays County Road Bond Program, utilizing a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(4) and amend the budget accordingly. **SHELL/BORCHERDING**

3. Discussion and possible action to authorize the County Judge to execute a TIA Contribution Agreement between Hays County and Arroyo Cap II-1, LLC, in the amount of \$56,446.00, for certain off-site traffic improvements related to the Sunset Oaks/Highmeadow Subdivision, and amend the budget accordingly. **INGALSBE/BORCHERDING**
4. Discussion and possible action to consider the acceptance of road construction and surface drainage improvements, release of the Letter of Credit #20234033 in the amount of \$18,520.06, acceptance of the maintenance bond #PB03016800851M2 in the amount of \$60,222.12, and acceptance of the revegetation bond #PB03016800851M1 in the amount of \$7,078.86 for 6 Creeks subdivision, Phase 1, Section 10. **SHELL/BORCHERDING**
5. Discussion and possible action to accept fiscal surety for street and drainage improvements in the amount of \$2,553,164.45 for the Waterstone, Unit B, Subdivision (Irrevocable Standby Letter of Credit No. FTFC-23234). **INGALSBE/BORCHERDING**
6. Discussion and possible action to accept fiscal surety for street and drainage improvements in the amount of \$2,252,601,.83 for the Waterstone, Unit C, Subdivision (Irrevocable Standby Letter of Credit No. FTFC-23233). **INGALSBE/BORCHERDING**
7. Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 4-way stop at the intersection of Sparrow Lane and Skyview Terrace. **INGALSBE/BORCHERDING**
8. Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 3-way stop at the intersection of Jennifer Drive and Christopher Drive. **INGALSBE/BORCHERDING**
9. Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 4-way stop at the intersection of Skyview Terrace and Green Pastures Road. **INGALSBE/BORCHERDING**
10. Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 3-way stop at the intersection of Miller Lane and Country Lane. **INGALSBE/BORCHERDING**

J.

<b>SUBDIVISIONS</b>
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1. PLN-2093-PRE; Discussion and possible action to consider granting a variance from Chapter 721 § 5.03 and Table 721.02 of the Hays County Development Regulations regarding the Hawk Ridge, Phase 2, Preliminary Plan. **SMITH/PACHECO**
2. PLN-2218-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Douglas Estates, D-11 Replat. **SMITH/PACHECO**
3. PLN-2235-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Hurlbut Ranch West, PT of Tract 23, Replat. **SHELL/PACHECO**
4. PLN-2115-PRE; Discussion and possible action regarding Vista West Ranches, Lots 12A & 12B, Preliminary Plan. **SHELL/PACHECO**

K.

<b>MISCELLANEOUS</b>
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1. Discussion and possible action to adopt an Order Authorizing Extraordinary Optional Redemption of a Portion of the Hays County, Texas Special Assessment Revenue Bonds, Series 2015 (La Cima Public Improvement District Major Public Improvement Project) and the Hays County, Texas Special Assessment Revenue Bonds, Series 2020 (La Cima Public Improvement District Neighborhood Improvement Areas #1-2 Project). **SHELL**
2. Discussion and possible action to adopt a Resolution Approving a La Cima South Public Improvement District Financing Agreement; Authorizing the Execution and Delivery of such Agreement; and Approving any Additional Actions Necessary in Connection Therewith. **SHELL**
3. Discussion and possible action to adopt a Resolution Approving a La Cima North Public Improvement District Financing Agreement; Authorizing the Execution and Delivery of such Agreement; and Approving any Additional Actions Necessary in Connection Therewith. **SHELL**

4. Discussion and possible action to accept a Proposal from Water & Earth Technologies (WET) related to the replacement of the pressure transducer on Wayside Drive, authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D), and amend the budget accordingly. **SHELL/MIKE JONES**
5. Discussion and possible action to accept a Proposal from Water & Earth Technologies (WET) related to upgrading the York Creek Flasher 3 to an Advance Notice Flasher and authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D). **INGALSBE/MIKE JONES**
6. Discussion and possible action to approve the appointment of David Edwards as the Hays County representative to the Board of Commissioners of the Texas Housing Foundation, a Texas regional housing authority. **SMITH**
7. Discussion and possible action to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and American Legion Post 290 Dripping Springs regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **SMITH**
8. Discussion and possible action to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and Buda VFW Post 12161 regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **SMITH**
9. Discussion and possible action to authorize the County Judge to execute the Hays County Social Service Funding Agreement between Hays County and Dripping Springs Water Supply Corporation regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **SMITH**
10. Discussion and possible action to authorize the County Judge to execute the Hays County Social Service Funding Agreement between Hays County and San Marcos Area Chamber of Commerce, Inc. regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **INGALSBE/SHELL**
11. Discussion and possible action to consider granting a variance from Section 705.2.01 of the Hays County Development Regulations and allow issuance of a development authorization for an entry monument on a property along Yarrington Road for the Sunset Oaks Subdivision. **INGALSBE/PACHECO**
12. Discussion and possible action to grant a purchasing waiver to the Tax Assessor's Office to utilize BIS Consulting, LLC. to perform 2023 tax rate calculations, where BIS was not the lowest quote received. **BECERRA/OKANE**
13. Discussion and possible action to execute a Master Lease Agreement with Ricoh USA, Inc. to add a copier for the Budget Office (\$155.01 monthly), IT Department (\$98.51 monthly) and Constable Precinct 4 Office (\$155.01 monthly) and amend the budget accordingly. **BECERRA/DORSETT/MCGILL/HOOD**
14. Discussion and possible action to accept a proposal from Water & Earth Technologies (WET) in the amount of \$5,413.83 related to the repair/replacement of the damaged York Creek Road Flasher 1; authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(7)(D) and amend the budget accordingly. **INGALSBE/MIKE JONES**
15. Discussion and possible action to accept a proposal from Water & Earth Technologies (WET) in the amount of \$10,241.15 related to the repairs of the damaged flasher at Jacobs Well and Cypress Creek and authorize a discretionary exemption pursuant to Texas Local Government Code Chpt. 262.024 (a)(7)(D). **SHELL/MIKE JONES**
16. Discussion and possible action to authorize the Development & Community Services Director to convert the GIS Specialist slot 0232-001 to a GIS Analyst position effective immediately. **SMITH/PACHECO**
17. Discussion and possible action to authorize the part-time Justice Clerk slot 0855-005 to work full-time for the period of July 18 through July 26, 2023 for the Justice of the Peace Pct. 1-1 Office and amend the budget accordingly. **INGALSBE/PRADO**
18. Discussion and possible action to approve a Scope of Work for a 10-year historical review and forensic audit to include the dates to review from January 1, 2012 through December 30, 2022. **BECERRA**

L.

#### EXECUTIVE SESSIONS

The Commissioners Court will announce that it will go into Executive Session, if necessary, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel to discuss matters of land acquisition, litigation and personnel matters as specifically listed on this agenda. The Commissioners Court may also announce it will go into Executive Session, if necessary, to receive advice from Legal Counsel regarding any other item on this agenda.

1. Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of real property associated with Parks and Open Space Projects being considered by Hays County. Possible discussion and/or action may follow in open court. **BECERRA**
2. Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation to consider a resolution determining the necessity and authorizing the use of the County's power of eminent domain to acquire fee simple interest in 0.7495 acre, owned by ADBF, LLC, a Texas limited liability company and Studio Estates, LLC, a Texas limited liability company, and which is required for the construction of the proposed FM 2001 roadway improvements, and take other appropriate action (Parcels 56). Possible discussion and/or action may follow in open court. **INGALSBE**
3. Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of Right of Way located at or near FM 110 in Pct. 1. Possible discussion and/or action may follow in open court. **INGALSBE**
4. Executive Session pursuant to Sections 551.071 and 551.087 of the Texas Government Code: consultation with counsel and deliberation regarding economic development negotiations associated with Project Lion King. Possible discussion and/or action may follow in open Court. **BECERRA**
5. Executive Session pursuant to Sections 551.071 and 551.076 of the Texas Government Code: consultation with counsel and deliberation regarding the deployment of security device(s) located at the Hays County Government Center, 712 S. Stagecoach Trail, San Marcos. Possible discussion and/or action may follow in open court. **BECERRA**

M.

#### STANDING AGENDA ITEMS

The Commissioners Court utilizes Standing Agenda Items to address issues that are frequently or periodically discussed in court. This section allows the Court to open the item when a need for discussion arises.

1. Discussion and possible action related to the burn ban. **BECERRA**
2. Discussion related to the Hays County inmate population, to include current population counts and costs. **BECERRA**
3. Discussion of issues related to the Hays County Jail, and the planning of projects pertaining to the public safety facilities needs within the County. Possible action may follow. **INGALSBE/CUTLER**
4. Discussion and possible action regarding Hays County's use of federal or other grant funding related to COVID-19 response including but not limited to the American Rescue Plan Act (ARPA) and the Emergency Rental Assistance Program (ERAP). **BECERRA**
5. Updates of community health assessment by local health department. **BECERRA**
6. Discussion and possible action related to proposed bills in the 87th Regular Session of the Texas Legislature and to consider adoption of resolution(s) regarding proposed bills. The Court may opt to withdraw to Executive Session during this item to consult with legal counsel pursuant to Texas Government Code 551.071. **SMITH**
7. Updates on measurable advancement of Pretrial Services to include the areas of staffing, equipment, training, operations and policy, by Director Pre-Trial Services Randy Focken. **BECERRA**

N. **ADJOURNMENT**

**Posted by 5:00 o'clock P.M. on the 7th day of July, 2023  
COMMISSIONERS COURT, HAYS COUNTY, TEXAS**

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**CLERK OF THE COURT**

Hays County encourages compliance with the Americans with Disabilities Act (ADA) in the conduct of all public meetings. To that end, persons with disabilities who plan to attend this meeting and who may need auxiliary aids such as an interpreter for a person who is hearing impaired are requested to contact the Hays County Judge's Office at (512) 393-2205 as soon as the meeting is posted (72 hours before the meeting) or as soon as practical so that appropriate arrangements can be made. While it would be helpful to receive as much advance notice as possible, Hays County will make every reasonable effort to accommodate any valid request regardless of when it is received. Braille is not available.



AGENDA ITEM REQUEST FORM: **F. 1.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Judge Becerra

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### Agenda Item

Recognition of the Texas Historical Commission's Distinguished Service Award to the Hays County Historical Commission for the 2022 year of service. **BECERRA**

### Summary

The Texas Historical Commission (THC) received 197 County Historical Commission reports and approved 83 awards including the Hays County Historical Commission (HCHC). The annual award affirms HCHC's appointees for managing well-rounded history and preservation related programs that enrich Texas communities.

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AGENDA ITEM REQUEST FORM: F. 2.

## Hays County Commissioners Court

Date: 07/11/2023

**Requested By:**

**Sponsor:**

Judge Becerra

**Co-Sponsor:**

Commissioner Ingalsbe

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### **Agenda Item**

Presentation and Update on the Hays County Center for Pet Resources, Education, and Research by Austin Pets Alive! **BECERRA/INGALSBE**

### **Summary**

Update will be given during commissioners court.

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AGENDA ITEM REQUEST FORM: **G. 4.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Elaine H. Cardenas

Sponsor:

Judge Becerra

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### Agenda Item

Approve Commissioners Court Minutes of June 6, 2023 and June 20, 2023. **BECERRA/CARDENAS**

### Summary

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### Attachments

06/06/2023 Minutes

06/20/2023 Minutes



HAYS COUNTY COMMISSIONERS' COURT MINUTES



JUNE 6, 2023

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 6th DAY OF JUNE A.D., 2023, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

RUBEN BECERRA	COUNTY JUDGE
DEBBIE GONZALES INGALSBE	COMMISSIONER, PCT. 1
MICHELLE COHEN	COMMISSIONER, PCT. 2
LON A. SHELL	COMMISSIONER, PCT. 3
WALT SMITH	COMMISSIONER, PCT. 4
ELAINE H. CÁRDENAS	COUNTY CLERK

Clerk's Note: For complete transcript go to Hays County Website  
<https://hayscountytexas.com/commissioners-court/court-video/>  
Transcript can be translated into any language through Google.com.

THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Jim Davis, Grace Bible Church of San Marcos, gave the invocation. Judge Becerra led the court in the Pledge of Allegiance to the United States and Texas flags. Judge Becerra called the meeting to order.

#### PUBLIC COMMENTS

*Dan Lyon made a public comment concerning court video issues and construction around the Courthouse. Clay Huckaby made a public comment thanking the court for granting \$200,000 of American Rescue Plan Act funds to Hays County ESD 2 and updated the court on the progress of the Shadow Creek neighborhood fire station. Sam Brannon made a public comment concerning the last special meeting and action taken regarding the Treasurer's Office. Elaine Cardenas, County Clerk, read an emailed public comment from Jimmy Navarro concerning vehicle traffic and requesting a status update on the Hillside Terrace Improvement Project.*

**39010** Adopt a Proclamation recognizing June 2023 as Elder Abuse Prevention Month.

*Veronica Flores, Adult Protective Services, spoke about the importance of preventing elder abuse and ways for the public to report abuse. The Court thanked the representatives from APS for their work.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to adopt a Proclamation recognizing June 2023 as Elder Abuse Prevention Month.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39011** Adopt a Proclamation recognizing the 17th anniversary of the death of U.S. Army Private First Class Kristian Menchaca, a student of the Gary Job Corps Center.

*Randolph Goodman and others from Gary Job Corps Center thanked the Court for their support and spoke about their time with Kristian. The Court recognized Gary Job Corps for all they do for the community. Dan Lyon made a public comment thanking the Court for the proclamation.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Smith to adopt a Proclamation recognizing the 17th anniversary of the death of U.S. Army Private First Class Kristian Menchaca, a student of the Gary Job Corps Center.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**



**39012** Adopt a Proclamation recognizing June 13-19, 2023 as National Flag Week.

*The Court spoke about their appreciation for the country and its flag. Commissioner Shell thanked the Captain Thomas Moore Chapter of the Daughters of the American Revolution (DAR) for sponsoring this item. Representatives from the DAR thanked the Court and spoke about the importance of the American flag.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to adopt a Proclamation recognizing June 13-19, 2023 as National Flag Week.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39013** Adopt a Proclamation declaring June 2023 as Hays County Month Long Celebration of Juneteenth.

*Constable Peterson, Precinct 1, spoke about the importance of Juneteenth and recognized several individuals from the community for their mentorship. Pastor Derrick Benn, representative for the Juneteenth Foundation, spoke about the history of the holiday and invited the public to various Juneteenth events.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to adopt a Proclamation declaring June 2023 as Hays County Month Long Celebration of Juneteenth.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39014** Approve payments of County invoices.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve payments of County invoices.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39015** Approve the payment of Juror checks.

*Marisol Villarreal-Alonzo, County Auditor, added 36 juror checks totaling \$450 from the County Court at Law.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the payment of Juror checks.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39016** Approve the payment of United Healthcare claims.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the payment of United Healthcare claims.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39017** Approve Commissioners Court minutes for May 23, 2023.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve Commissioners Court minutes for May 23, 2023.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39018** Approve the payment of the June 15, 2023 payroll disbursements in an amount not to exceed \$3,650,000.00 effective June 15, 2023 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized.



A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the payment of the June 15, 2023 payroll disbursements in an amount not to exceed \$3,650,000.00 effective June 15, 2023 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39019** Authorize the County Judge to execute an agreement between the Hays County Local Health Department and Go Sharps Medical Waste Experts LLC for the disposal of Health Department medical waste.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the County Judge to execute an agreement between the Hays County Local Health Department and Go Sharps Medical Waste Experts LLC for the disposal of Health Department medical waste.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39020** Ratify the submission of a grant application to the Texas Indigent Defense Commission, FY24 Improvement Grant Program in the amount of \$77,391.00 and authorize the execution of the associated resolution.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to ratify the submission of a grant application to the Texas Indigent Defense Commission, FY24 Improvement Grant Program in the amount of \$77,391.00 and authorize the execution of the associated resolution.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39021** Authorize the execution of a Memorandum of Understanding (MOU) with the City of San Marcos related to the Local Health Department's Community Outreach Activities.

*Mark Kennedy, General Counsel, noted the Indemnity Clause in the back-up needs to be modified.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the execution of a Memorandum of Understanding (MOU) with the City of San Marcos related to the Local Health Department's Community Outreach Activities.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39022** Approve specifications for RFP 2023-P08 Pre-Trial Services Case Management Software and authorize Purchasing to solicit for proposals and advertise.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve specifications for RFP 2023-P08 Pre-Trial Services Case Management Software and authorize Purchasing to solicit for proposals and advertise.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39023** Authorize Building Maintenance to remodel and convert two office spaces into three medical exam rooms located at the Local Health Department on Thermon Drive in the amount of \$63,806.00 and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize Building Maintenance to remodel and convert two office spaces into three medical exam rooms located at the Local Health Department on Thermon Drive in the amount of \$63,806.00 and amend the budget accordingly.



AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39024** Authorize the County Judge to execute the Texas Historical Commission Antiquities Permit Application Form for Archeology as part of the Sentinel Peak Park Project.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the County Judge to execute the Texas Historical Commission Antiquities Permit Application Form for Archeology as part of the Sentinel Peak Park Project.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39025** Authorize Building Maintenance to have Security One install an alarm security system at the Local Health Department Thermon location and authorize the County Judge to execute the Alarm System Monitoring Agreement authorizing a waiver to the purchasing policy.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize Building Maintenance to have Security One install an alarm security system at the Local Health Department Thermon location and authorize the County Judge to execute the Alarm System Monitoring Agreement authorizing a waiver to the purchasing policy.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39026** Receive and Ratify the finalized Parks Bond Agreement: the Diligence Funding Agreement with the Indigenous Cultures Institute and amend the budget accordingly.

*Dan Lyon made a public comment concerning the Funding Agreement and the possible environmental impact of construction. Commissioner Ingalsbe clarified this agreement did go through the Parks and Open Space Advisory Commission. Mark Kennedy, General Counsel, noted the agreement was previously approved by the Court out of Executive Session.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to receive and Ratify the finalized Parks Bond Agreement: the Diligence Funding Agreement with the Indigenous Cultures Institute and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39027** Authorize the Office of Emergency Services Community Emergency Response Team (CERT) division to accept a donation from the Buda Lions Club in the amount of \$500.00 and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Office of Emergency Services Community Emergency Response Team (CERT) division to accept a donation from the Buda Lions Club in the amount of \$500.00 and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39028** Authorize the County Judge to execute Letter Amendment #1 for an updated Exhibit B for Rate Schedule to the Master Service Agreement between Hays County and Halff Associates, Inc. regarding the Park Bond Management Program.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Judge to execute Letter Amendment #1 for an updated Exhibit B for Rate Schedule to the Master Service Agreement between Hays County and Halff Associates, Inc. regarding the Park Bond Management Program.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**



**39029** Authorize the County Judge to execute Correction Donation Deeds and Drainage Easements between Hays County and Walton Texas, L.P. for Right of Way Parcels 82 & 86 of the FM 2001 road improvement project; and authorize staff to file the same.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Judge to execute Correction Donation Deeds and Drainage Easements between Hays County and Walton Texas, L.P. for Right of Way Parcels 82 & 86 of the FM 2001 road improvement project; and authorize staff to file the same.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39030** Authorize the County Judge to execute an amended Interlocal Cooperation Agreement between Hays County and Burnet County for Jail Services related to the outsourcing of Hays County inmates.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Judge to execute an amended Interlocal Cooperation Agreement between Hays County and Burnet County for Jail Services related to the outsourcing of Hays County inmates.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith

NAY: Judge Becerra

**4 - 1 Passed**

**39031** Authorize Building Maintenance to have JM Engineering install a new 1.5 ton Mitsubishi mini-split AC system for the electrical room, in the amount of \$9,158.60 and provide additional ductwork, fire smoke dampers, grills, insulation, and supply tap in the amount of \$35,208.00 at the IT-Elections Building, and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize Building Maintenance to have JM Engineering install a new 1.5 ton Mitsubishi mini-split AC system for the electrical room, in the amount of \$9,158.60 and provide additional ductwork, fire smoke dampers, grills, insulation, and supply tap in the amount of \$35,208.00 at the IT-Elections Building, and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39032** Accept the donation of property from Posey Road Direct Holding, LLC of a 0.029 acres tract of land located near the intersection of Posey Road and Old Bastrop Road in Precinct 1; and authorize staff to file a Special Warranty Deed reflecting the same and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to accept the donation of property from Posey Road Direct Holding, LLC of a 0.029 acres tract of land located near the intersection of Posey Road and Old Bastrop Road in Precinct 1; and authorize staff to file a Special Warranty Deed reflecting the same and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39033** Authorize the Office of Emergency Services to use existing funds to purchase ArcGIS Indoors Maps for ArcGIS Online Annual Subscription in the amount of \$11,000.00; authorize a discretionary exemption pursuant to Texas Local Government Code, Ch. 262.024(a)(7)(D).

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Office of Emergency Services to use existing funds to purchase ArcGIS Indoors Maps for ArcGIS Online Annual Subscription in the amount of \$11,000.00; authorize a discretionary exemption pursuant to Texas Local Government Code, Ch. 262.024(a)(7)(D).

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**



**39034** Authorize the County Judge to execute a First Amendment for a time extension to the Professional Services Agreement between Hays County and Halff Associates, Inc. regarding the Willow Springs Flood Mitigation Project.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Judge to execute a First Amendment for a time extension to the Professional Services Agreement between Hays County and Halff Associates, Inc. regarding the Willow Springs Flood Mitigation Project.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39035** Authorize the acceptance of a grant award from the Department of State Health Services (DSHS), Infectious Disease Prevention Section/Surveillance (IDPS/SUR) Grant Program in the amount of \$165,000.00.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the acceptance of a grant award from the Department of State Health Services (DSHS), Infectious Disease Prevention Section/Surveillance (IDPS/SUR) Grant Program in the amount of \$165,000.00.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39036** Authorize the Sheriff's Office to use existing operating funds of \$2,629.00 to fund a price difference of grant-funded bullet-resistant shields.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Sheriff's Office to use existing operating funds of \$2,629.00 to fund a price difference of grant-funded bullet-resistant shields.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39037** Amend the Sheriff's Office Drug Forfeiture Fund in the amount of \$543.00 for additional travel expenses related to Honor Guard attendance at the National Police Week event.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to amend the Sheriff's Office Drug Forfeiture Fund in the amount of \$543.00 for additional travel expenses related to Honor Guard attendance at the National Police Week event.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39038** Amend the Sheriff's Office operating budget in the amount of \$10,000.00 for additional Continuing Education needs for the remainder of the fiscal year.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to amend the Sheriff's Office operating budget in the amount of \$10,000.00 for additional Continuing Education needs for the remainder of the fiscal year.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39039** Authorize the Juvenile Detention Center to accept a proposal from Cornerstone Detention related to three (3) door repairs pursuant to GSA Contract GA-07F-269AA, and authorize a purchasing wavier for all open market items and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Juvenile Detention Center to accept a proposal from Cornerstone Detention related to three (3) door repairs pursuant to GSA Contract GA-07F-269AA, and authorize a purchasing wavier for all open market items and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**





**39040** Accept delivery of the Quarterly Audit Report for the Parks Department for the audit period October 2022 through December 2022.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to accept delivery of the Quarterly Audit Report for the Parks Department for the audit period October 2022 through December 2022.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39041** Authorize the County Judge to execute a Contract Amendment with Texan Landscape LLC. pursuant to IFB 2021-B04 Lawn and Landscape Services.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Judge to execute a Contract Amendment with Texan Landscape LLC. pursuant to IFB 2021-B04 Lawn and Landscape Services.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39042** Authorize the Election's Administration Office to purchase an annual software subscription service through Vista Solutions Group, LP for a Campaign Finance Portal; authorize a waiver to the Purchasing Policy.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Election's Administration Office to purchase an annual software subscription service through Vista Solutions Group, LP for a Campaign Finance Portal; authorize a waiver to the Purchasing Policy.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39043** Approve the Elections and IT Departments to authorize Firetrol Protection Systems to perform work on the Fire Alarm System pursuant to Buyboard contract 654-21, total amount \$38,389.04 and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to approve the Elections and IT Departments to authorize Firetrol Protection Systems to perform work on the Fire Alarm System pursuant to Buyboard contract 654-21, total amount \$38,389.04 and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39044** Authorize the County Clerk, District Clerk, Justice of the Peace Pct. 1.1, Pct. 1.2, Pct. 2, Pct. 3, Pct. 4 and Pct. 5 Offices to obtain one mail permit related to the new Tyler Technologies Jury Module in the amount of \$290.00, and authorize the departments to maintain a three-month escrow balance. Authorize the IT Department to purchase two signature chips from Troy Group, Inc. for the District Clerk's Office and two signature chips for the County Clerk's Office in the amount of \$1,300.00.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Clerk, District Clerk, Justice of the Peace Pct. 1.1, Pct. 1.2, Pct. 2, Pct. 3, Pct. 4 and Pct. 5 Offices to obtain one mail permit related to the new Tyler Technologies Jury Module in the amount of \$290.00, and authorize the departments to maintain a three-month escrow balance. Authorize the IT Department to purchase two signature chips from Troy Group, Inc. for the District Clerk's Office and two signature chips for the County Clerk's Office in the amount of \$1,300.00.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**



**39045** Discussion and possible action to authorize the County Judge to execute Contract Amendment No. 2 in the amount of \$50,000.00 to the Professional Services Agreement between Hays County and Pape-Dawson Engineers, Inc. to provide construction engineering, inspection & testing (CE&I) services as part of the On-Call CE&I contract related to the 2016 Road Bond Program Winters Mill at RM 3237 project and amend the budget accordingly.

*Commissioner Shell stated the project took an additional 45 days to complete.*

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to authorize the County Judge to execute Contract Amendment No. 2 in the amount of \$50,000.00 to the Professional Services Agreement between Hays County and Pape-Dawson Engineers, Inc. to provide construction engineering, inspection & testing (CE&I) services as part of the On-Call CE&I contract related to the 2016 Road Bond Program Winters Mill at RM 3237 project and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39046** Discussion and possible action to authorize the execution of Change Order No. 6 in the amount of \$197,283.05 to the Construction Contract with Jordan Foster Construction, LLC for the Dacy Lane (IFB2021-B02) project as part of the Hays County Road Bond Program in Precinct 2 and 1.

*Commissioner Cohen and Commissioner Ingalsbe explained this is for utilities and electrical services.*

A motion was made by Commissioner Cohen, seconded by Commissioner Ingalsbe to authorize the execution of Change Order No. 6 in the amount of \$197,283.05 to the Construction Contract with Jordan Foster Construction, LLC for the Dacy Lane (IFB2021-B02) project as part of the Hays County Road Bond Program in Precinct 2 and 1.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39047** Discussion and possible action to call for a public hearing on June 20, 2023 to establish a No Parking zone on along River Road and Edgewater Drive in Wimberley, Texas.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to call for a public hearing on June 20, 2023 to establish a No Parking zone on along River Road and Edgewater Drive in Wimberley, Texas.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39048** Hold a public hearing with possible action to establish a 25 MPH speed limit throughout the Circle N Ranch Subdivision.

*Judge Becerra opened the Public Hearing at 10:06 a.m. No comments were made. Judge Becerra closed the Public Hearing at 10:06 a.m. Commissioner Ingalsbe stated staff has recommended the speed limit be lowered due to speeding in the area.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to establish a 25 MPH speed limit throughout the Circle N Ranch Subdivision.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39049** Hold a public hearing with possible action to establish a 3-way stop at the intersection of Crosscreek Drive and Bear Creek Pass.

*Judge Becerra opened the Public Hearing at 10:07 a.m. No comments were made. Judge Becerra closed the Public Hearing at 10:07 a.m. Commissioner Smith stated this was recommended by both residents and the Transportation Department to improve safety.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to establish a 3-way stop at the intersection of Crosscreek Drive and Bear Creek Pass.





AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39050** Hold a public hearing with possible action to establish a 3-way stop at the intersection of Sundown Avenue and Pine Arbol.

*Judge Becerra opened the Public Hearing at 10:08 a.m. No comments were made. Judge Becerra closed the Public Hearing at 10:08 a.m. Commissioner Cohen stated this was recommended by the residents of Sunfield to improve safety.*

A motion was made by Commissioner Cohen, seconded by Commissioner Ingalsbe to establish a 3-way stop at the intersection of Sundown Avenue and Pine Arbol.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39051** PLN-2204-PC; Call for a Public Hearing on June 20th, 2023 regarding the Oakridge Park, Section 5, Part of Lot 5 and Lot 6, Replat.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to call for a Public Hearing on June 20th, 2023 regarding the Oakridge Park, Section 5, Part of Lot 5 and Lot 6, Replat (PLN-2204-PC).

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39052** Discussion and possible action to authorize the County Judge to execute a Development Agreement for Mission Oaks Condominiums between Hays County, Davy Crockett Estates, LLC, and Lang Family Ranches L.P.

*William Wagner Jr. made a public comment regarding comments made by the developer and thanked the Court for their attention to residents' concerns. Bob Hardister made a public comment requesting a unit-by-unit approach to land clearing to prevent dust and erosion. Commissioner Smith and Mark Kennedy, General Counsel, clarified lot 5 will fall under the development rules of the Village of Bear Creek. Jon Thompson, consultant for the developer, stated land will be cleared on a house-by-house basis and each house will have its own septic system. Commissioner Smith thanked Hays County staff for their work on this Development Agreement. The Court discussed with Thompson the water plans for the development.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to authorize the County Judge to execute a Development Agreement for Mission Oaks Condominiums between Hays County, Davy Crockett Estates, LLC, and Lang Family Ranches L.P.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39053** PLN-2163-NP; Discussion and possible action regarding Centre on 12, Final.

*Marcus Pacheco, Director of Development Services, provided background on the property and stated staff recommends approval.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to approve Centre on 12, Final (PLN-2163-NP).

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**5 - 0 Passed - Unanimously**

**39054** Discussion and possible action to adopt changes to election precinct boundary lines pursuant to Sec. 42.005 & 42.006 of the Texas Election Code.

*Jennifer Doinoff, Elections Administrator, explained these changes are due to various district lines running through current precincts. Steve Floyd, Development Services GIS Division, reviewed the changes made. Commissioner Smith and Commissioner Shell clarified Commissioner, Justice of the Peace, and Constable districts are not changing.*



A motion was made by Commissioner Shell, seconded by Commissioner Smith to adopt changes to election precinct boundary lines pursuant to Sec. 42.005 & 42.006 of the Texas Election Code.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39055** Discussion and possible action to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and Emergency Services District #1 (ESD #1) regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly.

*Doug Fowler, Executive Director of ESD #1, spoke about the ESD's expansion and thanked the Court for the contribution.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and Emergency Services District #1 (ESD #1) regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39056** Discussion and possible action to approve the Resolution admitting Hays County, Texas as a member of the Texas Housing Foundation, a Texas Regional Housing Authority which is authorized to provide affordable housing to lower income residents.

*Commissioner Smith spoke about the County's need for affordable housing. Mark Mayfield, Texas Housing Foundation CEO, spoke about the evolution of the organization and its mission. He described their Community Resource Centers and the services they provide to local non-profits. The Court discussed with Mayfield the role the County would have in this partnership and the potential of a Community Resource Center in Hays County.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to approve the Resolution admitting Hays County, Texas as a member of the Texas Housing Foundation, a Texas Regional Housing Authority which is authorized to provide affordable housing to lower income residents.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39057** Discussion and possible action to authorize the County Judge to execute a contract between Hays County and Halff Associates in the amount of \$3,000.00 for the completion of the Hydrologic and Hydraulic (H&H) Evaluation Form (TCEQ Form 20346) for five dams which is a requirement for finalizing the Emergency Action Plan (EAP).

A motion was made by Commissioner Smith, seconded by Commissioner Ingalsbe to authorize the County Judge to execute a contract between Hays County and Halff Associates in the amount of \$3,000.00 for the completion of the Hydrologic and Hydraulic (H&H) Evaluation Form (TCEQ Form 20346) for five dams which is a requirement for finalizing the Emergency Action Plan (EAP).

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39058** Discussion and possible action to authorize the County Judge to execute an Interlocal Agreement between Hays County and the City of Wimberley regarding floodplain administration and environmental health services for a period not to exceed 12 months.

*Commissioner Shell stated the City of Wimberley pays Hays County for its services.*

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute an Interlocal Agreement between Hays County and the City of Wimberley regarding floodplain administration and environmental health services for a period not to exceed 12 months.



AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39059** Discussion and possible action to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and Hill Country Womens Health Collective regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly.

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and Hill Country Womens Health Collective regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39060** Discussion and possible action to authorize use of funding from the Hays County American Rescue Plan Recovery Grant for the Hays County Local Health Department Public Health Outreach regarding recovery assistance for direct or indirect impacts of COVID-19; and to amend the budget accordingly.

*Commissioner Cohen stated this is additional funding for the Hays County Local Health Department's outreach programs.*

A motion was made by Commissioner Cohen, seconded by Commissioner Ingalsbe to authorize use of funding from the Hays County American Rescue Plan Recovery Grant for the Hays County Local Health Department Public Health Outreach regarding recovery assistance for direct or indirect impacts of COVID-19; and to amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39061** Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement related to Sentinel Peak Project between Hays County and Atlas Technical Consultants LLC.

*Commissioner Shell stated this testing will be used for the construction of the park access road.*

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to authorize the County Judge to execute a Professional Services Agreement related to Sentinel Peak Project between Hays County and Atlas Technical Consultants LLC.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39062** Discussion and possible action to authorize the Countywide Operations Department to hire Texan Landscaping to remove two trees located on the Courthouse grounds, pursuant to IFB 2021-B04 Lawn and Landscape Services, in the amount of \$9,200.00.

*Judge Becerra explained the process of deciding to remove the trees and involving the Hays County Historical Commission and the Texas Historical Commission in the decision. Commissioner Ingalsbe clarified the trees were assessed and deemed a hazard. Judge Becerra stated the trees will be replaced.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the Countywide Operations Department to hire Texan Landscaping to remove two trees located on the Courthouse grounds, pursuant to IFB 2021-B04 Lawn and Landscape Services, in the amount of \$9,200.00.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**



**39063** Discussion and possible action to authorize the County Judge to execute a mental health services contract with Deblin Health Concepts & Associates, LLC for the County Court at Law Mental Health Specialty program.

*Kaimi Mattila, Mental Health Court Administrator, explained the benefits that a partnership with this company will bring, including community treatment for vulnerable individuals, an increase in staff, and an expedited referral process. Judge Becerra stated this will help lower inmate outsourcing costs. Commissioner Cohen asked for an update on the services provided before automatic renewal of the contract. Commissioner Smith cautioned against evaluating the contract too soon and suggested allowing the Mental Health Court time to implement the services. Mattila spoke about the company's commitment to working with Hays County.*

A motion was made by Commissioner Cohen, seconded by Commissioner Smith to authorize the County Judge to execute a mental health services contract with Deblin Health Concepts & Associates, LLC for the County Court at Law Mental Health Specialty program.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**Clerk's Note:** Executive Session began at 11:27 a.m. and resumed back into open court at 12:50 p.m.

**39064** Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of Right of Way located at or near FM 110 in Pct. 1. Possible discussion and/or action may follow in open court.

*Commissioner Ingalsbe stated this is approximately 17.599 acres, the purchase price will be reconciled against prior obligations of the landowner, and since the landowner is no longer intending to operate the business on the property, the industrial conveyor belt intended to support operations will be gifted to Hays County so it may auction the property.*

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize execution of a Purchase Agreement for Parcel 2N of the FM 110 Project, owned by F.M. 158 Land, LTD, a Texas Limited Partnership; and to authorize acceptance of a conditional gift bill of sale of certain personal property related to this transaction, as presented in Executive Session, and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39065** Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of real property associated with Parks and Open Space Projects being considered by Hays County. Possible discussion and/or action may follow in open court.

*Commissioner Shell stated the Purchase Agreement dictates that closing will be contingent on the support of an appraisal that meets or exceeds the purchase price for the property.*

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute a Purchase Agreement between Hays County and Hill Country Land Reserve, LLC, related to the Fee Simple Acquisition of approximately 102.8 acres of land for parks and open space purposes, as presented in Executive Session; to authorize the D.A.'s Office - Civil Division to execute any and all documents incidental to closing; and to amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

*Commissioner Shell stated numerous projects might require updated appraisals, and some, like the Elsik Tract, require original appraisals.*

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the D.A.'s Office - Civil Division to select and engage appraisal services for 2020 Parks and Open Space Bond projects, as needed, to be paid out of General Counsel - Legal.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute a Diligence Funding Agreement between Hays County, Wimberley Independent School District, and Wimberley Youth Sports Association for the performance of due diligence on a prospective property to establish and build youth sporting fields and common areas, as presented in Executive Session, and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

Executive Session pursuant to Sections 551.071 and 551.087 of the Texas Government Code: consultation with counsel and deliberation regarding economic development negotiations associated with Project Lion King and Project Radiata. Possible discussion and/or action may follow in open Court.

*No action taken.*

Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding the duties of the Hays County District Clerk. Possible discussion and/or action may follow in open court.

*No action taken.*

**39066** Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of Right of Way located at or near FM 2001 in Pct. 1. Possible discussion and/or action may follow in open court.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to accept landowner's counteroffer and authorize execution of a Purchase Agreement for Parcel 76/76E of the FM 2001 Project, owned by Triple Ewald Farms, LLC, a Texas Limited Liability Company, as presented in Executive Session, and amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**39067** Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: Consultation with counsel and deliberation related to lease and use of space within the Hays County Government Center located at 712 South Stagecoach Trail, San Marcos, Texas, 78666. Possible action may follow.

*Commissioner Shell stated this is for filming within the Government Center on a weekend day for a commercial, and the Constable's Office will coordinate and provide security.*

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute a Location Contract between Hays County and Breaklight Productions, LLC, as presented in Executive Session, and to amend the budget accordingly.

AYE: Commissioner Ingalsbe, Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**5 - 0 Passed - Unanimously**

**Clerk's Note Agenda Item #M-1 RE:** *Discussion and possible action related to the burn ban. - WAS PULLED.*

Discussion related to the Hays County inmate population, to include current population counts and costs.

*Judge Becerra read the Sheriff's update of the inmate population. Current maximum jail capacity is 410 inmates. Jail Standards recommends holding 10% open, lowering current capacity to 368 inmates. The jail's daily average was 562 for the week of May 28, 2023, with a peak of 567 inmates on May 30, 2023. The estimated cost for outsourcing inmates this week was \$138,510. The average number of outsourced males is 217 and females is 1. This week's inmates were housed in the following counties: Atascosa, Comal, Haskell, and Maverick. The number of "paper-ready" inmates who are now wardens of the state is 31.*



Clerk's Note Agenda Item #M-3 RE: *Discussion of issues related to the Hays County Jail, and the planning of projects pertaining to the public safety facilities needs within the County. Possible action may follow.* - WAS PULLED.

Clerk's Note Agenda Item #M-4 RE: *Discussion and possible action regarding Hays County's use of federal or other grant funding related to COVID-19 response including but not limited to the American Rescue Plan Act (ARPA) and the Emergency Rental Assistance Program (ERAP).* - WAS PULLED.

Clerk's Note Agenda Item #M-5 RE: *Updates of community health assessment by local health department.* - WAS PULLED.

Clerk's Note Agenda Item #M-6 RE: *Discussion and possible action related to proposed bills in the 87th Regular Session of the Texas Legislature and to consider adoption of resolution(s) regarding proposed bills. The Court may opt to withdraw to Executive Session during this item to consult with legal counsel pursuant to Texas Government Code 551.071.* - WAS PULLED.

Clerk's Note Agenda Item #M-7 RE: *Updates on measurable advancement of Pretrial Services to include the areas of staffing, equipment, training, operations and policy, by Director Pre-Trial Services Randy Focken.* - WAS PULLED.


#### ADJOURNMENT


A motion was made by Commissioner Shell, seconded by Judge Becerra to adjourn court at 12:54 p.m.

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I, ELAINE H. CÁRDENAS, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on JUNE 6, 2023.



  
ELAINE H. CÁRDENAS, COUNTY CLERK AND EXOFFICIO  
CLERK OF THE COMMISSIONERS' COURT OF  
HAYS COUNTY, TEXAS





HAYS COUNTY COMMISSIONERS' COURT MINUTES



JUNE 20, 2023

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 20th DAY OF JUNE A.D., 2023, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

RUBEN BECERRA	COUNTY JUDGE
MICHELLE COHEN	COMMISSIONER, PCT. 2
LON A. SHELL	COMMISSIONER, PCT. 3
WALT SMITH	COMMISSIONER, PCT. 4
ELAINE H. CÁRDENAS	COUNTY CLERK

Clerk's Note: For complete transcript go to Hays County Website  
<https://hayscountytexas.com/commissioners-court/court-video/>  
Transcript can be translated into any language through Google.com.

WITH COMMISSIONER INGALSBE BEING ABSENT, THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Adam Knapp, First United Methodist Church San Marcos, gave the invocation. Judge Becerra led the court in the Pledge of Allegiance to the United States and Texas flags. Judge Becerra called the meeting to order.

**PUBLIC COMMENTS**

*Rodrigo Amaya made a public comment concerning Hays County law enforcement and the trial of Cyrus Gray III. Dan Lyon made a public comment concerning County spending and the placement of flags around the Courthouse. Kelli Keenan made a public comment in support of microchipping pets, especially with the upcoming holidays and the animal shelter being over-capacity. Elaine Cardenas, County Clerk, read an emailed public comment from Austin Baier in support of the Pride Month Proclamation.*

**39068** Adopt a Proclamation recognizing July 2023 as Park and Recreation Month.

*Commissioner Shell thanked the Hays County Parks and Recreation staff for their work. Katherine Sturdivant, Hays County Parks and Recreation, spoke about the importance of parks and stated this year's theme is "Where Community Grows".*

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to adopt a Proclamation recognizing July 2023 as Park and Recreation Month.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39069** Adopt a Proclamation recognizing June 2023 as Children's Awareness Month.

*Lucy Gonzales, Outreach and Recruitment Specialist for Community Action, Inc. of Central Texas, spoke about the importance of community and support for children.*

A motion was made by Commissioner Smith, seconded by Commissioner Cohen to adopt a Proclamation recognizing June 2023 as Children's Awareness Month.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39070** Adopt a Proclamation recognizing June 2023 as LGBTQIA+ Pride Month.

*Matthew Gonzales made a public comment thanking the Court for the Proclamation and spoke about health issues faced by the LGBTQIA+ community. Dan Lyon made a public comment against the Proclamation. Terry Swift made a public comment against the Proclamation. Commissioner Shell spoke about the importance of acceptance and recognizing past suffering, and stated he disagrees with wording in the Proclamation regarding "hateful laws".*



*Commissioner Smith spoke about fairness and recognition vs. promotion, and stated he also disagrees with the language regarding "hateful laws". Commissioner Cohen spoke about acceptance and stated she supports the Proclamation as written. Judge Becerra spoke about unity and agreed to change the Proclamation's language. The Court agreed to the following replacement from Commissioner Shell: "Whereas, Hays County recognizes the critical need for education and awareness to end discrimination and prejudice against the LGBTQIA+ community, and is committed to supporting dignity and equality for the LGBTQIA+ community".*

A motion was made by Judge Becerra, seconded by Commissioner Cohen to adopt a Proclamation recognizing June 2023 as LGBTQIA+ Pride Month.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39071** Adopt a Proclamation recognizing the dedication of a Texas State Historical Subject Marker for Cuauhtemoc Hall.

*Commissioner Cohen and Commissioner Shell spoke about their experiences at Cuauhtemoc Hall growing up and the importance of community centers. Commissioner Smith congratulated La Sociedad Mutualista Cuauhtemoc on their recent 100-year anniversary. Gina Alba-Rogers, Chair of the Council for the Indigenous and Tejano Community, invited the public to the unveiling and dedication ceremony of the Texas Historical Subject Marker and spoke about the history of Cuauhtemoc Hall with the Mexican-American community. Judge Becerra praised Cuauhtemoc Hall for their work within the community. Frank Arredondo spoke about the origins of Cuauhtemoc Hall and thanked the Court for the recognition.*

A motion was made by Judge Becerra, seconded by Commissioner Shell to adopt a Proclamation recognizing the dedication of a Texas State Historical Subject Marker for Cuauhtemoc Hall.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

Presentation by Ardurra regarding use of American Rescue Plan Act (ARPA) funds for the Dripping Springs Water Supply Corporation.

*Eric Boehning, Ardurra Senior Project Manager, presented a plan to grant \$50,000 to the Dripping Springs Water Supply Corporation to aid in their purchase of two diesel generators that will keep critical services operating in the event of extended power outages. Commissioner Smith spoke about the issues encountered during the 2021 freeze and how this will prevent future problems.*

Presentation by Ardurra regarding use of American Rescue Plan Act (ARPA) funds for the Buda VFW Post 12161.

*Eric Boehning, Ardurra Senior Project Manager, presented a plan to grant \$21,203 to the Buda VFW Post 12161 for their pandemic-induced loss of revenue.*

Presentation by Ardurra regarding use of American Rescue Plan Act (ARPA) funds for the American Legion Post 290 Dripping Springs.

*Eric Boehning, Ardurra Senior Project Manager, presented a plan to grant \$5,605 to the American Legion Post 290 Dripping Springs for their pandemic-induced loss of revenue.*

**Clerk's Note Agenda Item #F-8 RE: Presentation by Ardurra regarding use of American Rescue Plan Act (ARPA) funds for Driftwood Historical Conservation Society (DHCS). - WAS PULLED.**

Presentation by Ardurra regarding use of American Rescue Plan Act (ARPA) funds for the San Marcos Chamber of Commerce.

*Eric Boehning, Ardurra Senior Project Manager, presented a plan to grant \$100,000 to the San Marcos Chamber of Commerce for the implementation of its education and talent pipeline initiative in coordination with SMCISD. Commissioner Shell stated this will help create educational, training, and job opportunities for the local workforce. Judge Becerra spoke about the economic and workforce development of the County.*



**39072 Approve payments of County invoices.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve payments of County invoices.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39073 Approve the payment of Juror checks.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve the payment of Juror checks.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39074 Approve the payment of United Healthcare claims.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve the payment of United Healthcare claims.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39075 Approve Commissioners Court Minutes of May 30, 2023.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve Commissioners Court Minutes of May 30, 2023.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39076 Approve the payment of the June 30, 2023 payroll disbursements in an amount not to exceed \$4,350,000 effective June 30, 2023 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve the payment of the June 30, 2023 payroll disbursements in an amount not to exceed \$4,350,000 effective June 30, 2023 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39077 Authorize the County Judge to execute an agreement between the Hays County Local Health Department and CureMD Inc. for the access and use of the CureMD Electronic Health Records software, approve a 25% deposit at Delivery of Software and amend the budget accordingly.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the County Judge to execute an agreement between the Hays County Local Health Department and CureMD Inc. for the access and use of the CureMD Electronic Health Records software, approve a 25% deposit at Delivery of Software and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39078 Accept new terms and conditions from Security One, Inc. related to security camera's and equipment for the Justice of the Peace Precinct 3 Office utilizing the Justice Court Building Security Fund.**

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to accept new terms and conditions from Security One, Inc. related to security camera's and equipment for the Justice of the Peace Precinct 3 Office utilizing the Justice Court Building Security Fund.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**



**39079** Approve the Elections and IT Departments to purchase and install the required signage from Sign Crafters, Inc. for the IT/Elections Building and authorize a fifty (50%) percent deposit to start production of the custom signs and amend the budget accordingly.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve the Elections and IT Departments to purchase and install the required signage from Sign Crafters, Inc. for the IT/Elections Building and authorize a fifty (50%) percent deposit to start production of the custom signs and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39080** Authorize the acceptance of a grant award from the Texas Indigent Defense Commission (TIDC), FY23 Formula Grant program in the amount of \$175,957.00 and amend the budget accordingly.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the acceptance of a grant award from the Texas Indigent Defense Commission (TIDC), FY23 Formula Grant program in the amount of \$175,957.00 and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39081** Authorize the acceptance of a grant award from the Texas Department of Agriculture, Texas Community Development Block Grant (TxCDBG) grant program in the amount of \$350,000.00 and amend the budget accordingly.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the acceptance of a grant award from the Texas Department of Agriculture, Texas Community Development Block Grant (TxCDBG) grant program in the amount of \$350,000.00 and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39082** Authorize the execution of a grant award from the Texas Veterans Commission (TVC), Veterans Treatment Court Grant Program in the amount of \$300,000.00.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the execution of a grant award from the Texas Veterans Commission (TVC), Veterans Treatment Court Grant Program in the amount of \$300,000.00.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39083** Authorize the County Judge to execute a second no-cost, time extension to the Halff Associates, Inc. Work Authorization #3 Agreement, related to the 2020 Parks and Open Space Bond Program Master Services Agreement.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the County Judge to execute a second no-cost, time extension to the Halff Associates, Inc. Work Authorization #3 Agreement, related to the 2020 Parks and Open Space Bond Program Master Services Agreement.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39084** Authorize the submission of a grant application to the Capital Area Council of Governments (CAPCOG) in the amount of \$26,636.44.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the submission of a grant application to the Capital Area Council of Governments (CAPCOG) in the amount of \$26,636.44.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39085** Ratify the submission of a Public Assistance Grant Request to the Federal Emergency Management Agency (FEMA) for reimbursement of debris cleanup from Winter Storm Mara.



A motion was made by Commissioner Shell, seconded by Commissioner Cohen to ratify the submission of a Public Assistance Grant Request to the Federal Emergency Management Agency (FEMA) for reimbursement of debris cleanup from Winter Storm Mara.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39086** Authorize the acceptance of a grant award from the Texas Veterans Commission for the FY24 Assistance to Veterans Program.

*Jude Prather, Hays County Veteran Services Officer, corrected the date in the summary from June 2023 to June 2024.*

A motion was made by Commissioner Cohen, seconded by Commissioner Shell to authorize the acceptance of a grant award from the Texas Veterans Commission for the FY24 Assistance to Veterans Program.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39087** Authorize payment to Wingate by Windham in the amount of \$621.10 for the District Attorney's Office for witness expenses, where no purchase order was issued according to County Policy.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize payment to Wingate by Windham in the amount of \$621.10 for the District Attorney's Office for witness expenses, where no purchase order was issued according to County Policy.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39088** Approve specifications for IFB 2023-B15 Regulatory Road Signs and authorize Purchasing to advertise and solicit for bids.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve specifications for IFB 2023-B15 Regulatory Road Signs and authorize Purchasing to advertise and solicit for bids.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39089** Authorize the contract renewal of RFP 2022-P08 HVAC - Maintenance & Repair Services, Jail with SI Mechanical, LLC.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the contract renewal of RFP 2022-P08 HVAC - Maintenance & Repair Services, Jail with SI Mechanical, LLC.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39090** Authorize the execution of an extension to RFP 2016-P06 Bank Depository with Sage capital Bank, N.A. for a period not to exceed 92 days (September 30, 2023) for \$5,000.00 monthly, plus any additional Letter of Credit Fees and authorize a discretionary exemption pursuant to Section 262.024 (a)(4) of the Texas Local Government Code.

A motion was made by Commissioner Cohen, seconded by Commissioner Smith to authorize the execution of an extension to RFP 2016-P06 Bank Depository with Sage capital Bank, N.A. for a period not to exceed 92 days (September 30, 2023) for \$5,000.00 monthly, plus any additional Letter of Credit Fees and authorize a discretionary exemption pursuant to Section 262.024 (a)(4) of the Texas Local Government Code.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39091** Approve the Elections and IT Departments to authorize L.D. Tebben Company Inc. to perform roofing repairs valued at \$4,723.00 on the IT-Election Building, pursuant to TIPS Contract 21060301 and amend the budget accordingly.



A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve the Elections and IT Departments to authorize L.D. Tebben Company Inc. to perform roofing repairs valued at \$4,723.00 on the IT-Election Building, pursuant to TIPS Contract 21060301 and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39092** Authorize the County Judge to execute an Easement Agreement for Roadway between Kenneth Jeffries and Hays County, related to the County's maintenance of River Mountain Road, and authorize staff to file the same in the Official Public Record of the County.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the County Judge to execute an Easement Agreement for Roadway between Kenneth Jeffries and Hays County, related to the County's maintenance of River Mountain Road, and authorize staff to file the same in the Official Public Record of the County.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39093** Authorize a waiver to the purchasing policy for Building Maintenance to install ADA handrails in the amount of \$1,160.59 at the rear elected officials' entrance of the Government Center and amend the budget accordingly.

*Commissioner Smith asked Tammy Crumley, Director of Countywide Operations, for an update on the work being done to the back gate of the Government Center.*

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize a waiver to the purchasing policy for Building Maintenance to install ADA handrails in the amount of \$1,160.59 at the rear elected officials' entrance of the Government Center and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39094** Approve Utility Permits.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to approve Utility Permits.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39095** Authorize the County Judge to execute a proposal with Axon Enterprise Inc. related to the Law Enforcement body worn camera and taser program for Constable Pct. 4 and amend the budget accordingly.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the County Judge to execute a proposal with Axon Enterprise Inc. related to the Law Enforcement body worn camera and taser program for Constable Pct. 4 and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39096** Accept delivery of the Investment Report for October 2022 and November 2022.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to accept delivery of the Investment Report for October 2022 and November 2022.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39097** Authorize the County Judge to execute an Amendment to the Letter of Agreement between Hays County and TexHealth Central Texas, Inc. regarding the small employer premium support program.

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the County Judge to execute an Amendment to the Letter of Agreement between Hays County and TexHealth Central Texas, Inc. regarding the small employer premium support program.



AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39098** Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement between Hays County and HDR Engineering Inc. related to a warrant study for both signals and four-way stop conditions for the intersection at Robert S. Light Blvd. and 967, and Robert S. Light Blvd. and 2770, not to exceed \$22,234.00.

*Commissioner Smith stated the road was officially opened and has gotten positive feedback, and this will speed up the process of installing traffic signals if they are deemed necessary by the Texas Department of Transportation. Judge Becerra further explained the importance of this item.*

A motion was made by Commissioner Smith, seconded by Commissioner Cohen to authorize the County Judge to execute a Professional Services Agreement between Hays County and HDR Engineering Inc. related to a warrant study for both signals and four-way stop conditions for the intersection at Robert S. Light Blvd. and 967, and Robert S. Light Blvd. and 2770, not to exceed \$22,234.00.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39099** Hold a public hearing with possible action to establish a "No Parking" zone along River Road and Edgewater Drive in Wimberley between 2900 River Road and 302 Edgewater Drive.

*Judge Becerra opened the Public Hearing at 10:39 a.m. No comments were made. Judge Becerra closed the Public Hearing at 10:40 a.m. Commissioner Shell spoke about increased danger on the road due to parked cars.*

A motion was made by Commissioner Shell, seconded by Judge Becerra to establish a "No Parking" zone along River Road and Edgewater Drive in Wimberley between 2900 River Road and 302 Edgewater Drive.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39100** Discussion and possible action to call for a public hearing on July 11, 2023, to establish a 3-way stop at the intersection La Ventana Parkway and Elder Hill Road.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to call for a public hearing on July 11, 2023, to establish a 3-way stop at the intersection La Ventana Parkway and Elder Hill Road.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39101** Discussion and possible action to consider the acceptance of road construction and surface drainage improvements, release of the Letter of Credit #20234032 in the amount of \$24,916.91, acceptance of the maintenance bond #PB03016800850M1 in the amount of \$71,130.58, and acceptance of the revegetation bond #PB03016800850M in the amount of \$13,467.04 for 6 Creeks subdivision, Phase 1, Section 9.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to accept road construction and surface drainage improvements, release the Letter of Credit #20234032 in the amount of \$24,916.91, accept the maintenance bond #PB03016800850M1 in the amount of \$71,130.58, and accept the revegetation bond #PB03016800850M in the amount of \$13,467.04 for 6 Creeks subdivision, Phase 1, Section 9.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39102** Discussion and possible action to consider the acceptance of road construction and surface drainage improvements, release of the Letter of Credit #20234033 in the amount of \$18,520.06, acceptance of the maintenance bond #PB03016800850M12 in the amount of \$60,222.12, and acceptance of the revegetation bond #PB03016800850M in the amount of \$7,786.86 for 6 Creeks subdivision, Phase 1, Section 10.



A motion was made by Commissioner Shell, seconded by Commissioner Smith to accept road construction and surface drainage improvements, release the Letter of Credit #20234033 in the amount of \$18,520.06, accept the maintenance bond #PB03016800850M12 in the amount of \$60,222.12, and accept the revegetation bond #PB03016800850M in the amount of \$7,786.86 for 6 Creeks subdivision, Phase 1, Section 10.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39103** PLN-2204-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Oakridge Park, Section 5, Part of Lot 5 and Lot 6, Replat.

*Judge Becerra opened the Public Hearing at 10:28 a.m. No comments were made. Judge Becerra closed the Public Hearing at 10:29 a.m. Colby Machacek, Development Services Planning Division, provided background on the property and stated staff recommends disapproval due to the outstanding deficiencies as provided in the comment letter in the back-up.*

A motion was made by Commissioner Smith, seconded by Judge Becerra to disapprove Oakridge Park, Section 5, Part of Lot 5 and Lot 6, Replat (PLN-2204-PC).

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39104** PLN-2218-PC; Call for a Public Hearing on July 11, 2023 followed by discussion and possible action regarding the Douglas Estates, D-11 Replat.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to call for a Public Hearing on July 11, 2023 followed by discussion and possible action regarding the Douglas Estates, D-11 Replat (PLN-2218-PC).

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39105** PLN-2235-PC; Call for a Public Hearing on July 11, 2023 followed by discussion and possible action regarding the Hurlbut Ranch West, PT of Tract 23, Replat.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to call for a Public Hearing on July 11, 2023 followed by discussion and possible action regarding the Hurlbut Ranch West, PT of Tract 23, Replat (PLN-2235-PC).

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39106** Discussion and possible action to execute a Memorandum of Understanding (MOU) with the City of Kyle authorizing the use of city property to house the Remote Automatic Weather Station (RAWS); accept a Proposal in the amount of \$6,755.00 from Water & Earth Technologies (WET) for the RAWS relocation expenses; and authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D).

A motion was made by Commissioner Cohen, seconded by Commissioner Shell to execute a Memorandum of Understanding (MOU) with the City of Kyle authorizing the use of city property to house the Remote Automatic Weather Station (RAWS); accept a Proposal in the amount of \$6,755.00 from Water & Earth Technologies (WET) for the RAWS relocation expenses; and authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D).

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

Update on Hays County website development.

*Kim Hilsenbeck, Hays County Communications Manager, reviewed the timeline of creating a new County website and presented the progress made so far. The Court provided feedback, and Hilsenbeck predicted project completion by the end of the year.*

**39107** Discussion and possible action to authorize the Local Health Department to utilize salary savings to hire one temporary Health Promotion Intern effective June 26 through September 30, 2023.





A motion was made by Commissioner Smith, seconded by Commissioner Cohen to authorize the Local Health Department to utilize salary savings to hire one temporary Health Promotion Intern effective June 26 through September 30, 2023.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39108** Discussion and possible action authorizing the County Judge to execute a Licensed Training Provider Agreement between Hays County and the American National Red Cross licensing Red Cross training materials and curriculum permitting County employees or volunteers to deliver instruction in Red Cross training courses.

A motion was made by Commissioner Smith, seconded by Commissioner Cohen to authorize the County Judge to execute a Licensed Training Provider Agreement between Hays County and the American National Red Cross licensing Red Cross training materials and curriculum permitting County employees or volunteers to deliver instruction in Red Cross training courses.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39109** Discussion and possible action to approve Amendment #2 to the Motor Vehicle License Registration Agent Agreement between Hays County Tax Assessor-Collector and HEB Grocery Company, LP.

*Commissioner Smith spoke about the convenience this will bring to Dripping Springs residents once the new HEB location on Nutty Brown and 290 opens. Jordan Powell, Civil Division of the D.A.'s Office, noted a correction made to the amendment. Jenifer O'Kane, Tax Assessor-Collector, clarified that residents will be able to renew their vehicle registration at this HEB location starting July 5th.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to approve Amendment #2 to the Motor Vehicle License Registration Agent Agreement between Hays County Tax Assessor-Collector and HEB Grocery Company, LP.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39110** Discussion and possible action to approve the Assessment and Collection Agreements with Dripping Springs MUD (Municipal Utility District) 1.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to approve the Assessment and Collection Agreements with Dripping Springs MUD (Municipal Utility District) 1.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39111** Discussion and possible action to approve the Assessment and Collection Agreements with Mirasol Springs MUD (Municipal Utility District).

*Commissioner Smith noted this is now located in Precinct 3.*

A motion was made by Commissioner Smith, seconded by Commissioner Shell to approve the Assessment and Collection Agreements with Mirasol Springs MUD (Municipal Utility District).

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39112** Discussion and possible action to approve the Assessment and Collection Agreements with Wild Ridge MUD (Municipal Utility District).

A motion was made by Commissioner Smith, seconded by Commissioner Shell to approve the Assessment and Collection Agreements with Wild Ridge MUD (Municipal Utility District).

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**



**39113** Discussion and possible action to authorize the County Judge to execute a proposal with Ultimate Kronos Group (UKG) related to the Budget/Payroll Office implementing a new County-wide Timekeeping System.

*Vickie Dorsett, Hays County Budget Officer, spoke about the new timekeeping system's features and compatibility with County departments, especially law enforcement agencies. The Court gave support for the new system. Daphne Tenorio, Hays County Treasurer, stated the new system will help cut down employee comp time accrual. Dorsett stated the new system is expected to go into use in the fall.*

A motion was made by Commissioner Cohen, seconded by Commissioner Shell to authorize the County Judge to execute a proposal with Ultimate Kronos Group (UKG) related to the Budget/Payroll Office implementing a new County-wide Timekeeping System.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39114** Discussion and possible action to authorize the Budget/Payroll Office to implement a payroll reduction authorization process for overpayments to county employees.

*Vickie Dorsett, Hays County Budget Officer, reviewed overpayment correction plans. Judge Becerra gave support for a repayment plan. Mark Kennedy, General Counsel, noted this is an ongoing authorization, not a one-time authorization.*

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the Budget/Payroll Office to implement a payroll reduction authorization process for overpayments to county employees.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39115** Discussion and possible action to authorize the Budget Officer to work with VALIC Financial Advisors on a "make-whole" contribution process to identify negative impacts on employees deferred compensation accounts as a result of missed contributions and amend the budget accordingly.

*Vickie Dorsett, Hays County Budget Officer, explained the issue and stated the County will fund 10% of missed contributions plus labor. Daphne Tenorio, Hays County Treasurer, reviewed the timeline and stated the agenda item summary is inaccurate and the payments were made. Commissioner Shell clarified the 10% is to fund any interest that was not accrued, and if no interest was lost the money will be refunded to the County.*

A motion was made by Commissioner Shell, seconded by Commissioner Cohen to authorize the Budget Officer to work with VALIC Financial Advisors on a "make-whole" contribution process to identify negative impacts on employees deferred compensation accounts as a result of missed contributions and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39116** Discussion and possible action authorizing the County Judge to execute an Information Release Contract with the Texas Workforce Commission for the benefit of the Hays County Criminal District Attorney's Office.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute an Information Release Contract with the Texas Workforce Commission for the benefit of the Hays County Criminal District Attorney's Office.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra  
**4 - 0 Passed - Unanimously**

**39117** Discussion and possible action to partner with Pet Prevent A Litter of Central Texas (PALS) to provide two Microchip Clinics in Hays County estimated at \$1,400.00 and amend the budget accordingly.

*Commissioner Shell suggested funding this from the Tobacco Settlement Fund. Commissioner Smith asked to add funding for an additional clinic. Commissioner Shell stated the new amount would be \$2,100.*





A motion was made by Commissioner Cohen, seconded by Commissioner Smith to partner with Pet Prevent A Litter of Central Texas (PALS) to provide three Microchip Clinics in Hays County estimated at \$2,100.00 and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**Clerk's Note:** Executive Session began at 11:36 a.m. and resumed back into open court at 12:05 p.m.

**Clerk's Note Agenda Item #L-1 RE:** *Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of real property associated with Parks and Open Space Projects being considered by Hays County. Possible discussion and/or action may follow in open court. - WAS PULLED.*

**39118** Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding employment and duties of all individual positions of the Hays County Information Technology department. Possible discussion and/or action may follow in open court.

*Commissioner Shell explained recent vacancies and the retirement of a long-time employee has created an opportunity for a restructuring of the IT department.*

A motion was made by Commissioner Shell, seconded by Commissioner Smith to accept a restructure of the Information Technology Department to dissolve the vacant Judicial Financial Manager and establish 2 IT Application Support Analysts, grades 123, and 1 IT Judicial Data Analyst, grade 123, effective July 1, 2023, utilizing salary savings, as presented in Executive Session.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**39119** Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding employment and duties of all individual positions of the Hays County Pre-trial Services. Possible discussion and/or action may follow in open court.

*Judge Becerra spoke about the modernization of Hays County's judicial system.*

A motion was made by Commissioner Shell, seconded by Commissioner Smith to create a progression plan for Pre-trial Officers levels I, II, and III, respectively grades 117, 119, and 121, and establish 1 Pre-trial Officer II, 2 Pre-trial Officer IIIs with one being a Mental Health Specialist, and 1 Administrative Assistant II, effective July 1, 2023, and authorize the Director to hire Officers up to the 25th percentile dependent on candidate qualifications, and purchase computer equipment, journaling products, and other operational needs, as presented in Executive Session, and amend the budget accordingly.

AYE: Commissioner Cohen, Commissioner Shell, Commissioner Smith, Judge Becerra

**4 - 0 Passed - Unanimously**

**Clerk's Note Agenda Item #M-1 RE:** *Discussion and possible action related to the burn ban. - WAS PULLED.*

Discussion related to the Hays County inmate population, to include current population counts and costs.

*Judge Becerra read the Sheriff's update of the inmate population. Current maximum jail capacity is 410 inmates. Jail Standards recommends holding 10% open, lowering current capacity to 368 inmates. The jail's daily average was 572 for the week of June 11, 2023, with a peak of 575 inmates on June 13, 2023. The estimated cost for outsourcing inmates this week was \$84,115. The average number of outsourced males is 236 and females is 1. This week's inmates were housed in the following counties: Atascosa, Comal, Haskell, and Maverick. The number of "paper-ready" inmates who are now wardens of the state is 39.*

**Clerk's Note Agenda Item #M-3 RE:** *Discussion of issues related to the Hays County Jail, and the planning of projects pertaining to the public safety facilities needs within the County. Possible action may follow. - WAS PULLED.*



Clerk's Note Agenda Item #M-4 RE: *Discussion and possible action regarding Hays County's use of federal or other grant funding related to COVID-19 response including but not limited to the American Rescue Plan Act (ARPA) and the Emergency Rental Assistance Program (ERAP).* - **WAS PULLED.**

Clerk's Note Agenda Item #M-5 RE: *Updates of community health assessment by local health department.* - **WAS PULLED.**

Clerk's Note Agenda Item #M-6 RE: *Discussion and possible action related to proposed bills in the 87th Regular Session of the Texas Legislature and to consider adoption of resolution(s) regarding proposed bills. The Court may opt to withdraw to Executive Session during this item to consult with legal counsel pursuant to Texas Government Code 551.071.* - **WAS PULLED.**

Clerk's Note Agenda Item #M-7 RE: *Updates on measurable advancement of Pretrial Services to include the areas of staffing, equipment, training, operations and policy, by Director Pre-Trial Services Randy Focken.* - **WAS PULLED.**


#### ADJOURNMENT

A motion was made by Commissioner Shell, seconded by Judge Becerra to adjourn court at 12:07 p.m.

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I, ELAINE H. CÁRDENAS, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on JUNE 20, 2023.



  
\_\_\_\_\_  
ELAINE H. CÁRDENAS, COUNTY CLERK AND EXOFFICIO  
CLERK OF THE COMMISSIONERS' COURT OF  
HAYS COUNTY, TEXAS





AGENDA ITEM REQUEST FORM: **G. 5.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Vickie Dorsett, Budget Officer

Sponsor:

Judge Becerra

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### Agenda Item

Approve the payment of the July 15, 2023 payroll disbursements in an amount not to exceed \$3,700,000 effective July 15, 2023 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized. **BECERRA/DORSETT**

### Summary

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## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Constable Peterson

Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Approve and confirm the appointment of Courtney Gamble as a regular full-time Deputy Constable in the Hays County Constable's Precinct 1 Office. **INGALSBE/PETERSON**

### Summary

Pursuant to Local Government Code Chapter 86 Subchapter B 86.011 (a) The Commissioner's Court shall approve and confirm the appointment of a Deputy Constable.

#### Sec. 86.011. APPOINTMENT OF DEPUTY CONSTABLE.

- (a) An elected constable who desires to appoint a deputy must apply in writing to the commissioner's court of the county and show that it is necessary to appoint a deputy in order to properly handle the business of the constable's office that originates in the constable's precinct. The application must state the name of the proposed deputy. The commissioners court shall approve and confirm the appointment of the deputy only if the commissioners court determines that the constable needs a deputy to handle the business originating in the precinct.
  - (b) Each deputy constable must qualify in the manner provided for deputy sheriffs.
  - (c) The constable is responsible for the official acts of each deputy of the constable. The constable may require a deputy to post a bond or surety. A constable may exercise any remedy against a deputy or the deputy's surety that a person may exercise against the constable or the constable's surety.
  - (d) A person commits an offense if the person:
    - (1) serves as a deputy constable and the person has not been appointed as provided by Subsection (a); or
    - (2) is a constable and issues a deputyship without the consent and approval of the commissioner's court.
  - (e) An offense under Subsection (d) is punishable by a fine of not less than \$50 or more than \$1,000
- Deputy Courtney Gamble is filling a vacant position in the Constable office, Precinct 1.
-



AGENDA ITEM REQUEST FORM: **G. 7.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Judge Becerra

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### Agenda Item

Authorize the Hays County Veterans Service Office to occupy the office space within the Hays County Courthouse. **BECERRA**

### Summary

The Veterans Service Office (VSO) conducts mental health counseling and needs private office space. There is space currently available for the VSO to move into Suite 205 of the Hays County Courthouse. This space will allow for a waiting room and private counseling room required to conduct effective counseling for our Hays County veterans.

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## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Shell

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### Agenda Item:

Receive and Ratify the finalized Parks Bond Agreement: the Diligence Funding Agreement with Wimberley Independent School District (WISD) and Wimberley Youth Sports Association (WYSA) and amend the budget accordingly. **SHELL**

### Summary:

The attached agreements were all authorized for completion and execution out of prior Executive Session meetings on 2020 recommended Parks and Open Space Bonds Projects.

Attached: Diligence Funding Agreement with Wimberley ISD and Wimberley YSA

### Fiscal Impact:

Amount Requested: \$250,000

Line Item Number: 154-813-97-434.5600

### Budget Office:

Source of Funds: Voter Approved Park Bond Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$250,000 - Increase Wimberley Youth Sports Field Project Contribution 154-813-97-434.5600

(\$250,000) - Decrease Bond Issues Project Contributions 154-800-97.5600

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Diligence Funding Agreement

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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### Attachments

Diligence Funding Agreement-WISD & WYSA

**STATE OF TEXAS** §  
§  
**COUNTY OF HAYS** §

This Agreement proposes the lawful use of Hays County general obligation bond funds authorized under Chapter 1251 of the Texas Government Code and the vote of the citizens of Hays County, Texas, which affirmed and authorized the County's issuance of up to Seventy-Five Million Dollars (\$75,000,000.00 USD) in bonds "for the purpose of constructing, improving, renovating, equipping and acquiring land and interests in land, buildings and facilities for park and recreational purposes, including but not limited to constructing and improving parks and the acquisition of land and interests in land in connection therewith; acquiring open space and conservation land and acquiring conservation easements on land for any authorized purposes, including to ensure its availability for recreational, or open-space use, or to protect wildlife habitat and the water quality of creeks, rivers and springs; protecting natural resources by minimizing flood risks and improving flood safety; improving connectivity through the acquisition of land, construction and improvement

of trails, sidewalks and related infrastructure.” The Parties both maintain a public interest in the establishment of youth sporting fields and common areas on the property.

### **Funding**

The estimated costs of due diligence needed to review the viability of the Property are up to Two Hundred and Fifty Thousand Dollars (\$250,000.00 USD). Due diligence activities are anticipated to include (but not be limited to) surveying, topographical and hydrological analysis, environmental and antiquities surveys, and conceptual designs.

## **SECTION III. COUNTY OBLIGATION**

### **Diligence**

The total amount paid by the County under this Agreement shall not exceed the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00 USD). If WYSA has not spent monies provided under this agreement within three (3) years of the Effective Date, and such funds are no longer needed for the purposes described herein, then the remaining funds shall be returned to the County.

### **Draw Requests**

The County’s Program Manager, Halff Associates (or successor), will collaborate with WISD and WYSA to identify the due diligence activities eligible for funds under this Agreement. The County shall pay WYSA in one or more disbursements, the funds needed to perform due diligence, after application for such funds is made by WYSA, with monitor subcontractors’ performance of due diligence services. Distribution of funds shall be made utilizing the Draw Request form attached hereto as **Exhibit “B”**.

### **Project Funding**

The remainder of POSAC-recommended funds for WISD and WYSA may be made available for expenditure after the Parties executed a subsequent Parks and Open Space Improvements Agreement, conditioned upon the following:

1. The Property is deemed a viable site for the establishment of youth sporting fields and common areas by the Parties;
2. WISD provides a legal instrument that grants site control of the Property for a duration of time that exceeds Hays County’s repayment of 2020 Parks and Open Space bond;
3. The Hays County Commissioners Court affirms and approves a subsequent Parks and Open Space Improvements Agreement between the Parties.

## **SECTION IV. OTHER OBLIGATIONS**

### **Compliance with Laws**

The parties acknowledge that the funds expended under this contract are public funds that must be carefully monitored to ensure proper distribution under the County’s parks bond program. WISD and WYSA are obligated to comply with all local, State, and Federal laws in relation to the expenditure of funds paid under this Agreement.



### **Recognition**

In consideration of the County's obligations under this Agreement WISD and/or WYSA shall acknowledge County contributions to the Project by including reference to Hays County on public signage and public literature that promotes and/or serves the Project.

### **SECTION V. CONTRACTS**

WISD and WYSA may contract for the performances of the due diligence activities specified herein. Any such contracts shall be subjected to competitive quotes or selected based on the basis of the best qualifications among at least three candidates for the performance of work.

### **SECTION VI. CONFLICT OF INTEREST**

No agent or employee of WISD and WYSA and no employee of the County, and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this contract which affects his or her personal pecuniary interest.

### **SECTION VII. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by the parties that the County is contracting with WISD and WYSA as an Independent Contractor and that WISD and WYSA as such, agrees to the extent provided by law, to hold the County harmless against any and all claims, demands and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the Diligence described above.

### **SECTION VIII. EQUAL OPPORTUNITY**

WISD and WYSA assure that no person shall, on the ground of race, creed, color, handicap, national origin, sex, political affiliation or beliefs, be excluded from, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part under this agreement or otherwise under WISD and WYSA's control.

### **SECTION IX. ORAL AND WRITTEN AGREEMENTS**

All oral or written agreements, relating to the subject matter of this contract and which were made prior to the Effective Date of this Agreement between the County and WISD and WYSA have been reduced to writing and are contained herein.

### **SECTION X. AMENDMENTS**

Any alterations, additions, or deletions to the terms of this contract shall be by amendment hereto in writing and executed by both parties hereto except as may be expressly provided for in some other manner by the terms of this contract.

### **SECTION XI. SEVERABILITY**

If any clause, sentence, paragraph or article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

**SECTION XII.      RIGHT TO AUDIT**

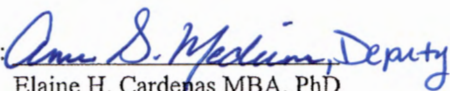
At its sole discretion, the County may arrange for an independent audit of all funds received under and payments made pursuant to this contract by County Auditor staff, or a certified public accountant.

(Signatures Follow on the Next Page)

WITNESS OUR HANDS EFFECTIVE THIS 6<sup>th</sup> OF June, 2023.

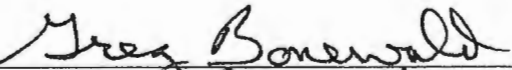
Approved and accepted on behalf of the County of Hays.

  
\_\_\_\_\_  
Judge Ruben Becerra  
Hays County Judge

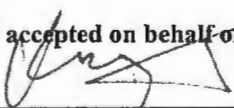
ATTEST:   
Elaine H. Cardenas MBA, PhD  
Hays County Clerk



Approved and accepted on behalf of WISD

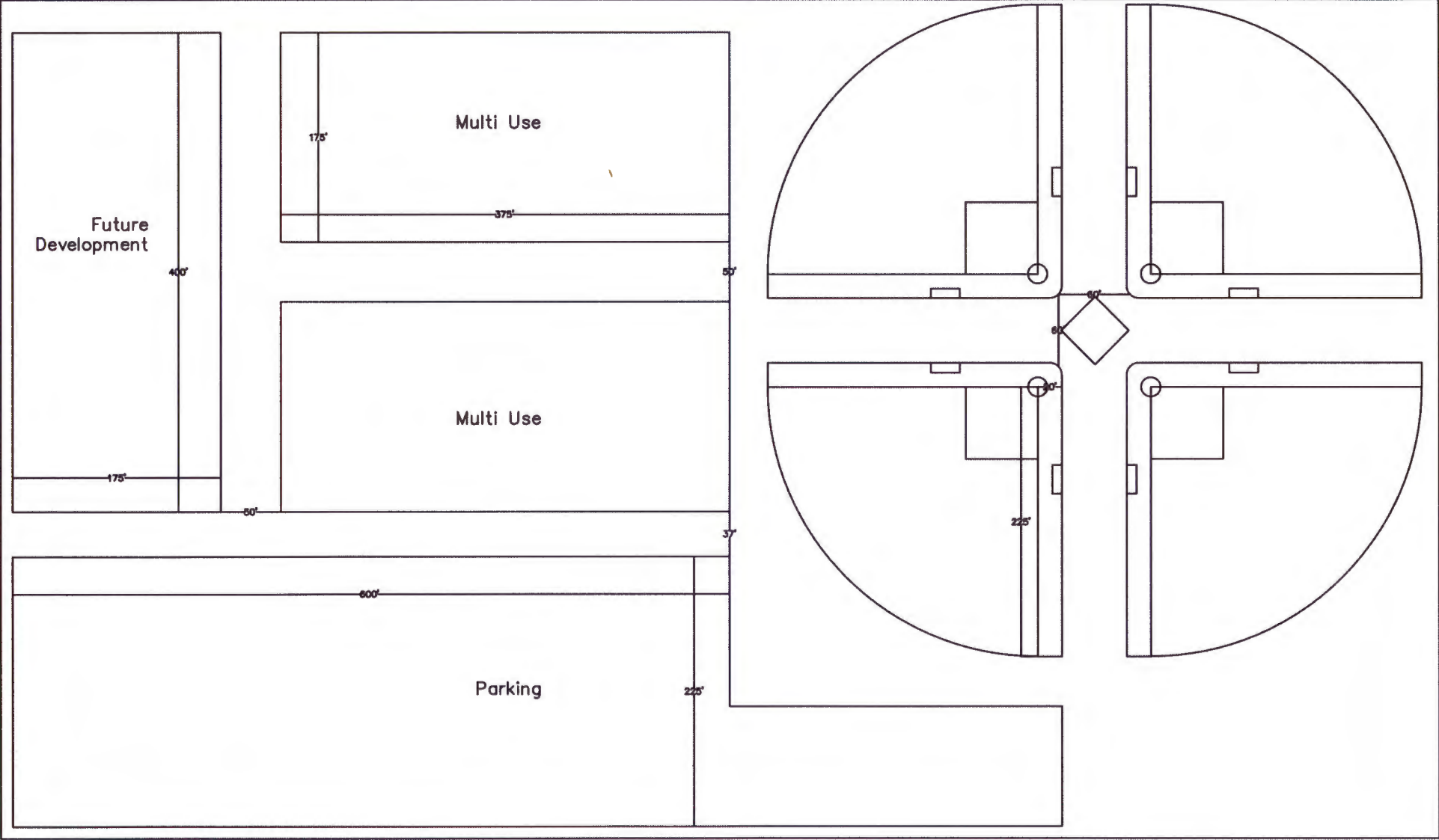
  
\_\_\_\_\_  
Name: Greg Bonewald  
Title: Superintendent

Approved and accepted on behalf of WYSA

  
\_\_\_\_\_  
Name: Kelly Latz  
Title: President

**EXHIBIT A**

Depiction of Proposed Site



**EXHIBIT B**

Draw Request Form

## Hays Park Bond 2020 – Funding Draw Request

Project Name: \_\_\_\_\_ Date of Request: \_\_\_\_\_

Sponsor Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Sponsor Address: \_\_\_\_\_ Federal Tax ID: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Request Number	Total Funding Amount	Funds for:
	(Round all numbers to the nearest dollar)	<input type="checkbox"/> Land \$ _____
		<input type="checkbox"/> Soft Costs \$ _____
1. Total Project Amount \$ _____		<input type="checkbox"/> Construction \$ _____
2. 10 % Retainage - \$ _____		<input type="checkbox"/> Other \$ _____
3. Project Amt minus 10% retainage = _____	(Line 1 minus Line 2)	Explanation: _____
4. Subtract total amount of current draw - \$ _____		
5. Available balance = \$ _____	(Line 1 minus Line 2)	
6. Subtract amount of current draw - \$ _____		
7. Balance after payment = \$ _____		
Is this your FINAL Draw? <input type="checkbox"/> YES <input type="checkbox"/> NO (if yes, continue to line 8)		
8. IF this is your FINAL DRAW include 10% retainage + \$ _____	(Line 2)	
9. Total requested amount = \$ _____	(Line 6 plus Line 8)	

**NOTE:** The final request must be accompanied by documentation suitable to determine project completion (CO, Deed Recordation, etc).

Documentation required for the payment request includes:

1. Contractor/Consultant Payment Request
2. Progress Report w/ updated schedule
3. Documentation for Acquisition, to include deed and closing documents.
4. Documentation for soft costs to include invoices that show an itemization of the work completed.

The Sponsor certifies that this project request is for eligible expended costs in accordance with the HTF Program and that proper documentation has been included to support this request.

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

Program Manager Approval

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

Hays County Staff Approval

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





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Ron Hood

Sponsor:

Commissioner Smith

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### Agenda Item:

Authorize a waiver to the purchasing policy for the Constable Pct. 4 Office to purchase one (1) Motor Kit, Freedom Wireless, Portable Only Operation on Harley-Davidson Motor with PA Interface valued at \$854.00 from PVP Communication and amend the budget accordingly. **SMITH/HOOD**

### Summary:

The Constable Pct. 4 Office is requesting to purchase one new Motor Kit for the motor unit. The Motor Kit allows the motor officer to send and receive communication without having to remove his hands while operating the motor unit. PVP Communications has the required Motor Kit.

### Fiscal Impact:

Amount Requested: \$854

Line Item Number: 001-638-00.5715\_400

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$854 - Increase Communication Equipment\_Ops 001-638-00.5715\_400

(\$854) - Decrease Vehicles\_Capital 001-638-00.5713\_400

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a purchasing policy waiver of three quotes.

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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### Attachments

PVP Communications Quote



2310 W 205th Street, Torrance CA 90501

# Quotation

Quotation #	Date
22318	7/6/2023
Terms	Sales Rep
Net 30	JV
FOB	

Customer			
Hays County			
712 S. Stagecoach Trail, Ste 1071			
San Marcos	TX	78666	

Ship To			
Hays County Constable-Precinct 4			
195 Roger Hanks Parkway #3			
Attn: Ron Hood			
Dripping Springs	TX	78620	

Qty	Item	Description	Price Per	Total Price
1	PV-HR-WW/G3	MOTOR KIT, FREEDOM WIRELESS, PORTABLE ONLY OPERATION ON HARLEY-DAVIDSON MOTOR WITH PA INTERFACE TO WS320 SIREN, REAR MOUNT WIRING	829.00	829.00

TERMS: Quotation valid for 30 days. Prices quoted are in U.S. dollars and DO NOT INCLUDE SHIPPING CHARGES which are additional. Buyer acknowledges that a 1.5% per month (18% per annum) interest charge will be added to account balances not paid within 30 days of invoice date and acknowledges this as the terms of this quotation. A 15% restocking fee will be charged on returned goods. Items must be returned with the original packaging and in "like-new" condition. All sales of custom items or special requests are final.

<b>Sub-Total:</b>	829.00
<b>Taxes</b>	0.00
<b>Est. Freight</b>	25.00
<b>Total</b>	854.00



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Ron Hood

Sponsor:

Commissioner Smith

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### Agenda Item:

Authorize a waiver to the purchasing policy for the Constable Pct. 4 Office to purchase one (1) Freedom Speakermic with Wireless System Control valued at \$534.00 from PVP Communication and amend the budget accordingly. **SMITH/HOOD**

### Summary:

The Constable, Pct. 4 Office needs to purchase one (1) new Freedom Speakermic w/ Wireless System Control. The Speakermic is a Bluetooth device that enables the motor officer to communicate with his headset while operating the motorcycle. PVP Communications has the Speakermic and is compatible with the LCRA radio systems.

### Fiscal Impact:

Amount Requested: \$534

Line Item Number: 001-638-00.5715\_400

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$534 - Increase Communication Equipment\_Ops 001-638-00.5715\_400

(\$534) - Decrease Vehicles\_Capital 001-638-00.5713\_400

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a purchasing policy waiver for requiring three quotes

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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### Attachments

PVP Communications Quote



2310 W 205th Street, Torrance CA 90501

# Quotation

Quotation #	Date
21699	7/6/2023
Terms	Sales Rep
Net 30	JV
FOB	

Customer			
Hays County			
712 S. Stagecoach Trail, Ste 1071			
San Marcos	TX	78666	

Ship To			
Hays County Constable-Precinct 4			
195 Roger Hanks Parkway #3			
Attn: Ron Hood			
Dripping Springs	TX	78620	

Qty	Item	Description	Price Per	Total Price
1	PVSM-XG1/G3	FREEDOM SPEAKERMIC WITH WIRELESS SYSTEM CONTROL, PORTABLE ONLY OPERATION, FOR HARRIS XG-100/XL-200P	509.00	509.00

TERMS: Quotation valid for 30 days. Prices quoted are in U.S. dollars and DO NOT INCLUDE SHIPPING CHARGES which are additional. Buyer acknowledges that a 1.5% per month (18% per annum) interest charge will be added to account balances not paid within 30 days of invoice date and acknowledges this as the terms of this quotation. A 15% restocking fee will be charged on returned goods. Items must be returned with the original packaging and in "like-new" condition. All sales of custom items or special requests are final.

<b>Sub-Total:</b>	509.00
<b>Taxes</b>	0.00
<b>Est. Freight</b>	25.00
<b>Total</b>	534.00



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Shell

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### Agenda Item:

Authorize the Transportation Department to purchase one replacement Dell Latitude 5540 laptop computer and wireless mouse in the amount of \$1,431.04 and amend the budget accordingly. **SHELL/BORCHERDING**

### Summary:

The Transportation Department is requesting authorization to purchase one Dell Latitude 5540 laptop computer and wireless mouse totaling \$1,431.04. The Construction Inspector Environmental Manager, James Parman, is having communication issues with the Microsoft Surface he is currently using to participate in Zoom meetings. Funding is available in the Transportation Department FY 23 budget.

### Fiscal Impact:

Amount Requested: \$1,431.04

Line Item Number: 020-710-00.5202/5712\_400

### Budget Office:

Source of Funds: Road & Bridge General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$1,406 - Increase Computer Equipment\_Ops 020-710-00.5712\_400

\$26 - Increase Data Supplies 020-710-00.5202

(\$1,432) - Decrease Road Materials 020-710-00.5351

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, DIR-TSO-3763

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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### Attachments

Dell Latitude quote



## A quote for your consideration

Based on your business needs, we put the following quote together to help with your purchase decision. Below is a detailed summary of the quote we've created to help you with your purchase decision.

To proceed with this quote, you may respond to this email, order online through your [Premier page](#), or, if you do not have Premier, use this [Quote to Order](#).

<b>Quote No.</b>	<b>3000155948110.1</b>	<b>Sales Rep</b>	Huntley Sawyers
<b>Total</b>	<b>\$1,431.04</b>	<b>Phone</b>	(800) 456-3355
Customer #	9657350	<b>Email</b>	Huntley.Sawyers@dell.com
Quoted On	Jun. 20, 2023	<b>Billing To</b>	ACCOUNTS PAYABLE
Expires by	Jul. 20, 2023		HAYS COUNTY - AUDITORS
Contract Name	Texas Department of Information Resources (TX DIR)		712 S STAGECOACH TRL STE 1071 SAN MARCOS, TX 78666-6247
Contract Code	C000000006841		
Customer Agreement #	TX DIR-TSO-3763		
Deal ID	23048855		

### Message from your Sales Rep

Please contact your Dell sales representative if you have any questions or when you are ready to place an order.  
Thank you for shopping with Dell!

Regards,  
Huntley Sawyers

### Shipping Group

Shipping To	Shipping Method
ERICA LEE HAYS COUNTY - AUDITORS 712 S STAGECOACH TRL STE 1206 SAN MARCOS, TX 78666-6250 (512) 393-2844	Standard Delivery

Product	Unit Price	Quantity	Subtotal
Dell Latitude 5540	\$1,405.40	1	\$1,405.40
Dell Full-Size Wireless Mouse - Daintree - MS300	\$25.64	1	\$25.64

---

<b>Subtotal:</b>	<b>\$1,431.04</b>
<b>Shipping:</b>	<b>\$0.00</b>
<b>Non-Taxable Amount:</b>	<b>\$1,431.04</b>
<b>Taxable Amount:</b>	<b>\$0.00</b>
<b>Estimated Tax:</b>	<b>\$0.00</b>

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<b>Total:</b>	<b>\$1,431.04</b>
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## Shipping Group Details

### Shipping To

ERICA LEE  
HAYS COUNTY - AUDITORS  
712 S STAGECOACH TRL  
STE 1206  
SAN MARCOS, TX 78666-6250  
(512) 393-2844

### Shipping Method

Standard Delivery

	Quantity	Subtotal
<b>Dell Latitude 5540</b>	<b>1</b>	<b>\$1,405.40</b>

Estimated delivery if purchased today:  
Jul. 05, 2023  
Contract # C000000006841  
Customer Agreement # TX DIR-TSO-3763

Description	SKU	Unit Price	Quantity	Subtotal
Dell Latitude 5540 XCTO Base	210-BGBM	-	1	-
13th Generation Intel(R) Core(TM) i7-1365U vPro (12 MB cache, 10 cores, up to 5.2 GHz)	379-BFBW	-	1	-
Windows 11 Pro, English, Spanish, French, Brazilian Portuguese	619-ARSB	-	1	-
No Microsoft Office License Included	658-BCSB	-	1	-
Assembly Base	338-CHGG	-	1	-
Intel 13th Generation Core i7-1365U vPro, Intel Integrated Graphics, Thunderbolt	338-CHGN	-	1	-
Intel vPro Management Disabled	631-ADPS	-	1	-
16 GB, 2 x 8 GB, DDR4, 3200 MT/s, dual-channel, Non-ECC	370-AFVQ	-	1	-
M.2 2230 PCIe NVMe Gen4x4 256GB SSD Class 35	400-BOWJ	-	1	-
15.6" FHD (1920x1080) Non-Touch, AG, IPS, 250 nits, FHD IR Cam, WLAN	391-BHEP	-	1	-
FHD/IR Camera, Temporal Noise Reduction, Camera Shutter, Mic	319-BBIE	-	1	-
English US backlit keyboard with numeric keypad, 99-key	583-BHBG	-	1	-
Wireless Intel AX211 WLAN Driver MOD-SRV	555-BJDC	-	1	-
Intel(R) Wi-Fi 6E (6 if 6E unavailable) AX211, 2x2, 802.11ax, Bluetooth Wireless Card	555-BHHU	-	1	-
3- cell, 54Wh Battery, Express Charge Capable, 3-year warranty	451-BDBJ	-	1	-
65W AC adapter, USB Type-C, TCO Gen9 compliant	492-BDHS	-	1	-
Single Pointing, Smart Card Reader, Finger Print Reader (w/ControlVault 3)	346-BINO	-	1	-
E4 Power Cord 1M for US	537-BBDO	-	1	-
Latitude 5540 Quick Start Guide	340-DDHL	-	1	-
ENERGY STAR Qualified	387-BBPC	-	1	-
Custom Configuration	817-BBBB	-	1	-
Dell Additional Software	658-BFQB	-	1	-
Mix Model 65W Adapter (WHN)	340-DJVQ	-	1	-
EPEAT 2018 Registered (Gold)	379-BDZB	-	1	-
Latitude 5540 Bottom Door, Intel 13th Gen U-Series CPU, Intel Integrated Graphics	321-BJTL	-	1	-
Intel(R) Rapid Storage Technology Driver	409-BCWS	-	1	-

Dell Limited Hardware Warranty Extended Year(s)	975-3461	-	1	-
Thank you choosing Dell ProSupport. For tech support, visit <a href="https://support.dell.com/ProSupport">//support.dell.com/ProSupport</a>	989-3449	-	1	-
Dell Limited Hardware Warranty	997-8317	-	1	-
ProSupport: 7x24 Technical Support, 3 Years	997-8344	-	1	-
ProSupport: Next Business Day Onsite, 1 Year	997-8349	-	1	-
ProSupport: Next Business Day Onsite, 2 Year Extended	997-8354	-	1	-

			<b>Quantity</b>	<b>Subtotal</b>
<b>Dell Full-Size Wireless Mouse - Daintree - MS300</b>	<b>\$25.64</b>	<b>1</b>		<b>\$25.64</b>

Estimated delivery if purchased today:  
Jun. 23, 2023  
Contract # C000000006841  
Customer Agreement # TX DIR-TSO-3763

Description	SKU	Unit Price	Quantity	Subtotal
Dell Full-Size Wireless Mouse MS300	570-ABOB	-	1	-

<b>Subtotal:</b>	<b>\$1,431.04</b>
<b>Shipping:</b>	<b>\$0.00</b>
<b>Estimated Tax:</b>	<b>\$0.00</b>
<b>Total:</b>	<b>\$1,431.04</b>

## Important Notes

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### Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to [Tax\\_Department@dell.com](mailto:Tax_Department@dell.com) or [ARSalesTax@emc.com](mailto:ARSalesTax@emc.com), as applicable.

**Governing Terms:** This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at [www.dell.com/terms](http://www.dell.com/terms) or [www.dell.com/oemterms](http://www.dell.com/oemterms)), or for cloud/as-a-Service offerings, the applicable cloud terms of service (identified on the Offer Specific Terms referenced below); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

**Supplier Software Licenses and Services Descriptions:** Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on [www.Dell.com/eula](http://www.Dell.com/eula). Descriptions and terms for Supplier-branded standard services are stated at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) or for certain infrastructure products at [www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm](http://www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm).

**Offer-Specific, Third Party and Program Specific Terms:** Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on [www.dell.com/offeringsspecificterms](http://www.dell.com/offeringsspecificterms) ("Offer Specific Terms").

**In case of Resale only:** Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

**In case of Financing only:** If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

**^DELL BUSINESS CREDIT (DBC):** Offered to business customers by WebBank, who determines qualifications for and terms of credit. Taxes, shipping and other charges are extra and vary. The Total Minimum Payment Due is the greater of either \$20 or 3% of the New Balance shown on the statement rounded up to the next dollar, plus all past due amounts. Dell and the Dell logo are trademarks of Dell Inc.



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

T.CRUMLEY

Sponsor:

Commissioner Shell

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### Agenda Item:

Authorize the acceptance of a cash match contribution from Cedar Oaks Mesa Water Supply Corporation, as a grant requirement, in the amount of \$17,500.00 and amend the budget accordingly. **SHELL/T.CRUMLEY**

### Summary:

Cedar Oaks Mesa Water Supply Corporation desires to make improvements to the water systems that will principally serve persons of low/moderate incomes. The Cedar Oaks Mesa Water Supply Corporation will take ownership and maintain maintenance of the water system improvements, once completed. The Cedar Oaks Mesa Water Supply Corporation dedicates \$17,500 in cash to the County for the match for the County's application under the Community Development Block Grant funds.

### Fiscal Impact:

Amount Requested: None

Line Item Number: 146-753-99-188.4610

### Budget Office:

Source of Funds: Donated Funds

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$17,500) - Increase Contributions 146-753-99-188.4610

\$17,500 - Increase Construction\_Ops 146-753-99-188.5611\_400

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$17,500 in Contributions

Comments:

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### Attachments

Resolution

# RESOLUTION

A RESOLUTION OF THE CEDAR OAK MESA WATER SUPPLY CORPORATION BOARD OF DIRECTORS IN HAYS COUNTY, REQUESTING HAYS COUNTY TO APPLY FOR FUNDING AND COMMITTING MATCHING FUNDS FOR A TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT (TxCDBG) PROGRAM, COMMUNITY DEVELOPMENT FUND APPLICATION TO BE SUBMITTED TO THE TEXAS DEPARTMENT OF AGRICULTURE OFFICE OF RURAL AFFAIRS.

WHEREAS, the Cedar Oak Mesa Water Supply Corporation desires to make improvements to the water system that will principally serve persons of low/moderate income;

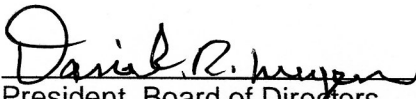
WHEREAS, certain conditions exist which represent a threat to the public health and safety; and


WHEREAS, it is necessary and in the best interest of Cedar Oak Mesa Water Supply Corporation to request that Hays County apply for funding under the 2021-2022 Texas Community Development Block Grant (TxCDBG) Program, Community Development Fund for water system improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE CEDAR OAK MESA WATER SUPPLY CORPORATION:

1. That Cedar Oak Mesa Water Supply Corporation requests that Hays County apply for funding under the Texas Community Development Block Grant (TxCDBG) Program for the Community Development Fund on behalf of the Water Supply Corporation through Hays County with the Texas Department of Agriculture.
2. That Cedar Oak Mesa Water Supply Corporation dedicates \$17,500.00 in cash to the County for the match for the County's application under the Community Development Fund.
3. The Cedar Oak Mesa Water Supply Corporation will take ownership and maintenance of the water system improvements, once completed.

PASSED AND APPROVED THIS THE 6 day of April, 2021.

  
\_\_\_\_\_  
President, Board of Directors  
Cedar Oak Mesa Water Supply Corporation

  
\_\_\_\_\_  
Secretary  
Cedar Oak Mesa Water Supply Corporation



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

T.CRUMLEY

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item:

Ratify the submission of a grant application to the Bulletproof Vest Partnership in the amount of \$20,628.32.

**INGALSBE/T.CRUMLEY**

### Summary:

The Patrick Leahy Bulletproof Vest Partnership (BVP) Grant program provides 50% of the cost per unit to purchase bulletproof vests for law enforcement officers. The application is for 27 vests at an average unit price of \$753.00 each. The total cost including \$297.32 shipping is \$20,628.32, making the required cash match \$10,314.16. The Patrick Leahy Bulletproof Vest Partnership (BVP) Grant program is offered through the Department of Justice, Office of Justice Program. The deadline for submission was June 26, 2023.

### Fiscal Impact:

Amount Requested:\$10,314.16 cash match

Line Item Number: 001-618-99-156.5717\_400

### Budget Office:

Source of Funds: DOJ Grant Funds & General Fund for cash match

Budget Amendment Required Y/N?: No

Comments: If grant is awarded, cash match will need to be identified and budgeted.

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: TBD if awarded

Comments:

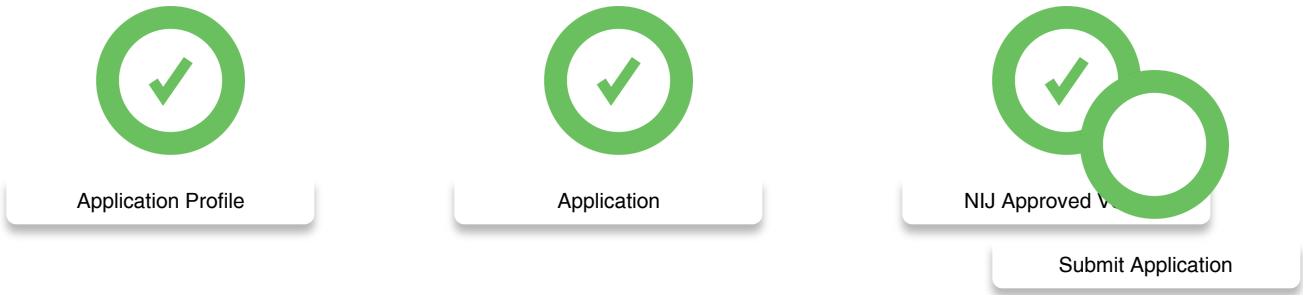
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## Attachments

Application

Quote23

# SUBMIT APPLICATION



**PLEASE NOTE: Applications for funding may be submitted for the purchase of any armor that meets the established NIJ ballistic or stab standards ordered on or after April 1, 2023. Once the open application period closes, funding levels will be established and all applicants will be notified.**

## APPLICATION PROFILE

Participant	HAYS COUNTY
Fiscal Year	2023
Number of Agencies Applied	1



<b>Total Number of Officers for Application</b>	168
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<b>Number of Officers on Approved Applications</b>	168
--	-----

### APPLICATION PROFILE

<b>Fiscal Year</b>	2023
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<b>Vest Replacement Cycle</b>	5
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<b>Number of Officers</b>	168
---------------------------	-----

<b>Number of Emergency Replacement Needs</b>	<b>Number of Stolen or Damaged</b>	0
--	--	---

<b>Number of Emergency Replacement Needs</b>	<b>Number of Officer Turnover</b>	0
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### SUBMIT APPLICATION FOR FUNDING FOR BVP APPROVAL

#### Application for Funding

Name	Quantity	Extended Cost	Tax, S&H*	Total Cost
HAYS COUNTY	27	\$20,331.00	\$297.32	\$20,628.32

Name	Quantity	Extended Cost	Tax, S&H*	Total Cost
Grand Totals	27	\$20,331.00	\$297.32	\$20,628.32
Requested BVP Portion of Total Cost, up to:				\$10,314.16

\* Total Taxes, Shipping and Handling Cost for each Application

SUBMIT APPLICATION FOR BVP APPROVAL

### Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time for all components of a jurisdiction to complete and file this Application for Funding form is two hours. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you may use the Suggestions e-mail option on this BVP web site, or you may write to the BVP, c/o Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC, 20531.



ANGEL ARMOR™  
4557 DENROSE CT  
FORT COLLINS, CO 80524  
ANGELARMOR.COM

## Customer Quote

Quote #	QUO6802
Quote Date	6/14/2023
Expires:	7/14/2023

DE - Dave Ensor  
(970) 818-9281

Bill To
Hays County Sheriff's Office 1307 Uhland Rd San Marcos TX 78666 United States

Ship To
Hays County Sheriff's Office 1307 Uhland Rd San Marcos TX 78666 United States

Part Number	Description	Qty	Unit Price	Amount
01-00452-01	RSC, Black, IIIA Standard, AAS3A01  \$50 surcharge is added to any vest 2x1 or larger	27	753.00	20,331.00

Subtotal	20,331.00
Shipping Cost (UPS® Ground)	297.32
Total	\$20,628.32

Accounts Payable
Email: _____
Phone Number: _____

I authorize the purchase above and acknowledge that I have read and accepted the Angel Armor, LLC Terms and Conditions of Sale and the Angel Armor, LLC Product Sample Disclaimer located at [angelarmor.com/terms-and-conditions/](http://angelarmor.com/terms-and-conditions/)

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



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Cynthia Millonzi

Sponsor:

Judge Becerra

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### Agenda Item:

Authorize a budget amendment transfer of \$5,000.00 to continuing education funds within the County Clerk's Records Management Fund and amend the budget accordingly. **BECERRA/CARDENAS**

### Summary:

The County Clerk would like to utilize available Records Management Funds for additional training events and conferences for staff development.

### Fiscal Impact:

Amount Requested: \$5,000

Line Item Number: 101-617-10.5501

### Budget Office:

Source of Funds: Records Management & Archive Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$5,000 - Increase Continuing Education 101-617-10.5501

(\$5,000) - Decrease Contract Services 101-617-10.5448

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: TBD

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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**Hays County Commissioners Court**

Date: 07/11/2023

Requested By:

Mike Jones

Sponsor:

Judge Becerra

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**Agenda Item:**

Authorize Payment to Card Service Center in the amount of \$894.99 for repairs done to the Kyle/Buda Community Emergency Response Team (CERT) trailer in which no purchase order was issued per the county purchasing policy and amend the budget accordingly. **BECERRA/MIKE JONES**

**Summary:**

Repairs were made to the Kyle/Buda CERT trailer which exceeded the \$500 purchasing limit with no purchase order in place.

**Fiscal Impact:**

Amount Requested: \$894.99

Line Item Number: 001-656-98-313.5411

**Budget Office:**

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$406 - Increase Equipment Maintenance & Repair 001-656-98-313.5411

(\$406) - Decrease Miscellaneous 001-656-98-313.5391

**Auditor's Office:**

Purchasing Guidelines Followed Y/N?: No

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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**Attachments**

Invoice

PAID

**BigTex**  
 TRAILER WORLD  
 NETWORK

**Big Tex Trailers**

 17140 IH -35  
 BUDA, TX 786109741  
 bigtextrailerworld/buda  
 (512) 295-4292

Customer PO#

Invoice#

**RO#423-141709**

Invoice Date

06/28/2023

Amount

**\$913.14**

Printed 06/28/2023 14:18 PM

**Hays County Cert**

Phone 5123937300

Mobile 3092519857

Email

VIN	Mileage	Advisor	RO Date	Tag#	
	0	Alonzo Mendez	06/28/2023		
Year	Make	Model	Conversion MFG	License Number	Stock/Equipment Number

Description of Service	Amount
<b>Job# 1 320-Electrical repair</b>	C

Concern:

QTY	Part#	Description	Unit Price	Price	Labor Charges	\$540.00
5	423:OT:8100645-01	LED C M THIN LINE RED 3.94 POL	\$6.99	\$34.95		
2	423:OT:8100768-01	LED C M MINI RED 1D POLYPACK	\$4.99	\$9.98		
2	423:OT:8100627-04	LED STT 6 OVAL 6D RED POLY	\$27.99	\$55.98		
2	423:OT:8100767-01	LED C M MINI AMB 1D FLEET POLY	\$4.99	\$9.98		
1	423:OT:9900071-01	HARNESS 4 FLAT 25 WISHBNE PPP	\$11.99	\$11.99		
2	423:OT:8100644-01	LED C M THIN LINE AMB 3.94 POL	\$6.99	\$13.98		
6	423:OT:8100015	BRACKET SRFC MT KIT C M BK	\$2.99	\$17.94		
1	423:OT:8100495	LED LIC PLATE 2.56 CLR 5D CR	\$21.99	\$21.99		

Parts \$176.79

Shop Supplies, Hazardous Materials &amp; Freight \$43.20

Sublet

Total Charges \$759.99

**Job# 2 TF047 Custom Fab**

C

Concern:

Labor Charges \$135.00

Parts \$0.00

Shop Supplies, Hazardous Materials &amp; Freight \$0.00

Sublet

Total Charges \$135.00

**TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE.** "I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto."

**DISCLAIMER OF WARRANTIES.** Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

NO RETURN ON ELECTRICAL OR SAFETY ITEMS OR SPECIAL ORDERS

X

Owner or Authorized Representative

Total Labor	\$675.00
Total Parts	\$176.79
Total Miscellaneous	\$43.20
Total Sublet	\$0.00
<del>Sales Tax</del>	<del>\$18.15</del>
<b>Total Invoice</b>	<b>\$894.99</b>
Discounts	\$0.00
Payments	\$894.99
Deposit	\$0.00
<b>Total Due</b>	<b>\$0.00</b>





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Villarreal-Alonzo

Sponsor:

Commissioner Smith

Co-Sponsor:

Commissioner Shell

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### Agenda Item

Accept the Fiscal Year 2022 Hays County Emergency Services District #1 Audit Report per Texas Health and Safety Code 775.082.**SMITH/SHELL/VILLARREAL-ALONZO**

### Summary

Texas Health and Safety Code 775.082 requires that the District prepare and file with the Commissioners Court by June 1 of each year an audit report of the district's fiscal accounts and records. The District's Audit Report dated January 19, 2023, is attached.

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### Attachments

ESD #1 FY 2022 Audit Report



**NORTH HAYS COUNTY  
EMERGENCY SERVICES DISTRICT #1**

**Annual Financial Report**  
For the Fiscal Year Ended  
September 30, 2022

# williams steinert mask

*Certified Public Accountants and Advisors*

## Independent Auditor's Report

Board of Directors  
North Hays County Emergency Services District #1  
PO Box 1604  
Dripping Springs, Texas 78620

### Opinion

We have audited the accompanying financial statements of the governmental activities of the North Hays County Emergency Services District #1 (the District) as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the North Hays County Emergency Service District #1's basic financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities of the District as of September 30, 2022, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the District, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### **Required Supplementary Information**

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Williams, Steinert, Mask, LLP*

Williams, Steinert, Mask, LLP  
January 19, 2023  
San Antonio, Texas

## NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

### MANAGEMENT'S DISCUSSION AND ANALYSIS

September 30, 2022

#### Using this Annual Report

Within this section of the North Hays County Emergency Services District #1's (the District) annual report, the District's Board of Directors provide narrative discussion and analysis of the financial activities of the District for the fiscal year ended September 30, 2022. This analysis should be read in conjunction with the basic financial statements that follow this section.

#### Overview of the Financial Statements

This discussion and analysis are intended to serve as an introduction to the District's basic financial statements. The District's basic financial statements are comprised of five components: (1) the independent auditor's report; (2) management's discussion and analysis (MD & A); (3) the government wide financial statements; (4) the fund financial statements and; (5) the notes to the financial statements. This report also contains other required supplementary information in addition to the basic financial statements themselves.

#### Government-Wide Financial Statements

The *government-wide financial statements* report information for the District as a whole. These statements include transactions and balances relating to all assets, including capital assets. These statements are designed to provide information about cost of services, operating results, and financial position of the District as an economic entity. The Statement of Net Position and the Statement of Activities report information on the District's activities that enable the reader to understand the financial condition of the District. These statements are prepared using the accrual basis of accounting, which is similar to the accounting used by most private-sector companies. All of the current year's revenues and expenses are taken into account even if cash has not yet changed hands.

The Statement of Net Position presents information on all of the District's assets, liabilities, and deferred inflows/outflows of resources, with the difference reported as net position. Over a period of time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the District is improving or deteriorating. Other non-financial factors, such as the District's property tax base and the condition of the infrastructure, need to be considered in order to assess the overall health of the District.

The Statement of Activities presents information showing how the District's net position changed during the year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in cash flows in future periods. This may include uncollected taxes and other revenues or expenses that are appropriated for the current year even though cash is not received or expended until the following year.

#### Fund Financial Statements

Funds may be considered as operating companies of the parent corporation (the District). Funds are segregated by specific activity. The District uses fund accounting to ensure and demonstrate compliance with finance related legal reporting requirements. The District uses only the governmental fund.

#### Governmental Funds

Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on *near-term inflows and outflows* of spendable resources, as well as on *balances of spendable resources* available at the end of the year. Such information may be useful in evaluating the District's near-term financing requirements.

## NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

### MANAGEMENT'S DISCUSSION AND ANALYSIS

September 30, 2022

#### Fund Financial Statements (continued)

##### Governmental Funds(continued)

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for *governmental funds* with similar information presented for *governmental activities* in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures and changes in fund balances provide a reconciliation to facilitate this comparison between *governmental funds and governmental activities*.

The District maintains one governmental fund. Information is presented in the governmental fund balance sheet and in the governmental fund statement of revenues, expenditures, and changes in fund balances for the general fund. The District adopts an annual non-appropriated budget for the general fund. A budgetary comparison schedule has been provided to demonstrate compliance with the budget.

#### Notes to the Financial Statements

The notes to the financial statements provide additional information that is essential to a full understanding of the data provided in the basic financial statements.

#### Financial Analysis of the District as a Whole

The District's overall financial position and operations for the past year is summarized as follows based on the information included in the government-wide financial statements.

#### Financial Highlights and Analysis

- The assets of the District exceeded its liabilities at the close of the fiscal year by \$8,559,048.
- The District's net position increased during the year by \$2,465,473.
- The District's property tax revenues, including penalty and interest collections, increased by \$397,178.
- The District's sales tax revenues increased by \$32,442.

#### Overall Financial Position of the District

The following condensed financial statements present the District's overall financial position and operations for the current year and the preceding year. The government-wide financial statements are shown first followed by the governmental fund financial statements.

# NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

## MANAGEMENT'S DISCUSSION AND ANALYSIS

September 30, 2022

### Government-Wide Financial Statements

#### Summary of Net Position

	2022	2021
Assets		
Cash and investments	\$ 14,310,246	5,299,452
Capital assets (net)	2,169,828	743,055
Taxes receivable (net)	34,259	38,702
Other current assets	23,115	23,115
<b>Total Assets</b>	<b>\$ 16,537,448</b>	<b>6,104,324</b>
Liabilities		
Current liabilities	\$ 771,053	10,749
Long-term liabilities	7,207,347	-
<b>Total Liabilities</b>	<b>7,978,400</b>	<b>10,749</b>
Net position		
Net investments in capital assets	2,169,828	743,055
Restricted	482,776	-
Unrestricted	5,906,444	5,350,520
<b>Total Net Position</b>	<b>8,559,048</b>	<b>6,093,575</b>
<b>Total Liabilities and Net Position</b>	<b>\$ 16,537,448</b>	<b>6,104,324</b>

#### Summary of Statement of Activities

	2022	2021
Revenues		
Taxes, penalties and interest	\$ 4,829,045	4,399,425
Investment income	114,299	4,269
Other income	7,906	4,995
<b>Total Revenues</b>	<b>4,951,250</b>	<b>4,408,689</b>
Expenses		
Service	1,548,878	1,552,289
Administration	541,259	331,343
Tax collection expense	38,487	157,726
Debt service - interest	142,578	-
Depreciation	214,575	145,223
<b>Total Expenditures</b>	<b>2,485,777</b>	<b>2,186,581</b>
<b>Change in Net Position</b>	<b>2,465,473</b>	<b>2,222,108</b>
Net position, beginning of year	6,093,575	3,871,467
Net position, end of year	<b>\$ 8,559,048</b>	<b>6,093,575</b>

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1****MANAGEMENT'S DISCUSSION AND ANALYSIS****September 30, 2022****Capital Assets and Cash**

Capital assets held by the District at the end of the current fiscal year are summarized as follows:

	<u><b>Capital Assets</b></u>	
	2022	2021
Land	\$ 1,037,784	273,715
Building and leaseholds	189,118	189,118
Vehicles	915,043	639,798
Equipment - electronics	651,741	490,475
Furniture and fixtures	9,095	9,095
Construction in progress	465,208	24,440
	<u>3,267,989</u>	<u>1,626,641</u>
Less accumulated depreciation	(1,098,161)	(883,586)
Net capital assets	<u>\$ 2,169,828</u>	<u>743,055</u>

	<u><b>Cash and Investments</b></u>	
	2022	2021
Broadway Bank	\$ 216,219	337,465
Texpool Investments	14,094,027	4,961,987
<b>Total</b>	<u>\$ 14,310,246</u>	<u>5,299,452</u>

# NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

## MANAGEMENT'S DISCUSSION AND ANALYSIS

September 30, 2022

### Governmental Fund Financial Statements

#### Summary of Governmental Funds Balance Sheet

	2022	2021
Assets		
Current and other assets	\$ 14,310,246	5,299,452
Taxes receivable (net)	34,259	38,702
Other assets	23,115	23,115
<b>Total Assets</b>	<b>\$ 14,367,620</b>	<b>5,361,269</b>
Liabilities and deferred inflow of resources		
Accounts payable	\$ 35,822	10,749
Deferred inflow of resources		
Deferred inflow of resources	19,812	30,018
<b>Total Liabilities and Deferred Inflows</b>	<b>19,812</b>	<b>30,018</b>
Fund balance		
Non-spendable	15,997	-
Assigned for:		
Debt service	482,776	-
Unrestricted	13,813,213	5,320,502
<b>Total Fund Balance</b>	<b>14,311,986</b>	<b>5,320,502</b>
<b>Total Liabilities and Fund Balance</b>	<b>\$ 14,367,620</b>	<b>5,361,269</b>

#### Summary of Governmental Fund Revenues, Expenditures and Changes in Fund Balance

	2022	2021
Revenues		
Taxes, penalties and interest	\$ 4,839,251	4,400,652
Investment income	114,299	4,269
Other income	7,906	4,995
<b>Total Revenues</b>	<b>4,961,456</b>	<b>4,409,916</b>
Expenditures		
Service	1,548,878	1,552,289
Administration	541,259	331,343
Tax collection expense	38,487	157,726
Debt service - principal	300,000	-
<b>Total Expenditures</b>	<b>2,428,624</b>	<b>2,041,358</b>
Excess of revenues over expenditures	2,532,832	2,368,558
Other financing activities		
Financing proceeds	8,100,000	-
Capital expenditures	(1,641,348)	(298,162)
Fund balance - beginning of year	5,320,502	3,250,106
Change in fund balance	8,991,484	2,070,396
Fund balance - end of year	<b>\$ 14,311,986</b>	<b>5,320,502</b>



## **NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**

### **MANAGEMENT'S DISCUSSION AND ANALYSIS**

**September 30, 2022**

#### **Economic Factors and Next Year's Budget and Rates**

##### **Property Tax Base**

The District's fiscal year 2022 certified taxable value was \$8,684,015,854. The fiscal year 2022 total adopted tax rate was based on \$0.03/\$100.00 of value.

##### **Budget**

For the fiscal year ending September 30, 2022, the District's budget remained virtually unchanged from the previous fiscal years with the exception of an increase in capital expenditures. The District expects future revenues to show modest increases as the tax base increases.

As part of the Board creating a long-term strategic plan that will service the greater Dripping Springs and Northwest Hays County areas for the next ten years, it is expected that a large increase in capital additions will be expected in subsequent years as part of the growth to increase the number of service stations located throughout the service area.

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**  
**Statement of Net Position and Governmental Funds Balance Sheet**  
**September 30, 2022**

	Governmental Funds	Adjustments	Statement of Net Position
<b>Assets</b>			
Cash and cash equivalents	\$ 216,219	-	216,219
Investments	14,094,027	-	14,094,027
Taxes receivable, net	19,813	-	19,813
Due from tax collector	14,446	-	14,446
Prepaid expenses	15,997	-	15,997
Capital assets, net	-	2,169,828	2,169,828
Other current assets	7,118	-	7,118
<b>Total Assets</b>	<u>14,367,620</u>	<u>2,169,828</u>	<u>16,537,448</u>
<b>Liabilities, deferred inflows of resources</b> and fund balances			
Accounts payable	35,822	-	35,822
Accrued interest	-	142,578	142,578
Due within one year	-	592,653	592,653
Long-term liabilities			
Due after one year	-	7,207,347	7,207,347
<b>Total Liabilities</b>	<u>35,822</u>	<u>7,942,578</u>	<u>7,978,400</u>
<b>Deferred inflows of resources</b>			
Unavailable revenue - property taxes	19,812	(19,812)	-
<b>Total Deferred Inflows of Resources</b>	<u>19,812</u>	<u>(19,812)</u>	<u>-</u>
<b>Fund balances</b>			
Non-spendable	15,997	(15,997)	-
Assigned for:			
Debt service	482,776	(482,776)	-
Unassigned	13,813,213	(13,813,213)	-
<b>Total Fund Balances</b>	<u>\$ 14,311,986</u>	<u>(14,311,986)</u>	<u>-</u>
<b>Net position</b>			
Net investment in capital assets		2,169,828	2,169,828
Restricted		482,776	482,776
Unrestricted		5,906,444	5,906,444
<b>Total Net Position</b>		<u>8,559,048</u>	<u>8,559,048</u>

See accompanying notes to financial statements.

# NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

## Statement of Activities and Governmental Funds Revenue, Expenditures and Changes in Fund Balances September 30, 2022

	Governmental Fund	Adjustments	Statement of Activities
Revenues			
Property taxes	\$ 2,619,012	(10,205)	2,608,807
Sales taxes	2,208,037	-	2,208,037
Penalties and fees	12,202	(1)	12,201
Investment earnings	114,299	-	114,299
Other income	7,906	-	7,906
<b>Total Revenues</b>	<u>4,961,456</u>	<u>(10,206)</u>	<u>4,951,250</u>
Expenditures			
Contract services	1,548,878	-	1,548,878
Administrative expenditures	541,259	-	541,259
Tax collection fees	38,487	-	38,487
Debt service			
Principal	300,000	(300,000)	-
Interest	-	142,578	142,578
Depreciation	-	214,575	214,575
<b>Total Expenditures</b>	<u>2,428,624</u>	<u>57,153</u>	<u>2,485,777</u>
Excess (deficiency) of revenues over expenditures	2,532,832	(67,359)	2,465,473
Other Financing Activities			
Capitalized expenses	(1,641,348)	1,641,348	-
Financing proceeds	8,100,000	(8,100,000)	-
<b>Total Other Financing Activities</b>	<u>6,458,652</u>	<u>(6,458,652)</u>	<u>-</u>
Change in fund balance and net position over expenditures	8,991,484	(6,526,011)	2,465,473
Fund Balance and Net Position			
Beginning of the year	5,320,502	925,890	6,093,575
End of the year	<u>\$ 14,311,986</u>	<u>(5,600,121)</u>	<u>8,559,048</u>

See accompanying notes to financial statements.

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**

Reconciliation of the Governmental Funds  
to the Statement of Net Position  
September 30, 2022

Total fund balance for governmental funds \$ 14,311,986

Amounts reported for governmental activities in the Statement of Net Position are different because:

Capital assets used in governmental activities are not financial resources and, therefore, not reported in the governmental funds.

Capital assets, net of depreciation 2,169,828

Long-term liabilities, are not due and payable in the current period and therefore, are not reported in the funds.

(7,800,000)

Accrued interest payable on long-term debt is not due and payable in the current period and therefore, are not reported in the funds.

(142,578)

Other reclassifications and eliminations are necessary to convert from the modified accrual basis of accounting to the accrual basis of accounting. These include adjusting property tax revenue and eliminating unavailable revenue.

19,812

**Net Position in Governmental Activities**

\$ 8,559,048

See accompanying notes to financial statements.

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**  
**Reconciliation of the Statement of Revenues, Expenditures,**  
**and Changes in Fund Balance of Governmental Funds**  
**September 30, 2022**

Net change in fund balances - total governmental funds \$ 8,991,484

Amounts reported for governmental activities in the Statement of Activities are different because:

Governmental funds report capital outlays as expenditures. However, in the Statement of Activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense.

Capital outlay	1,641,348
Depreciation	(214,575)

Revenues in the Statement of Activities that do not provide current financial resources are not reported as revenues in the funds.	(10,206)
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The issuance of long-term debt provide current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net position. This is the net effect of these differences in the treatment of long-term debt and related items.

Proceeds from debt issuance	(8,100,000)
Principal repayments	300,000

Some expenses reported in the Statement of Activities do not require the use of current financial resources and, therefore, are not reported as expenditures in the governmental funds:

Accrued interest	(142,578)
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<b>Change in Net Position</b>	<b>\$ 2,465,473</b>
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See accompanying notes to financial statements.

## NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

### Notes to Basic Financial Statements

September 30, 2022

#### 1) Creation of District

In 1988 the voters of North Hays County and the Commissioners Court of Hays County, Texas approved the formation of North Hays County Emergency Services District # 1 under Article III, Section 48-E of the Texas Constitution. That District operated under the Health and Safety code found in Chapter 775, Emergency Services Districts.

In a special election on May 2, 1988, the voters elected to create a new district, the Wimberley, Hays County Emergency Services District #3. With the election and separation of the Wimberley District, the remainder of North Hays County Emergency Services District # 1 covers the Dripping Springs area of the county.

#### 2) Summary of Significant Accounting Policies

The accounting policies of the District conform to accounting principles generally accepted in the United States of America. The following is a summary of the most significant policies.

##### Reporting Entity

The District is a governmental unit of the state with powers to acquire and sell real and personal property, enter into contracts, impose and collect taxes, accept donations, and to lease, own, maintain and operate and provide emergency services vehicles and other equipment to provide emergency services.

The District has adopted GASB Statement No. 61(*The Financial Reporting Entity: Omnibus*). Using this criteria, the District has no component units.

##### Government-Wide and Fund Financial Statements

The government-wide and fund financial statements are presented on one schedule and are interrelated. The statement of net position and the statement of activities display information on all of the nonfiduciary activities of the District. For the most part, the effect of interfund activity has been removed from these statements.

The statement of net position presents the District's nonfiduciary assets and deferred outflows of resources and liabilities and deferred inflows of resources, with the difference reported as net position. The governmental activities are reported on the full accrual, economic resource basis, which recognizes all long-term assets and receivables, as well as long-term debt and obligations.

The statement of activities demonstrates the degree to which the direct expenses of a given function are offset by revenue. Direct expenses are those that are clearly identifiable with a specific function. Revenue includes (1) charges to customers or applicants who purchase, use or directly benefit from goods, services or privileges provided by a given function or segment and (2) grants, contributions and interest that are restricted to meeting the operational or capital requirements of a particular function or segment. Property taxes and other items are reported as revenues.

## **NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**

### **Notes to Basic Financial Statements**

**September 30, 2022**

#### **2) Summary of Significant Accounting Policies (continued)**

##### Government-Wide and Fund Financial Statements (continued)

The fund financial statements of the District are organized into funds, each of which is considered a separate accounting entity. Each fund is accounted for by providing a separate set of self-balancing accounts that constitute its assets, liabilities, deferred inflows/outflows, fund balance, revenues and expenditures. Government resources are allocated to and accounted for the purpose of carrying on specific activities in accordance with laws, regulations or other appropriate requirements.

Governmental funds are those through which most governmental functions typically are financed. Governmental fund reporting focuses on the sources, uses and balances of current financial resources. Expendable assets are assigned to various governmental funds according to the purposes for which they may or must be used. Current liabilities are assigned to the fund from which they will be paid. The difference between governmental fund assets plus deferred outflows of resources and liabilities plus deferred inflows of resources is reported as fund balance. The following is the District's major governmental funds:

The General fund is the District's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

##### Measurement Focus and Basis of Accounting

The government-wide financial statements use the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of the related cash flows. Property taxes are recognized as revenue in the year for which they are levied.

Governmental fund financial statements are organized on the basis of funds, each of which is considered to be separate accounting entity. They use the modified accrual basis of accounting. Revenue is recognized in the accounting period in which it becomes both available and measurable to finance expenditures of the current period. For this purpose, the government considers revenues to be available if they are collected within sixty days of the end of the current fiscal period. Revenues susceptible to accrual include interest earned on investments and income from District operations. Property tax revenues are generally recognized in the period for which the tax levy was made. Property taxes receivable at the end of the fiscal year are treated as deferred revenues because they are not considered available to pay liabilities of the current period. The District levies taxes for debt service purposes only, and all related liabilities had been paid by the end of the year.

Expenditures are recognized in the accounting period in which the liability is incurred, if measurable, except for unmatured interest on long-term debt (if any), which is recognized when due.

##### Budget

The budget is adopted by the Board and presented in the accompanying financial statements on the budgetary basis. The budget is not legally binding. Annual appropriations lapse at the end of the fiscal year.

## NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

### Notes to Basic Financial Statements

September 30, 2022

## 2) Summary of Significant Accounting Policies (continued)

### Investments

The District classifies investments, which have a remaining maturity of one year or less at the date of purchase, as money market investments. The District values these funds at cost. The District's certificates of deposit, if any, are recorded also at cost.

Temporary investments consist of deposits in Tex-Pool, which is a public funds investment pool and are stated at cost, which approximates fair value and certificates of deposit at local banks.

### Taxes Receivable

All receivables are reported at their gross value and are reduced by the estimated portion that is expected to be uncollectible. The estimated uncollectible is 5% of the outstanding tax receivable. At September 30, 2022, the District's taxes receivable consisted of \$36,062 less an allowance of \$1,803.

### Capital Assets

Capital assets, which include land and infrastructure, are reported in the government-wide financial statements. The district defines capital assets as assets with an initial valued cost of \$2,500 and an estimated useful life in excess of one year. Capital assets are recorded at historical cost or estimated historical cost. Donated capital assets are recorded at the estimated fair market value at the date of donation. The District has not capitalized interest incurred during the construction of its capital assets.

The costs of normal maintenance and repairs that do not add to the value of the assets or materially extend asset lives are not capitalized. Capital assets are depreciated over their remaining useful lives using the straight-line method as follows:

	Est. Depreciable Life
Vehicles	5 Yrs.
Equipment-Electronic	5 Yrs.
Equipment and Furniture	5 Yrs.

### Fund Equity/ Restricted Assets

In the fund financial statements, restricted equity balances represent those portions of fund balance not appropriable for expenditures or legally segregated for a specific future use. Unassigned fund balances represent available balances for the District's future use.

### Use of Estimates

The preparation of financial statements, in conformity with generally accepted accounting principles, requires management to make estimates and assumptions that affect certain reported amounts and disclosure. Accordingly, actual results could differ from those estimates.



# NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

## Notes to Basic Financial Statements

September 30, 2022

### 3) Cash and Temporary Investments

Cash consists of checking and savings accounts. Investments consist of Tex-Pool. The carrying amounts for cash and temporary investment balances by fund at September 30, 2022, are as follows:

<u>Institution</u>	<u>Balances at End of Year</u>	<u>Interest Earned During Year</u>
Cash and cash equivalents:		
Checking - Broadway	\$ 35,086	-
Savings - Broadway	181,133	240
Temporary Investments:		
TexPool	14,094,027	114,060
	<u>\$ 14,310,246</u>	<u>114,300</u>

### Investment Policies

The District has adopted a written investment policy, as required by the Public Funds Investment Act, Chapter 2256, and Texas Government Code. The investments of the District are in compliance with their investment policies.

State statutes and provisions, included in the District's bond resolution, require that all funds invested in depository institutions be covered by federal depository insurance and/or pledged collateral. The types of collateral to be pledged to secure District demand deposits and investments are stated in the District's Investment Policy. Balances in demand accounts and investments were entirely covered by federal depository insurance or pledged collateral held by the District's agent bank in the District's name.

### Investment Pool

The State Comptroller of Public Accounts exercises oversight responsibility of Tex-Pool, the Texas Local Government Investment Pool. Oversight includes the ability to significantly influence operations, designation of management and accountability for fiscal matters. Additionally, the State Comptroller has established an advisory board composed of both Participants in Tex-Pool and other persons who do not have a business relationship with Tex-Pool. The Advisory Board members review the investment policy and management fee structure. Tex-Pool is rated AAA by Standard & Poor's. Tex-Pool operates in a manner consistent with the SEC's Rule 2.a.7 of the Investment Company Act of 1940. Tex-Pool uses amortized cost rather than market value to report net assets to compute share prices. Accordingly, the fair value of the position in Tex-Pool is the same as the value of Tex-Pool shares.

### Concentration of Credit Risk

The District maintains their cash in bank deposit accounts at a high credit quality financial institution that is insured by the Federal Deposit Insurance Corporation (FDIC). At the end of the fiscal year, the balances maintained in the accounts at this financial institution did not exceed the FDIC limits.

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**

## Notes to Basic Financial Statements

September 30, 2022

**4) Property Taxes**

All property values and exempt status, if any, are determined by the Hays County Appraisal District. Taxes are levied after receipt of the certified tax roll, are due upon receipt and are delinquent the following January 31<sup>st</sup>, at which time a tax lien attaches to the related property. Penalty and interest attach thereafter.

**Property Tax Summary**

Operating taxes as adjusted	\$ 2,605,205
Debt service	-
Total taxes	\$ 2,605,205
Base assessment	\$ 8,684,015,854

Tax rate = \$0.03/\$100

**5) Capital Assets**

A summary of changes in capital assets for the year ended September 30, 2022 is as follows:

	Beginning Balance	Additions	Dispositions	Ending Balance
Land	\$ 273,715	764,069	-	1,037,784
Building and leaseholds	189,118	-	-	189,118
Vehicles	639,798	275,245	-	915,043
Equipment	490,475	161,266	-	651,741
Furniture and fixtures	9,095	-	-	9,095
Total	1,602,201	1,200,580	-	2,802,781
Depreciation	(883,586)	(214,575)	-	(1,098,161)
Non-depreciable assets	24,440	465,208	24,440	465,208
Capital assets	\$ 743,055	1,451,213	24,440	2,169,828

**6) Commitments**

Effective April 1, 2017, the District entered into an agreement with SMHC EMS to provide services related to operations and EMS. Under this contract, SMHC EMS must provide all personnel and administration related to these services.

**7) Risk Management**

The District is exposed to various risks of loss related to torts: theft of, damage to, and destruction of assets; errors and omissions; personal injuries; and natural disasters. The risk of loss is covered by commercial insurance. There have been no significant reductions in insurance coverage. Settlement amounts have not exceeded insurance coverage for the current year or the three prior years.

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**

## Notes to Basic Financial Statements

September 30, 2022

**8) Long term debt**

In November 2021, the District signed a promissory note for 2 installments for the purchase of land. The original balance was \$600,000, and the first installment was paid in January 2022. The second installment will be paid in January 2023.

In December 2021, the District signed a promissory note for 20 years for the construction of 2 EMS stations and 1 admin office building. The original balance was \$7.5 million with a 2.50% interest rate and the annual payments will be \$482,757. Additionally, the loan is secured by rights to future ad valorem tax and revenue and all other income received by the District.

The annual requirements to amortize notes payable outstanding as of September 30, 2022, including interest payments, are as follows:

Fiscal year ending September 30,	Principal	Interest	Total
2023	\$ 592,653	190,104	782,757
2024	300,071	182,686	482,757
2025	307,197	175,560	482,757
2026	315,463	167,294	482,757
2027	323,459	159,298	482,757
2028-2041	5,961,157	1,280,215	7,241,372
	<u>\$ 7,800,000</u>	<u>2,155,157</u>	<u>9,955,157</u>

**9) Subsequent Events**

Subsequent events were evaluated through January 19, 2023, the date the financial statements were available to be issued.

# NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1

## Budgetary Comparison Schedule – Governmental Funds

Year Ended September 30, 2022

	Budget	Actual	Variance
Revenues	\$ 4,352,001	4,961,456	609,455
Expenses			
Contract Services	1,622,010	1,548,878	73,132
Administrative			
Wages	106,417	107,631	(1,214)
Payroll Tax	-	9,069	(9,069)
PR Processing	4,115	4,680	(565)
Accounting Fees	11,800	22,657	(10,857)
Advertising Fees	5,000	23,741	(18,741)
Auditing	7,500	7,500	-
Bank Fees	75	4	71
Dues and Publications	4,485	1,190	3,295
Equipment maintenance	10,440	13,474	(3,034)
Insurance	5,863	5,890	(27)
Legal	11,135	21,942	(10,807)
License and permit	20	-	20
Miscellaneous	3,289	1,357	1,932
Office expense	10,039	23,552	(13,513)
Opticom	5,645	6,799	(1,154)
Postage	228	4,031	(3,803)
Professional fees	-	160,418	(160,418)
Rents	40,100	66,200	(26,100)
Repairs and maintenance	47,066	24,833	22,233
Telephone	4,047	2,858	1,189
Travel	4,000	7,956	(3,956)
Utilities	11,501	20,269	(8,768)
Website & Social Media	6,642	5,208	1,434
Total Admin	299,407	541,259	(241,852)
Tax Collection			
Appraisal District Fees	13,933	24,018	(10,085)
Tax collector	137,000	14,469	122,531
Total tax collection	150,933	38,487	112,446
Debt service - principal	-	300,000	(300,000)
<b>Total Expenses</b>	<b>2,072,350</b>	<b>2,428,624</b>	<b>(356,274)</b>
Excess (deficiency) of revenues			
over (under) expenditures	2,279,651	2,532,832	253,181
Financing proceeds	-	8,100,000	8,100,000
Purchase of Capital Assets	(300,000)	(1,641,348)	(1,341,348)
Net change in fund balance	\$ 1,979,651	8,991,484	7,011,833

**NORTH HAYS COUNTY EMERGENCY SERVICES DISTRICT #1**  
**Comparative Schedule of Statement of Revenues and Expenses**  
**Year Ended September 30, 2022**

	2022	2021
Revenues	\$ 4,961,456	4,409,916
Expenses		
Contract Services	1,548,878	1,552,289
Administrative		
Wages	107,631	105,093
Payroll Tax	9,069	7,787
Benefits	-	-
PR Processing	4,680	3,976
Accounting Fees	22,657	12,855
Advertising Fees	23,741	3,284
Auditing	7,500	7,500
Bank Fees	4	49
Dues and Publications	1,190	4,714
Equipment maintenance	13,474	18,464
Insurance	5,890	5,863
Legal	21,942	16,781
License and permit	-	5,721
Office expense	23,552	11,464
Opticom	6,799	5,386
Postage	4,031	128
Professional fees	160,418	9,500
Rents	66,200	40,100
Repairs and maintenance	24,833	46,072
Telephone	2,858	3,163
Travel	7,956	4,730
Utilities	21,626	12,281
Website & Social Media	5,208	6,432
Total Admin	541,259	331,343
Tax Collection		
Appraisal District Fees	24,018	18,026
Tax collector	14,469	139,700
Total tax collection	38,487	157,726
Debt service - principal	300,000	-
<b>Total Expenses</b>	<b>2,428,624</b>	<b>2,041,358</b>
Excess (deficiency) of revenues over (under) expenditures	2,532,832	2,368,558
Financing proceeds	8,100,000	-
Purchase of Capital Assets	(1,641,348)	(298,162)
Net change in fund balance	\$ 8,991,484	2,070,396

# williams steinert mask

*Certified Public Accountants and Advisors*

## **Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards***

Board of Directors  
North Hays County Emergency Services District #1  
PO Box 1604  
Dripping Springs, Texas 78620

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the governmental financial statements of North Hays County Emergency Service District #1 as of September 30, 2022, and the related notes to the financial statements, and have issued our report thereon dated January 19, 2023.

### **Internal Control over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the District's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during my audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the District's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of my audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## Purpose of the Report

The purpose of this report is solely to describe the scope of our testing on internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Williams, Steinert, Mask, LLP*

January 19, 2023  
San Antonio, Texas



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Villarreal-Alonzo

Sponsor:

Commissioner Smith

Co-Sponsor:

Commissioner Cohen

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### Agenda Item

Accept the Fiscal Year 2022 Hays County Emergency Services District #2 Audit Report per Texas Health and Safety Code 775.082. **SMITH/COHEN/VILLARREAL-ALONZO**

### Summary

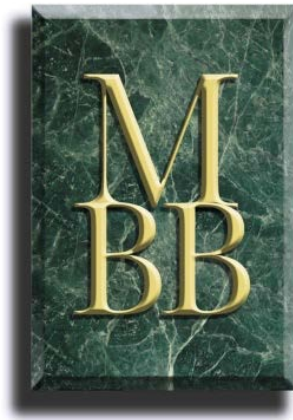
Texas Health and Safety Code 775.082 requires that the District prepare and file with the Commissioners Court by June 1 of each year an audit report of the district's fiscal accounts and records. The District's Audit Report dated May 18, 2023, is attached.

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### Attachments

ESD #2 FY 2022 Audit Report





# Montemayor Britton Bender PC

CERTIFIED PUBLIC ACCOUNTANTS

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

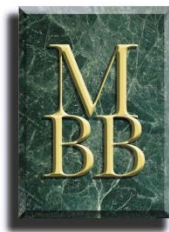
### **INDEPENDENT AUDITOR'S REPORT AND FINANCIAL STATEMENTS**

**SEPTEMBER 30, 2022**

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

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Budgetary Comparison Schedule - General Fund	13



**Montemayor Britton Bender PC**  
CERTIFIED PUBLIC ACCOUNTANTS

Board of Fire Commissioners  
Hays County Emergency Services District #2

**INDEPENDENT AUDITOR'S REPORT**

Opinions

We have audited the accompanying financial statements of the governmental activities and the general fund of the Hays County Emergency Services District #2 (District), as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the general fund of the District, as of September 30, 2022 and the respective changes in financial position and, where applicable, cash flows thereof, for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the District, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions.

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BUILDING B, SUITE 102  
AUSTIN, TEXAS 78747  
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FAX: 512.442.0817  
[www.montemayor.team](http://www.montemayor.team)



Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Montemayor Britton Bender PC*

May 18, 2023  
Austin, Texas

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #2

### MANAGEMENT'S DISCUSSION AND ANALYSIS

The following is a narrative overview and analysis of the financial activities of the Hays County Emergency Services District #2 (“the District”) for the year ended September 30, 2022. Please read it in conjunction with the District’s financial statements, which follow this section.

#### **Financial Highlights**

- The District’s property tax rate was assessed at \$.075 per \$100 of assessed valuation for the year ended September 30, 2022. Property tax revenues for the year were \$4,158,577 an increase of \$563,072 over prior year.
- The District incurred an increase in net position of \$1,248,282 for the year.
- Cash and investments amounted to \$4,452,390 at September 30, 2022, which represented an increase of \$1,144,012 over the \$3,308,378 balance at September 30, 2021.

#### **Overview of the Financial Statements**

This annual report consists of three parts—*management’s discussion and analysis* (this section), the *basic financial statements*, and *required supplementary information*. The *basic financial statements* include two kinds of statements that present different views of the District. The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data. The statements are followed by a section of *required supplementary information* that further explains and supports the information in the financial statements.

#### **Government-Wide Financial Statement**

The government-wide financial statements are designed to provide readers with a broad overview of the District’s finances in a manner similar to a private sector business reporting on a full accrual basis of accounting.

The *Statement of Net Position* presents information on all of the District’s assets and liabilities, with the difference between the two reported as net position. Increases or decreases in net position may serve as a useful indicator of whether the financial position of the District has improved or deteriorated.

The *Statement of Activities* presents information showing how the District’s net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of the related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in cash flows in future fiscal periods (example: property taxes assessed but uncollected as of 31 days after year-end). Because the District’s principal source of revenue is property taxes, the government-wide financial statements are grouped into one function that is supported by taxes (governmental activities).

#### **Fund Financial Statements**

A fund is a grouping of related accounts that is used to maintain control and account for resources that have been segregated for specific activities or objectives. The District, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal or contractual requirements. The District has one fund, the General Fund.

**Governmental Funds:** The General Fund is used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, the governmental funds financial statements focus on current fiscal year cash

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #2

### MANAGEMENT'S DISCUSSION AND ANALYSIS

inflows and outflows, as well as balances of resources available for spending at the end of the fiscal year.

Because the focus of the governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for the General Fund with similar information presented for governmental activities in the government-wide financial statements. Both the Governmental Funds balance sheet and the Governmental Funds statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between Governmental Fund and government-wide financial statements.

#### **Government-Wide Financial Analysis**

Net position may serve as a useful indicator of the District's financial position. The District's net position (assets less liabilities) was \$5,426,492 as of September 30, 2022. The District's net position includes a net investment of \$1,061,480 in capital assets and \$4,365,012, which is unrestricted, and available to meet the District's ongoing obligations to citizens. The tables below summarize the financial position of the District at September 30, 2022 and 2021 and the results of operations for the same years ended.

<b><u>Assets</u></b>	<b><u>9/30/2022</u></b>	<b><u>9/30/2021</u></b>
Current	\$4,499,254	\$3,348,415
Capital, net	<u>1,061,480</u>	<u>829,795</u>
Total assets	<u>5,560,734</u>	<u>4,178,210</u>
 <b><u>Total liabilities</u></b>	 <u>134,242</u>	 <u>0</u>

#### **Net position**

Net investment in capital assets	1,061,480	829,795
Unrestricted	<u>4,365,012</u>	<u>3,348,415</u>
Total net position	<u>\$5,426,492</u>	<u>\$4,178,210</u>

#### **Revenues**

	<b><u>9/30/2022</u></b>	<b><u>9/30/2021</u></b>
Ad Valorem property taxes	\$4,158,577	\$3,595,505
Interest and other	<u>105,836</u>	<u>27,566</u>
Total revenues	<u>4,264,413</u>	<u>3,623,071</u>

#### **Expenses**

ESD#8 contract	2,243,481	1,915,099
Station user fee	550,000	550,000
Emergency/contingency equipment	0	106,795
Tax collection fees	32,946	26,671
Administrative	3,582	4,323
Professional services	4,589	3,350
Depreciation	<u>181,533</u>	<u>179,471</u>
Total expenses	<u>3,016,131</u>	<u>2,785,709</u>
Change in net position	1,248,282	837,362
Net position, beginning	<u>4,178,210</u>	<u>3,340,848</u>
Net position, ending	<u>\$5,426,492</u>	<u>\$4,178,210</u>

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

### **MANAGEMENT'S DISCUSSION AND ANALYSIS**

#### **Financial Analysis of the Governmental Fund**

The focus of the District's Governmental Fund is to provide information on near-term inflows and outflows and on resource balances available for spending. Such information is useful in assessing the District's financing requirements. In particular, unassigned fund balance serves as a useful measure of the District's net resources available for spending at fiscal year-end.

During the fiscal year ending September 30, 2022, the District's only Governmental Fund was the General Fund, and it reported ending fund balance of \$4,318,148, an increase of \$1,009,770 over the year-ended September 30, 2021. The District's ending unassigned fund balance of \$4,318,148 was unencumbered and available for spending at the District's discretion.

#### **General Fund Budgetary Highlights**

General Fund revenues were \$197,211, or 4%, over budget, due to \$85,772 more than anticipated in Ad Valorem tax revenues, \$80,133 more than anticipated in other income, and \$31,306 more than anticipated in interest income. Expenses for the General Fund were \$308,240 less than budget, a variance of (8%). The budget variance resulted primarily from the budget for emergency/contingency equipment and new equipment of \$250,000 not being utilized, as well as capital outlay being \$55,585 less than anticipated. The budget was amended during the year to increase budgeted expenditures for the ESD#8 contract and for capital outlay.

#### **Capital Asset Administration**

At September 30, 2022, the District had \$1,061,480 invested in capital assets, which consists of ambulances, vehicles and equipment. Current year activity consists of additions of \$425,321 offset by \$181,533 in depreciation expense. Additionally, a vehicle was disposed off in fiscal 2022 for a gain of \$12,103.

#### **Economic Factors, Future Years' Budgets and Tax Rates**

The tax levy for fiscal year 2022-2023 is expected to provide an approximately \$592,000 increase in tax revenues for the next fiscal year. The tax rate decreased to \$0.0674 per \$100 of value.

The District considers many factors when approving budgets for the next year's fiscal activities. With increased tax revenues, the District's budget for operating expenses is expected to increase a proportional amount to support increased services.

#### **Request for Information**

This financial report is designed to provide a general overview of the finances of the District for all parties with an interest. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to:

Halley Ortiz, President  
Hays County Emergency Services District #2  
P.O. Box 153  
Buda, TX 78610

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**  
**STATEMENT OF NET POSITION AND GOVERNMENTAL FUNDS BALANCE SHEET**  
**SEPTEMBER 30, 2022**

	General Fund	Adjustments (Note 8)	Statement of Net Position
<b>ASSETS</b>			
Cash	\$ 22,977		\$ 22,977
Short-term investments	4,429,413		4,429,413
Taxes receivable	46,864		46,864
Capital assets, net of depreciation	-	1,061,480	1,061,480
Total assets	<u>\$ 4,499,254</u>		<u>5,560,734</u>
<b>LIABILITIES</b>			
Current liabilities:			
Accounts payable	<u>\$ 134,242</u>		<u>134,242</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Unavailable revenue - property taxes	<u>46,864</u>	(46,864)	<u>-</u>
<b>FUND BALANCES/NET POSITION</b>			
<b>FUND BALANCES</b>			
Fund balance - unassigned	<u>4,318,148</u>	(4,318,148)	
	<u>\$ 4,499,254</u>		
<b>NET POSITION</b>			
Net investment in capital assets		1,061,480	1,061,480
Unrestricted		4,365,012	4,365,012
			<u>\$ 5,426,492</u>

The accompanying notes are an integral part of this financial statement presentation.



**HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**  
**STATEMENT OF ACTIVITIES AND GOVERNMENTAL FUNDS STATEMENT**  
**OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES**  
**FOR THE YEAR ENDED SEPTEMBER 30, 2022**

	<u>General Fund</u>	<u>Adjustments (Note 8)</u>	<u>Statement of Activities</u>
<b>EXPENDITURES/EXPENSES:</b>			
ESD#8 contract	\$ 2,243,481		\$ 2,243,481
Station user fee	550,000		550,000
Tax collection fees	32,946		32,946
Professional services	4,589		4,589
Administrative	3,582		3,582
Capital outlay	425,321	(425,321)	-
Depreciation	-	181,533	181,533
	<u>3,259,919</u>		<u>3,016,131</u>
<b>GENERAL REVENUES:</b>			
Ad Valorem tax revenues	4,151,750	6,827	4,158,577
Other income	85,133	(12,103)	73,030
Interest	32,806		32,806
	<u>4,269,689</u>		<u>4,264,413</u>
<b>CHANGE IN FUND BALANCE/NET POSITION</b>	1,009,770		1,248,282
<b>BEGINNING FUND BALANCE/NET POSITION</b>	<u>3,308,378</u>		<u>4,178,210</u>
<b>ENDING FUND BALANCE/NET POSITION</b>	<u><u>\$ 4,318,148</u></u>		<u><u>\$ 5,426,492</u></u>

The accompanying notes are an integral part of this financial statement presentation.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 1: ORGANIZATION**

Emergency services districts may be organized in the State of Texas under the provisions of Article III, Section 48-3 of the State Constitution. The Hays County Emergency Services District #2 (the District) was created in 1989 by an election of the residents of Hays County. The District was established to arrange for emergency services within its boundaries. The District operated under the Health and Safety Code in Chapter 775, Emergency Services District. The District contracts with, and disburses funds to, the Hays County Emergency Services District #8 located in Buda to provide for services within the District's boundaries. The District has no employees.

The District is not included in any other governmental reporting entity as defined in Section 2100, Codification of Governmental Accounting and Financial Reporting Standards. Additionally, no other entity meets the requirements for inclusion in the District's financial statements.

The District is governed by a five-member Board of Fire Commissioners (the Board) appointed for two-year terms by the Hays County Commissioners. The District has no employees, office location or fixed assets. The Board sets the budget and tax rate within limits authorized by Chapter 775 of the Health and Safety Code.

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The accounting policies of the District conform to U.S. generally accepted accounting principles applicable to governments promulgated by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA). The following is a summary of the significant accounting policies.

#### **GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS**

The District is considered a special purpose government under GASB Statement No. 34. This allows the District to present the required fund and government-wide statements in a single schedule. The requirement for fund financial statements to be prepared on the modified accrual basis of accounting is met with the "General Fund" column. An adjustment column includes those entries needed to convert to the full accrual basis government-wide statements. The Statement of Net Position and the Statement of Activities are government-wide financial statements. They report information on all of the District's activities. The District services are supported by ad valorem property taxes. The Statement of Activities demonstrates how the District used revenue and demonstrates how direct expenses of a given function are offset by program revenues.

#### **MEASUREMENT FOCUS, BASIS OF ACCOUNTING AND FINANCIAL STATEMENT PRESENTATION**

The government-wide financial statements are presented using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the District considers all revenues available if they are collectible within 31 days after year-end. Expenditures are recognized in the accounting period in which the liability is incurred. Interest and tax revenues associated with the current fiscal year are considered susceptible to accrual and have been recognized as revenues in the current fiscal year. All other revenue is considered measurable and available only when cash is received by the District.

#### **ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

#### **CAPITAL ASSETS**

Capital assets are recorded at cost (or estimated historical cost) and the time of acquisition and updated for additions and retirements during the year. The District does not possess any infrastructure. Improvements are capitalized. The cost of normal maintenance and repairs that do not add value to the asset or materially extend its life are expensed as incurred. Depreciation is calculated on a straight-line base over the estimated useful life of the asset: ten years for ambulances and vehicles and five years for equipment.

#### **NET POSITION**

Net position represents the difference between assets, deferred outflows, liabilities and deferred inflows. Net position is reported as restricted when there are limitations imposed on its use either through the enabling legislation adopted by the District or through external restrictions imposed by creditors, grantors or laws or regulations of other governments. When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first and then unrestricted resources as they are needed.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **FUND BALANCES**

Fund balance of governmental funds is reported in various categories based on the nature of any limitations requiring the use of resources for specific purposes. The District can establish limitations of the use of resources through either a commitment or an assignment. When both unassigned and committed or assigned funds are available for expenditure, committed or assigned funds are used first.

Nonspendable fund balances are amounts that cannot be spent because they are not in a spendable form or legally or contractually required to be maintained intact. Committed fund balances include amounts that can only be used for specific purposes determined by a formal action of the Board or adoption of an ordinance. Limitations imposed by commitments remain in place until formal Board action is taken to remove the limitation. Amounts in the assigned fund balances are intended to be used by the District for specific purposes but do not meet the criteria to be committed. Assignments are generally temporary and do not require Board action to be taken to remove the assignment.

##### **DEFERRED OUTFLOWS/INFLOWS OF RESOURCES**

The statement of net position and governmental funds balance sheet reports a separate section for deferred outflows of resources representing a consumption of net position that applies to a future period and is not recognized as an outflow of resources in the current period. The District's does not have any deferred outflows. The statement of financial position and governmental funds balance sheet reports a separate section for deferred inflows of resources representing an acquisition of net position that applies to a future period and is not recognized as an inflow of resources or revenue until that time. The District has one item which qualifies for reporting in this category- unavailable property tax revenue. These amounts are deferred and recognized as an inflow of resources in the period the amounts become available.

#### **NOTE 3: DEPOSITS AND INVESTMENTS**

At September 30, 2022, the carrying amount and the bank balance of the District's cash deposits was \$22,977. The District did not have any deposits in excess of FDIC insurance.

The Board of Fire Commissioners has authorized the District under a written investment policy to invest funds in compliance with the Texas Public Funds Investment Act, Chapter 2256 of the Texas Government Code. Investment vehicles authorized by Chapter 2256 include, but are not limited to, certificates of deposit, obligations backed by the U.S. and state governments, and public fund investment pools. All investments at year end were held in the Texas Local Government Investment Pool (TexPool). TexPool investments are carried at amortized cost, which approximates fair value. The State Comptroller oversees TexPool, with Federated Investors managing the daily operations of the pool under a contract with the State Comptroller.

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #2

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 3: DEPOSITS AND INVESTMENTS

TexPool is a 2(a)7 like fund, which means that it is structured similar to a money market mutual fund. It allows shareholders the ability to deposit or withdraw funds on a daily basis. Such funds seek to maintain a constant net asset value of \$1.00, although this cannot be fully guaranteed. TexPool is rated AAAm (the highest rating a local government investment pool can achieve) and must maintain a dollar weighted average maturity not to exceed 60 days, which is the limit. At September 30, 2022, the TexPool portfolio had a weighted average maturity of 25 days. However, the District considers the holdings in these funds to have a one day weighted average maturity because the share position can usually be redeemed each day at the discretion of the shareholder, unless there has been a significant change in value.

#### NOTE 4: CAPITAL ASSETS

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Deletions</u>	<u>Ending Balance</u>
<u>Capital assets being depreciated:</u>				
Ambulances and vehicles	\$1,303,321	\$216,436	(\$121,050)	\$1,398,707
Equipment	<u>645,828</u>	<u>208,885</u>	<u>0</u>	<u>854,713</u>
	<u>1,949,149</u>	<u>425,321</u>	<u>(121,050)</u>	<u>2,253,420</u>
<u>Accumulated depreciation</u>				
Ambulances and vehicles	(613,991)	(123,736)	108,947	(628,780)
Equipment	<u>(505,363)</u>	<u>(57,797)</u>	<u>0</u>	<u>(563,160)</u>
Total accumulated depreciation	<u>(1,119,354)</u>	<u>(181,533)</u>	<u>108,947</u>	<u>(1,191,940)</u>
Total capital assets	<u>\$829,795</u>	<u>\$243,788</u>	<u>(\$12,103)</u>	<u>\$1,061,480</u>

#### NOTE 5: RISK MANAGEMENT

The District is exposed to various risks of loss related to torts, theft, damage and destruction of assets, errors and omissions, lawsuits and natural disasters. The District purchases insurance to provide coverage for these risks.

#### NOTE 6: PROPERTY TAXES

The District has the authority to levy a tax to a maximum of \$0.10 per \$100 of value. Ad Valorem taxes are levied each October 1 on the assessed valuation of all taxable property in the District. The tax rate for the October 1, 2021 levy was \$0.075 per \$100 of value. Taxes are due upon receipt of the bill and are delinquent if not paid before the first day of February in the year following levy. On January 1 of each year, a tax lien attaches to the property to secure the payment of all taxes, penalties and interest ultimately imposed. Taxes are billed and collected by the Hays County Tax Assessor-Collector.

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #2

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 7: BUDGET

The District adopts an annual budget for each fiscal year and amends the budget as needed during the year. The budget was amended during the year to increase budgeted expenses for the ESD#8 service contract and for capital outlay. The District does not use an encumbrance system and appropriations lapse at the end of each fiscal year.

Certain revenue and expenses were different than budgeted, resulting in a higher than budgeted fund balance. Primarily, Ad valorem property taxes, other income and interest revenue were higher than budgeted, and emergency/contingency equipment and new equipment expenses were less than anticipated.

#### NOTE 8: ADJUSTMENTS TO CONVERT FUND STATEMENTS TO GOVERNMENT-WIDE

Fund balance - general fund	\$4,318,148
Increase net position for capital assets not reported in the fund financial statements	1,061,480
Taxes receivables deferred in the fund financial statements and not in the government-wide financial statements	<u>46,864</u>
Net position - governmental activities	<u>\$5,426,492</u>
Change in fund balance - general fund	\$1,009,770
Depreciation expense not recognized in the fund financial statements	(181,533)
Capital outlay recognized in the fund financial statements and not in the government-wide financial statements	425,321
Gain on sale of capital asset not recognized in the fund statements	(12,103)
Change in taxes receivables deferred in the fund financial statements and not in the government-wide financial statements	<u>6,827</u>
Change in net position - governmental activities	<u>\$1,248,282</u>

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #2**  
**BUDGETARY COMPARSION SCHEDULE**  
**GENERAL FUND**  
**FOR THE YEAR ENDED SEPTEMBER 30, 2022**

	Original Budget	Final Budget	Actual	Variance Favorable (Unfavorable)
<b>GENERAL REVENUES</b>				
Ad Valorem tax revenues	\$ 4,065,978	\$ 4,065,978	\$ 4,151,750	\$ 85,772
Other income	5,000	5,000	85,133	80,133
Interest	1,500	1,500	32,806	31,306
	<u>4,072,478</u>	<u>4,072,478</u>	<u>4,269,689</u>	<u>197,211</u>
<b>EXPENDITURES</b>				
ESD#8 contract	2,176,426	2,243,481	2,243,481	-
Station user fee	550,000	550,000	550,000	-
Emergency/contingency equipment	250,000	250,000	-	250,000
Tax collection fees	30,272	30,272	32,946	(2,674)
Professional services	10,000	10,000	4,589	5,411
Administrative	3,500	3,500	3,582	(82)
Capital outlay	350,000	480,906	425,321	55,585
	<u>3,370,198</u>	<u>3,568,159</u>	<u>3,259,919</u>	<u>308,240</u>
<b>CHANGE IN FUND BALANCE</b>	<u>702,280</u>	<u>504,319</u>	<u>1,009,770</u>	<u>505,451</u>
<b>BEGINNING FUND BALANCE</b>	<u>3,308,378</u>	<u>3,308,378</u>	<u>3,308,378</u>	<u>-</u>
<b>ENDING FUND BALANCE</b>	<u><u>\$ 4,010,658</u></u>	<u><u>\$ 3,812,697</u></u>	<u><u>\$ 4,318,148</u></u>	<u><u>\$ 505,451</u></u>

See independent auditor's report



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Villarreal-Alonzo

Sponsor:

Commissioner Shell

Co-Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Accept the Fiscal Year 2022 Hays County Emergency Services District #3 Audit Report per Texas Health and Safety Code 775.082. **SHELL/INGALSBIE/VILLARREAL-ALONZO**

### Summary

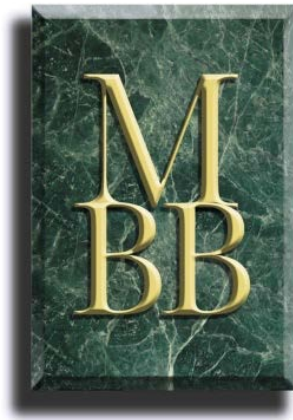
Texas Health and Safety Code 775.082 requires that the District prepare and file with the Commissioners Court by June 1 of each year an audit report of the district's fiscal accounts and records. A 30-day extension was granted to ESD #3 on 5/23/2023 and the District's Audit Report dated June 29, 2023, is attached.

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### Attachments

ESD #3 FY 2022 Final Audit Report





# Montemayor Britton Bender PC

CERTIFIED PUBLIC ACCOUNTANTS

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

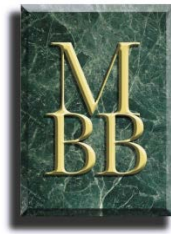
### INDEPENDENT AUDITOR'S REPORT AND FINANCIAL STATEMENTS

DECEMBER 31, 2022

# **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

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**Montemayor Britton Bender PC**  
CERTIFIED PUBLIC ACCOUNTANTS

Board of Commissioners and Management  
Hays County Emergency Services District #3

**INDEPENDENT AUDITOR'S REPORT**

Opinions

We have audited the accompanying financial statements of the governmental activities and each major fund of Hays County Emergency Services District #3 (District), as of and for the year ended December 31, 2022, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the District, as of December 31, 2022, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the District, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Correction of Error

As discussed in Note 9 to the financial statements, certain errors resulted in the understatement of amounts previously reported for accounts receivable and deferred inflows of resources from property taxes as of December 31, 2021. Accordingly, amounts reported for accounts receivable and deferred inflows of resources from property taxes have been restated in the 2021 financial statements, and an adjustment has been made to net position and fund balance as of December 31, 2021. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern

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for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

#### Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

#### Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3-6, and the general fund budgetary comparison schedule on page 21 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Montemayor Brittan Bender PC*

June 29, 2023  
Austin, Texas

**HAY COUNTY EMERGENCY SERVICES DISTRICT #3**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED DECEMBER 31, 2022**

The following is a narrative overview and analysis of the financial activities of the Hays County Emergency Services District #3 ("the District") for the year ended December 31, 2022. Please read it in conjunction with the District's financial statements, which follow this section.

**Financial Highlights**

- The District's property tax revenues for the year totaled \$1,385,668, an increase of \$452,676 over prior year.
- The District's sales tax revenue for the year totaled \$2,211,973, an increase of \$231,602 over the prior year.
- The District incurred an increase in net position of \$1,381,821 for the year.
- Capital assets decreased by \$292,546, due to additions of equipment, furniture and equipment, vehicles, and work in progress of \$305,597, offset by depreciation expense of \$598,143.
- Debt decreased by \$503,776, due to principal payments on existing debt.

**Overview of the Financial Statements**

This annual report consists of three parts—*management's discussion and analysis* (this section), the *basic financial statements*, and *required supplementary information*. The *basic financial statements* include two kinds of statements that present different views of the District. The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data. The statements are followed by a section of *required supplementary information* that further explains and supports the information in the financial statements.

**Government-Wide Financial Statements**

The government-wide financial statements are designed to provide readers with a broad overview of the District's finances in a manner similar to a private sector business reporting on a full accrual basis of accounting.

The *Statement of Net Position* presents information on all of the District's assets and liabilities, with the difference between the two reported as net position. Increases or decreases in net position may serve as a useful indicator of whether the financial position of the District has improved or deteriorated.

The *Statement of Activities* presents information showing how the District's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of the related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in cash flows in future fiscal periods (example: property taxes assessed but uncollected as of 31 days after year-end).

Because the District's principal source of revenue is property and sales taxes, the government-wide financial statements are grouped into one function that is supported by taxes (governmental activities).

**Fund Financial Statements**

A fund is a grouping of related accounts that is used to maintain control and account for resources that have been segregated for specific activities or objectives. The District, like other state and local

**HAY COUNTY EMERGENCY SERVICES DISTRICT #3**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED DECEMBER 31, 2022**

governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal or contractual requirements.

**Governmental Funds:** The General Fund is used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, the governmental funds financial statements focus on current fiscal year cash inflows and outflows, as well as balances of resources available for spending at the end of the fiscal year. Such information may be useful in evaluating the District's recent financing requirements.

Because the focus of the governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for the General Fund with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the District's recent financing decisions. Both the Governmental Funds balance sheet and the Governmental Funds statement of revenue, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between Governmental Fund and government-wide financial statements.

The District maintains two funds, the General Fund and the Debt Service Fund.

**Government-Wide Financial Analysis**

Net position may serve as a useful indicator of the District's financial position. The District's net position (assets plus deferred outflows less liabilities and deferred inflows) was \$9,697,631 as of December 31, 2022. Capital assets, net of depreciation and related debt, accounted for \$6,582,967 or 68% of the total net position. Capital assets reflect the large investments in facilities and equipment that are necessary to provide adequate fire and rescue operations and emergency services to the community. \$2,807,456 of net position of is unrestricted and available to meet the District's ongoing obligations to citizens and creditors. Governmental activities account for all of the changes in net position at the government-wide reporting level as the District has no business-type activities. The tables below summarize the financial position of the District at December 31, 2022 and 2021 and the results of operations for the same years ended.

<u>Assets</u>	<u>12/31/2022</u>	<u>12/31/2021</u>
Current and other assets	\$5,095,174	\$3,657,231
Capital assets, net of accumulated depreciation	<u>7,622,880</u>	<u>7,915,426</u>
Total assets	<u>12,718,054</u>	<u>11,572,657</u>
<u>Liabilities</u>		
Current and other liabilities	354,376	435,418
Long-term liabilities	<u>1,039,913</u>	<u>1,543,689</u>
Total liabilities	<u>1,394,289</u>	<u>1,979,107</u>
<u>Deferred inflows of resources-property taxes</u>	<u>1,626,134</u>	<u>1,277,740</u>
<u>Net position</u>		
Net investment in capital assets, net of debt	6,582,967	6,772,121
Restricted	307,208	303,886
Unrestricted	<u>2,807,456</u>	<u>1,239,803</u>
Total net position	<u>\$9,697,631</u>	<u>\$8,315,810</u>

**HAY COUNTY EMERGENCY SERVICES DISTRICT #3**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED DECEMBER 31, 2022**

<u>Revenues</u>	<u>12/31/2022</u>	<u>12/31/2021</u>
Program revenues:		
Charges for services	\$569,051	\$579,466
Operating grants	49,535	302,944
General revenues:		
Property taxes	1,385,668	932,992
Sales taxes	2,211,973	1,980,371
Other	68,687	60,870
Total revenues	<u>4,284,914</u>	<u>3,856,643</u>
 <u>Expenses</u>		
Fire and emergency services	2,266,041	1,849,168
Depreciation	598,143	600,632
Interest expense	38,909	59,095
Total expenses	<u>2,903,093</u>	<u>2,508,895</u>
 Change in net position	1,381,821	1,347,748
Net position, beginning - restated	<u>8,315,810</u>	<u>6,968,062</u>
Net position, ending	<u>\$9,697,631</u>	<u>\$8,315,810</u>

**Financial Analysis of the Governmental Funds**

The focus of the District's Governmental Funds is to provide information on near-term inflows and outflows and on resource balances available for spending. Such information is useful in assessing the District's financing requirements. In particular, unassigned fund balance serves as a useful measure of the District's net resources available for spending at fiscal year-end.

During the year-ended December 31, 2022, the General Fund reported ending fund balance of \$2,783,016, an increase of \$1,199,341 from the prior year. The District's ending unassigned fund balance was \$2,621,838, which was unencumbered and available for spending at the District's discretion. The District had \$40,000 in committed fund balance at year-end for apparatus repairs.

During the year-ended December 31, 2022, the Debt Service Fund reported ending fund balance of \$302,208, an increase of \$3,322 from the prior year. The District's ending fund balance was restricted for debt service.

**General Fund Budgetary Highlights**

General Fund revenues were \$16,805 under budget, due primarily to \$142,121 less than anticipated interest and other revenues and \$112,990 less than anticipated in grants, offset by sales tax revenues of \$178,823 more than budget and \$78,432 more than anticipated in property taxes. Expenses for the General Fund were \$1,216,146 less than budget. The budget variance resulted primarily from lower than anticipated capital outlay (\$308,951) and general and administrative (\$206,083), offset by \$164,130 in unbudgeted bad debt expenses. Additionally, the budget for contingency reserves of \$805,594 was not used. The variances in all other expenses were not individually significant, but combined were \$59,643 less than budget. The budget was amended during the year to increase the budgets for all revenue streams and to increase the budget for expenses primarily for personnel, apparatus, general and administrative, personal equipment, and contingency reserves.

**HAY COUNTY EMERGENCY SERVICES DISTRICT #3**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**  
**YEAR ENDED DECEMBER 31, 2022**

**Capital Assets**

The District's capital assets, net of accumulated depreciation, were \$7,622,880 at year-end. Capital assets decreased by \$292,546, due to additions of equipment, furniture and equipment, vehicles, and work in progress of \$305,597, offset by depreciation expense of \$598,143.

**Debt**

The District's long-term debt at December 31, 2022, net of the current portion, amounted to \$820,786. The current portion of long-term debt was \$219,127. The debt is collateralized by an interest in sales tax revenues.

**Economic Factors, Future Years' Budgets and Tax Rates**

The October 2022 tax rate of \$.10 per \$100 of assessed valuation for 2023 year remained the same as 2022.

The tax levy for the 2023 year is expected to provide an approximately \$235,000 increase in property tax revenues for the next year. Additionally, the District collects sales tax revenues. The budget for fiscal 2023 sales taxes is \$1,625,000 however, monthly collections for the first four months of 2023 were approximately \$707,000.

The District considers many factors when approving budgets for the next year's activities. With increased tax revenues, the District's budget for operating expenses is expected to increase a proportional amount to support increased services.

**Request for Information**

This financial report is designed to provide a general overview of the finances of the District for all parties with an interest. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to:

Hays County Emergency Services District #3  
3528 Hunter Road  
San Marcos, TX 78666



**HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**  
**STATEMENT OF NET POSITION**  
**DECEMBER 31, 2022**

ASSETS	<u>Governmental Activities</u>
Cash and cash equivalents	\$2,966,769
Due from other governments	637,735
Property taxes receivable, net of allowance of \$6,690	916,154
Sales tax receivable	375,773
Other receivables	77,565
Prepaid expenses and inventory	<u>121,178</u>
	<u>5,095,174</u>
Capital assets:	
Land	126,078
Work in progress	521,131
Other capital assets, net of accumulated depreciation	<u>6,975,671</u>
	<u>7,622,880</u>
	<u>12,718,054</u>
 LIABILITIES	
Accounts payable	16,932
Accrued liabilities	108,890
Texas Fire Academy deposits	228,554
Long-term liabilities:	
Due within one year	219,127
Due in more than one year	<u>820,786</u>
	<u>1,394,289</u>
DEFERRED INFLOWS OF RESOURCES- property taxes levied for subsequent period	<u>1,626,134</u>
NET POSITION	
Net investment in capital assets	6,582,967
Restricted-debt service	307,208
Unrestricted	<u>2,807,456</u>
	<u><u>\$9,697,631</u></u>

The accompanying notes are an integral part of this financial statement presentation.

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

## STATEMENT OF ACTIVITIES

YEAR ENDED DECEMBER 31, 2022

		<u>Program Revenues</u>		Net (Expenses) Revenue and Change in Net Position
Functions/Programs			Operating grants and	
<u>Primary government:</u>	<u>Expenses</u>	<u>Charges for Services</u>	<u>Contributions</u>	<u>Governmental Activities</u>
Government activities:				
General government	\$2,864,184	\$569,051	\$49,535	(\$2,245,598)
Interest expense	<u>38,909</u>	<u>0</u>	<u>0</u>	<u>(38,909)</u>
	<u>\$2,903,093</u>	<u>\$569,051</u>	<u>\$49,535</u>	<u>(2,284,507)</u>
 <u>General Revenues:</u>				
Property taxes				1,385,668
Sales tax				2,211,973
Interest and other				<u>68,687</u>
				<u>3,666,328</u>
Change in net position				1,381,821
Net position- beginning, restated				<u>8,315,810</u>
Net position-ending				<u>\$9,697,631</u>

The accompanying notes are an integral part of this financial statement presentation.

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

## GOVERNMENTAL FUNDS BALANCE SHEET

DECEMBER 31, 2022

	<u>General Fund</u>	<u>Debt Service Fund</u>	<u>Total Governmental Funds</u>
<b>ASSETS</b>			
Cash and cash equivalents	\$2,659,561	\$307,208	\$2,966,769
Due from other governments	637,735	0	637,735
Property taxes receivable, net of allowance of \$6,690	916,154	0	916,154
Sales tax receivable	375,773	0	375,773
Other receivables	77,565	0	77,565
Prepaid expenses and inventory	<u>121,178</u>	<u>0</u>	<u>121,178</u>
	<u>\$4,787,966</u>	<u>\$307,208</u>	<u>\$5,095,174</u>
<b>LIABILITIES</b>			
Accounts payable	\$16,932	\$0	\$16,932
Accrued expenses	74,996	0	74,996
Texas Fire Academy deposits	<u>228,554</u>	<u>0</u>	<u>228,554</u>
	<u>320,482</u>	<u>0</u>	<u>320,482</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Property taxes levied for subsequent period	1,626,134	0	1,626,134
Unavailable revenue – delinquent property taxes	<u>58,334</u>	<u>0</u>	<u>58,334</u>
	<u>1,684,468</u>	<u>0</u>	<u>1,684,468</u>
<b>FUND BALANCES</b>			
Nonspendable	121,178	0	121,178
Restricted- debt service	0	307,208	307,208
Committed -apparatus repairs	40,000	0	40,000
Unassigned	<u>2,621,838</u>	<u>0</u>	<u>2,621,838</u>
	<u>2,783,016</u>	<u>307,208</u>	<u>3,090,224</u>
	<u>\$4,787,966</u>	<u>\$307,208</u>	<u>\$5,095,174</u>

The accompanying notes are an integral part of this financial statement presentation.

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**  
**RECONCILIATION OF GOVERNMENTAL FUNDS BALANCE SHEET**  
**TO STATEMENT OF NET POSITION**  
**DECEMBER 31, 2022**

Total Fund Balances - Governmental Funds	\$3,090,224
Increase net position for capital assets not reported in the fund financial statements	7,622,880
Property taxes to be received more than 60 days after year end are unavailable to be spent and thus are deferred inflows in the fund financial statements.	58,334
Accrued leave not reported in the fund statements as it is not paid with current resources	(32,525)
Long-term debt not reported in the fund statements as it is not paid with current resources	(1,039,913)
Accrued interest not reported in the fund financial statements because it is not payable with current resources	<u>(1,369)</u>
Net Position of Governmental Activities	<u><u>\$9,697,631</u></u>

The accompanying notes are an integral part of this financial statement presentation.

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

## GOVERNMENTAL FUNDS STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCES

YEAR ENDED DECEMBER 31, 2022

	General <u>Fund</u>	Debt Service <u>Fund</u>	Total Governmental <u>Funds</u>
REVENUE			
Property taxes	\$1,383,847	\$0	\$1,383,847
Sales tax	2,211,973	0	2,211,973
Texas Fire Academy charges for service	569,051	0	569,051
Grants	49,535	0	49,535
Interest and other	<u>65,365</u>	<u>3,322</u>	<u>68,687</u>
	<u>4,279,771</u>	<u>3,322</u>	<u>4,283,093</u>
EXPENDITURES			
Current service operations:			
Personnel	1,128,659	0	1,128,659
Texas Fire Academy	237,761	0	237,761
Apparatus	193,605	0	193,605
General and administrative	188,303	0	188,303
Bad debt	164,130	0	164,130
Station repairs, maintenance and supplies	118,369	0	118,369
Training	83,905	0	83,905
Personal equipment	61,090	0	61,090
Communications	57,694	0	57,694
Debt service-principal	503,776	0	503,776
Debt service-interest	37,541	0	37,541
Capital outlay	<u>305,597</u>	<u>0</u>	<u>305,597</u>
	<u>3,080,430</u>	<u>0</u>	<u>3,080,430</u>
Net change in fund balance	1,199,341	3,322	1,202,663
Beginning fund balance, restated	<u>1,583,675</u>	<u>303,886</u>	<u>1,887,561</u>
Ending fund balance	<u>\$2,783,016</u>	<u>\$307,208</u>	<u>\$3,090,224</u>

The accompanying notes are an integral part of this financial statement presentation.

### **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

#### **RECONCILIATION OF STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES**

**YEAR ENDED DECEMBER 31, 2022**

Net Change in Fund Balances - Governmental Funds	\$1,202,663
Change in delinquent tax revenues deferred in the fund statements	1,821
Depreciation expense is not reflected in the governmental funds	(598,143)
Capital outlays recognized as expenditures in the fund statements	305,597
Long-term debt payments recognized as expenditures in the fund statements	503,776
Change in accrued leave not reported in the fund statements	(32,525)
Change in accrued interest on long-term debt not reported in the fund statements	<u>(1,368)</u>
Change in Net Position of Governmental Activities	<u>\$1,381,821</u>

The accompanying notes are an integral part of this financial statement presentation.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 1: REPORTING ENTITY**

The Hays County Emergency Services District #3 (the District) is a political subdivision of the State of Texas formed in July 1998 pursuant to Section 775 of the Texas Health and Safety Code. The District was formed to provide fire and rescue operations and emergency services to the citizens of its District. The District also provides a fire training academy. The District is governed by a five-member Board of Commissioners appointed by the Hays County Commissioners Court. include all parts of Gonzales and Caldwell counties that are over these reservoirs.

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The accounting and reporting policies of the District conform to U.S. generally accepted accounting principles applicable to state and local governments promulgated by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA) and by the Financial Accounting Standards Board (when applicable). The following is a summary of the significant accounting policies.

#### **GOVERNMENT-WIDE FINANCIAL STATEMENTS**

The Statement of Net Position and the Statement of Activities are government-wide financial statements. They report information on all of the District's activities with the interfund activities removed. Governmental activities include programs supported primarily by taxes and fees charged to purveyors.

The Statement of Activities presents a comparison between direct expenses and program revenues for each function of the District's government activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. The District does not allocate indirect expenses in the Statement of Activities. Program revenues include (a) fees, fines, and charges paid by the recipients of goods or services offered by the programs and (b) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues that are not classified as program revenues, including all taxes, are presented as general revenues.

#### **FUND FINANCIAL STATEMENTS**

The District segregates transactions related to certain functions or transactions in separate funds in order to aid financial management and to demonstrate legal compliance. Separate statements are presented for governmental activities. Major funds are determined by criteria specified by GASB. Governmental funds are those funds through which most governmental functions typically are financed. The measurement focus of governmental funds is on the sources, uses, and balance of current financial resources.

The District reports the following major governmental funds:

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

General Fund- the General Fund is the primary operating fund of the District. This fund is used to account for all financial resources not accounted for in other funds. All general tax revenues and other receipts that are not restricted by law or contractual agreement to some other fund are accounted for in this fund.

Debt Service Fund- the Debt Service Fund is used to account for resources accumulated for the payment of principal and interest on long-term debt, as required by the loan agreement associated with the construction of the Hunter Road Station.

#### **MEASUREMENT FOCUS AND BASIS OF ACCOUNTING**

The government-wide financial statements are reported using the flow of economic resources measurement focus and the full accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Taxes are recognized as revenues in the year for which they are levied.

Governmental fund financial statements use the modified accrual basis of accounting. This basis of accounting recognizes revenues in the period in which they become susceptible to accrual, i.e. both measurable and available. Revenues are considered to be available when they are collectible, within the current period or soon enough thereafter to pay liabilities of the current period (defined by the District as collected within 60 days of year end). Expenditures are generally recognized under the modified accrual basis of accounting when the related fund liability is incurred. The reported fund balance of governmental funds is considered a measure of available spendable resources.

#### **RESTRICTED RESOURCES AND FUND BALANCE SPENDING**

When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first and then unrestricted resources as they are needed.

The revenues susceptible to accrual are property taxes, sales tax, charges for services, grants and interest income. All other governmental revenues are recognized when received, as they are deemed immaterial.

#### **CASH AND CASH EQUIVALENTS**

Cash and cash equivalents include cash in demand accounts, certificates of deposit, savings accounts, and short-term highly liquid investments with original maturities of 3 months or less.



## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **PROPERTY TAXES**

The District has the authority to levy a tax to a maximum of \$0.10 per \$100 of value. Ad valorem taxes are levied each October 1 on the assessed valuation of all taxable property in the District. The tax rate for the October 1, 2022 levy was \$0.10 per \$100 of value. Taxes are due upon receipt of the bill and are delinquent if not paid before the first day of February in the year following levy. On January 1 of each year, a tax lien attaches to the property to secure the payment of all taxes, penalties and interest ultimately imposed. Taxes are billed and collected by the Hays County Tax Assessor-Collector.

##### **BUDGET**

The District adopts annual budgets for the General Fund. The District amends the budgets as needed during the year. All annual appropriations lapse at fiscal year-end.

##### **ESTIMATES**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

##### **INVENTORY**

Inventories of consumable supplies are valued at cost using the first in/first out method. The costs of government fund inventories are recorded as expenditures when consumed.

##### **TEXAS FIRE ACADEMY DEPOSITS**

Texas Fire Academy deposits consist of payments made by participants in advance of the applicable training program.

##### **CAPITAL ASSETS**

All capital assets are recorded at historical cost or estimated historical cost if actual historical cost is not available. Donated capital assets are recorded at their estimated fair value at the date of the donation. Repairs and maintenance are recorded as expenditures or expenses; renewals and betterments are capitalized. Depreciation has been calculated on each class of depreciable property using the straight-line method, over 5-30 years.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **DEFERRED INFLOWS OF RESOURCES**

The statement of financial position and governmental funds balance sheet report a separate section for deferred inflows of resources representing an acquisition of net position that applies to a future period and is not recognized as an inflow of resources or revenue until that time.

The District has one type of item which qualifies for reporting in this category- property taxes. The collection of taxes from the October 1, 2022 levy are considered deferred inflows of resources until the subsequent calendar year in the statement of financial position and in the governmental funds balance sheet. Unavailable revenue for delinquent taxes is reported only in the governmental funds balance sheet. These amounts are deferred and recognized as an inflow in the period that they become available.

##### **NET POSITION**

Net position represents the difference between assets, deferred outflows, liabilities and deferred inflows. Net position invested in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition, construction or improvements of those assets. Net position is reported as restricted when there are limitations imposed on its use either through the enabling legislation adopted by the District or through external restrictions imposed by creditors, grantors or laws or regulations of other governments. When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first and then unrestricted resources as they are needed.

##### **FUND BALANCES**

Fund balance of governmental funds is reported in various categories based on the nature of any limitations requiring the use of resources for specific purposes. The District can establish limitations on the use of resources through either a commitment or an assignment. When both unassigned and committed or assigned funds are available for expenditure, committed or assigned funds are used first.

Committed fund balances include amounts that can only be used for specific purposes determined by a formal action of the Board or adoption of an ordinance. Limitations imposed by commitments remain in place until formal Board action is taken to remove the limitation. Amounts in the assigned fund balances are intended to be used by the District for specific purposes but do not meet the criteria to be committed. Assignments are generally temporary and do not require Board action to be taken to remove the assignment.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **TRANSACTIONS BETWEEN FUNDS**

Short-term advances between funds are accounted for in the appropriate interfund receivable and payable accounts. Transactions between funds that would be treated as revenues, expenditures or expenses if they involved organizations external to the government unit are accounted for as revenues, expenditures or expenses in the funds involved. Transactions which constitute reimbursement for expenditures or expenses initially made from a fund which are properly applicable to another fund are recorded as expenditures or expenses in the reimbursing fund, and as reductions of the expenditures or expenses in the fund that is reimbursed.

#### **NOTE 3: DEPOSITS WITH FINANCIAL INSTITUTIONS**

The District does not have a formal investment policy. At year-end, the carrying amount of the District's deposits was \$2,966,769 and the bank balance was \$3,067,935. All of the District's deposits in excess of FDIC coverage were fully collateralized by securities held by the pledging financial institution.

#### **NOTE 4: BUDGET VARIANCES**

Total General Fund revenues were \$16,805 under budget due lower than anticipated interest and other and grants, which were offset by higher than anticipated property and sales taxes. General Fund expenditures were under budget by \$1,216,146, lower than anticipated capital outlay and general and administrative expenditures, offset by unbudgeted bad debt expense. Additionally, budgeted expenditures for contingency reserves of \$805,594 were not incurred. The variances in all other expense line items combined were not significant.

#### **NOTE 5: RELATED PARTY TRANSACTIONS**

The District utilizes a contract financial consultant to perform some of its accounting and related bookkeeping functions. This individual also served on the Board of Commissioners during the year and was paid \$65,000 for services during 2022.

#### **NOTE 6: RISK MANAGEMENT**

The District is exposed to various risks of loss including general liability, property damage, and worker's compensation. The District maintains commercial insurance coverage for these types of risks.

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

## NOTES TO FINANCIAL STATEMENTS

### NOTE 7: CAPITAL ASSETS

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Deletions</u>	<u>Ending Balance</u>
Capital assets not being depreciated:				
Land	\$126,078	\$0	\$0	\$126,078
Work in progress	<u>372,948</u>	<u>206,646</u>	<u>(58,463)</u>	<u>521,131</u>
	<u>499,026</u>	<u>206,646</u>	<u>(58,463)</u>	<u>647,209</u>
Capital assets being depreciated:				
Stations	6,941,447	8,588	0	6,950,035
Equipment	1,830,329	80,167	(17,210)	1,893,286
Trucks, vehicles and boats	3,895,978	45,753	0	3,941,731
Furniture and equipment	177,854	13,513	0	191,367
Computers and software	<u>336,492</u>	<u>9,393</u>	<u>0</u>	<u>345,885</u>
	<u>13,182,100</u>	<u>157,414</u>	<u>(17,210)</u>	<u>13,322,304</u>
	<u>13,681,126</u>	<u>364,060</u>	<u>(75,673)</u>	<u>13,969,513</u>
Accumulated depreciation:				
Stations	(1,765,612)	(231,405)	0	(1,997,017)
Equipment	(1,062,214)	(143,260)	17,210	(1,188,264)
Trucks, vehicles and boats	(2,563,867)	(195,589)	0	(2,759,456)
Furniture and equipment	(155,055)	(7,380)	0	(162,435)
Computers and software	<u>(218,952)</u>	<u>(20,509)</u>	<u>0</u>	<u>(239,461)</u>
	<u>(5,765,700)</u>	<u>(598,143)</u>	<u>17,210</u>	<u>(6,346,633)</u>
	<u>\$7,915,426</u>	<u>(\$234,083)</u>	<u>(\$58,463)</u>	<u>\$7,622,880</u>

Depreciation was charged to functions within the primary government as follows:

General administration	\$564,154
Texas Fire Academy	<u>33,989</u>
	<u>\$598,143</u>

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

## NOTES TO FINANCIAL STATEMENTS

### NOTE 8: LONG-TERM LIABILITIES

<u>Asset Acquired</u>	<u>Original Issue</u>	<u>Maturity</u>	<u>Interest Rate</u>	<u>Beginning Balance</u>	<u>Additions</u>	<u>Payments</u>	<u>Ending Balance</u>
Hunter Rd. Station	<u>\$2,032,599</u>	2029	3%	<u>\$1,543,689</u>	<u>\$0</u>	<u>\$503,776</u>	\$1,039,913
						Less: Current Portion	<u>(219,127)</u>
						Long-term Portion	<u>\$820,786</u>

Maturities at December 31:	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2023	\$219,127	\$24,088	\$243,215
2024	221,495	21,719	243,214
2025	228,232	14,982	243,214
2026	235,173	8,041	243,214
2027	<u>135,886</u>	<u>5,989</u>	<u>141,875</u>
	<u>\$1,039,913</u>	<u>\$74,819</u>	<u>\$1,114,732</u>

The District's long-term debt is secured by the assignment of Ad Valorem property taxes and the required establishment of a debt service fund equivalent to the payments due during the next fiscal year. Accordingly, \$307,208 is reported as restricted fund balance in the statement of net position and the governmental funds balance sheet. The District was in compliance with all requirements of the loan agreement at year-end.

### NOTE 9: PRIOR PERIOD ADJUSTMENT

At December 31, 2021, accounts receivable were understated by \$1,439,144, deferred inflows of resources related to property taxes were understated by \$1,277,740 and net position was understated by \$161,404 in the government-wide statement of net position. The change in unrestricted net position was understated by the same amount. A prior period adjustment was recorded to correct beginning unrestricted net position.

Beginning net position, as previously reported	\$8,154,406
Prior period adjustment	<u>161,404</u>
Beginning net position, as restated	<u>\$8,315,810</u>

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #3

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 9: PRIOR PERIOD ADJUSTMENT

At December 31, 2021, accounts receivable were understated by \$1,439,144, deferred inflows of resources related to property taxes were understated by \$1,277,740, unearned revenue was understated by \$291,853, and unassigned fund balance was overstated by \$130,449 in the governmental funds balance sheet. The change in unassigned fund balance was understated by the same amount. A prior period adjustment was recorded to correct beginning unassigned fund balance.

Beginning fund balance, as previously reported	\$2,018,010
Prior period adjustment	<u>(130,449)</u>
Beginning fund balance, as restated	<u>\$1,887,561</u>

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #3**  
**GENERAL FUND BUDGETARY COMPARISON SCHEDULE**  
**YEAR ENDED DECEMBER 31, 2022**

	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual</u>	Variance Favorable (Unfavorable)
<b>REVENUE</b>				
Property taxes	\$1,288,166	\$1,305,415	\$1,383,847	\$78,432
Sales tax	1,500,000	2,033,150	2,211,973	178,823
Texas Fire Academy charges for service	575,000	588,000	569,051	(18,949)
Grants	32,500	162,525	49,535	(112,990)
Interest and other	<u>39,300</u>	<u>207,486</u>	<u>65,365</u>	<u>(142,121)</u>
	<u>3,434,966</u>	<u>4,296,576</u>	<u>4,279,771</u>	<u>(16,805)</u>
<b>EXPENDITURES</b>				
Current service operations:				
Personnel	1,028,800	1,093,150	1,128,659	(35,509)
Texas Fire Academy	281,600	282,125	237,761	44,364
Apparatus	105,000	176,000	193,605	(17,605)
General and administrative	168,400	394,386	188,303	206,083
Bad debt	0	0	164,130	(164,130)
Station repairs, maintenance and supplies	115,500	118,000	118,369	(369)
Training	62,300	75,700	83,905	(8,205)
Personal equipment	90,000	121,000	61,090	59,910
Communications	73,000	65,500	57,694	7,806
Contingency reserves	357,193	805,594	0	805,594
Debt service-principal	503,785	503,803	503,776	27
Debt service-interest	49,388	46,770	37,541	9,229
Capital outlay	<u>600,000</u>	<u>614,548</u>	<u>305,597</u>	<u>308,951</u>
	<u>3,434,966</u>	<u>4,296,576</u>	<u>3,080,430</u>	<u>1,216,146</u>
Net change in fund balance	<u>0</u>	<u>0</u>	<u>1,199,341</u>	<u>1,199,341</u>
Beginning fund balance, restated	<u>1,583,675</u>	<u>1,583,675</u>	<u>1,583,675</u>	<u>1,583,675</u>
Ending fund balance	<u>\$1,583,675</u>	<u>\$1,583,675</u>	<u>\$2,783,016</u>	<u>\$2,783,016</u>

See independent auditor's report.



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Villarreal-Alonzo

Sponsor:

Commissioner Smith

Co-Sponsor:

Commissioner Shell

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### Agenda Item

Accept the Fiscal Year 2022 Hays County Emergency Services District #6 Audit Report per Texas Health and Safety Code 775.082. **SMITH/SHELL/VILLARREAL-ALONZO**

### Summary

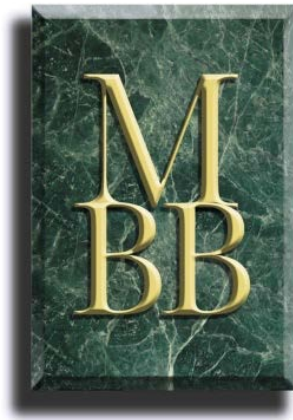
Texas Health and Safety Code 775.082 requires that the District prepare and file with the Commissioners Court by June 1 of each year an audit report of the district's fiscal accounts and records. The District's Audit Report dated May 11, 2023 is attached.

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### Attachments

ESD #6 FY 2022 Audit Report





# Montemayor Britton Bender PC

CERTIFIED PUBLIC ACCOUNTANTS

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**

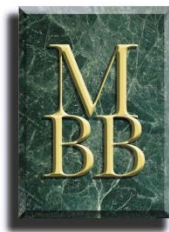
### **INDEPENDENT AUDITOR'S REPORT AND FINANCIAL STATEMENTS**

**SEPTEMBER 30, 2022**

# **HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**

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**Montemayor Britton Bender PC**  
CERTIFIED PUBLIC ACCOUNTANTS

Board of Fire Commissioners and Management  
Hays County Emergency Services District #6

**INDEPENDENT AUDITOR'S REPORT**

Opinions

We have audited the accompanying financial statements of the governmental activities and the general fund of the Hays County Emergency Services District #6 (District), as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the aggregate general fund of the District, as of September 30, 2022 and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the District, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions.

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Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, the schedule of changes in the net pension liability and related ratios, the schedule of contributions, and budgetary comparison information be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Montemayor Britton Bender PC

May 11, 2023  
Austin, Texas

**HAYS COUNTY EMERGENCY SERVICES DISTRICT # 6  
MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)  
SEPTEMBER 30, 2022**

The following is a narrative overview and analysis of the financial activities of Hays County Emergency Services District # 6 ("the District") for the fiscal year ended September 30, 2022. This discussion and analysis are intended to serve as an introduction to the District's basic financial statements, which have the following components: (1) management's discussion and analysis (MD&A), (2) government-wide and fund financial statements, (3) notes to the financial statements, and (4) supplemental schedules.

**Financial Highlights**

- The District's ad valorem tax rate increased to 8.033¢ per \$100 of assessed valuation for the fiscal year ended September 30, 2022. The statutory limit, as established by the State of Texas constitution, is 10¢ per \$100 of assessed valuation.
- Overall the district incurred a net increase to net position of \$4,124,463. The increase was due to increased ad valorem and sales tax revenue, as well as increased operating grants, interest and other income. Total expenses increased by \$1,753,148 from prior year mainly due to increased salaries, depreciation, and interest expense.
- Total assets increased by \$5,071,827, primarily as a result of an increase to capital assets.
- The District decreased its lease and loan debt by \$1,946,730.

**Explanation of the Financial Statements**

The MD&A is intended to serve as an introduction to the basic financial statements of the District. The basic financial statements are comprised of two components: 1) government-wide and fund financial statements, and 2) notes to the financial statements. This report also contains other required supplementary information in addition to the basic financial statements.

**Government-Wide Financial Statements**

The government-wide financial statements are designed to provide readers with a broad overview of the District's finances in a manner similar to a private sector business reporting on a full accrual basis of accounting.

The *Statement of Net Position* presents information on all of the District's assets, deferred outflows, liabilities, and deferred inflows, with the difference between them reported as net position. Increases or decreases in net position may serve as a useful indicator of whether the financial position of the District has improved or deteriorated.

The *Statement of Activities* presents information showing how the District's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of the related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in cash flows in future fiscal periods (example: uncollected property taxes).

Because the District's principal source of revenue is ad valorem and sales taxes, the government-wide financial statements are grouped into one function that is supported by taxes (governmental activities).

**HAYS COUNTY EMERGENCY SERVICES DISTRICT # 6  
MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)  
SEPTEMBER 30, 2022**

**Fund Financial Statements**

A fund is a grouping of related accounts that is used to maintain control and account for resources that have been segregated for specific activities or objectives. The District, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal or contractual requirements. The District has one fund, the Governmental Fund.

**Governmental Fund:** The Governmental Fund is used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, the Governmental Fund financial statements focus on current fiscal year cash inflows and outflows, as well as balances of resources available for spending at the end of the fiscal year. Such information may be useful in evaluating the District's recent financing requirements.

Because the focus of the Governmental Fund is narrower than that of the government-wide financial statements, it is useful to compare the information presented for the Governmental Fund with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the District's recent financing decisions. Both the Governmental Fund balance sheet and the Governmental Fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between Governmental Fund and government-wide financial statements.

**Government-Wide Financial Analysis**

Net position may serve as a useful indicator of the District's financial position. The District's net position (assets and deferred outflows less liabilities and deferred inflows) was \$20,586,194 as of the year ended September 30, 2022. Capital assets, net of depreciation and related debt, accounted for \$8,304,885. Capital assets reflect the large investments in facilities and equipment that are necessary to provide adequate fire suppression services to the community. The remaining balance of net position of \$12,281,309 is unrestricted and available to meet the District's ongoing obligations to citizens and creditors. Governmental activities account for all of the changes in net position at the government-wide reporting level because the District engages in no business-type activities. The tables below summarize the financials of the District at September 30, 2022.

**HAYS COUNTY EMERGENCY SERVICES DISTRICT # 6**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)**  
**SEPTEMBER 30, 2022**

	September 30,	
	2022	2021
Assets:		
Current and Other Assets	\$ 12,975,531	\$ 10,856,325
Non Current and Capital Assets	18,460,644	15,508,023
Total Assets	31,436,175	26,364,348
Deferred Outflows related to pensions	876,019	618,398
Current Liabilities	360,044	469,031
Other Liabilities	10,969,014	9,866,281
Total Liabilities	11,329,058	10,335,312
Deferred Inflows related to pensions	396,942	185,703
Net Position:		
Net Investments in Cap Assets	8,304,885	6,295,533
Unrestricted	12,281,309	10,166,198
Total Net Position	\$ 20,586,194	\$ 16,461,731
Revenues:		
Ad valorem tax revenue	\$ 7,037,676	\$ 6,396,527
Grants and other income	849,609	229,808
Interest Income	92,460	9,287
Sales Tax Revenue	3,480,558	3,453,438
Total Revenues	11,460,303	10,089,060
Expenses:		
Public Safety	7,048,046	5,284,708
Interest on Long-term Debt	287,794	297,984
Total Expenses	7,335,840	5,582,692
Increase in Net Position	4,124,463	4,506,368
Net Position, beginning of year	16,461,731	11,955,363
Net Position, end of year	\$ 20,586,194	\$ 16,461,731

**HAYS COUNTY EMERGENCY SERVICES DISTRICT # 6  
MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)  
SEPTEMBER 30, 2022**

**Financial Analysis of the Governmental Fund**

The focus of the District's Governmental Fund is to provide information on near-term inflows and outflows and on resource balances available for spending. Such information is useful in assessing the District's financing requirements. In particular, unassigned fund balance serves as a useful measure of the District's net resources available for spending at fiscal year-end.

During the fiscal year ending September 30, 2022, the District's only Governmental Fund was the General Fund, and it reported an ending cash and short-term investments balance of \$11,880,514, an increase of \$1,753,277 from September 30, 2021. The total ending unassigned fund balance was \$5,698,169, and it was available for spending at the District's discretion. The ending committed fund balances were \$6,448,832, committed for reserves, capital projects and debt service.

**Purpose of Organization**

The District operates under the provisions of Chapter 775 of the Health and Safety Code. The District was established to arrange for fire and rescue protection services within its boundaries. The district handles all financial matters for the fire departments. The District governs six fire stations located in the county: North Hays, Henly, Henly South, East, Central and Driftwood. The District has both paid and volunteer staff and is funded primarily by the collection of taxes.

**General Fund Budgetary Highlights**

The budget variance for the General Fund's excess of revenues over expenditures was \$1,679,328. The reasons for the budget difference included the following:

- Ad Valorem and Sales Tax Revenue were greater than expected.
- Operating grants, interest and other income were greater than expected.
- Operations expenses were less than anticipated, while capital outlay and debt service were more than budgeted.
- The District had \$2,890,000 in unbudgeted proceeds from debt.

**Capital Assets**

The District's investment in capital assets at September 30, 2022, net of accumulated depreciation, totaled \$18,460,644, an increase of \$2,952,621. Capital assets are classified as trucks and equipment, furniture, buildings, land, and construction in progress as shown below:



**HAYS COUNTY EMERGENCY SERVICES DISTRICT # 6  
MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)  
SEPTEMBER 30, 2022**

	September 30, 2022	2021
Trucks and Equipment	\$ 4,333,939	\$ 3,437,139
Furniture	877,538	629,405
Buildings	9,251,820	9,386,584
Land	3,871,239	2,032,465
Construction in Progress	126,108	22,430
	<u>\$18,460,644</u>	<u>\$ 15,508,023</u>

**Equipment:** Equipment is primarily comprised of fire suppression apparatus and the equipment associated with those apparatus. The construction work in progress relates to the down payment made prior to year end on a new truck to be completed in approximately six to eight months.

**Buildings:** Buildings are comprised principally of six fire stations.

**Land:** The District's investment in land at September 30, 2022 of \$3,871,239 was for five tracts of land. One three acre tract was purchased for \$57,000 on which the North Station was constructed. The other tract was purchased for \$9,696, on which the Henly South Fire Station was constructed. In prior years the district received \$262,670 in contributed property from the North Hays County VFD for land for the expansion and building of new admin offices. The land for the Henly Station and the Driftwood Station was donated to the Henly Volunteer Fire Department and the Driftwood Volunteer Fire Department, respectively. The District has ground leases with each department for use of the land for the respective fire stations. The East Station was built in a condominium association development, and the land for the building was included in the cost of the building. In fiscal year 2018 land was purchased for the new East Station 74 for \$303,646. Land for Station 77 was purchased for \$1,399,453 and is the future site of a training facility.

**Long-Term Debt**

The District's long-term debt at September 30, 2022, net of the current portion, totaled \$9,190,003 for loans and mortgages. The current portion of the long-term debt was \$965,756. Fire stations and fire apparatus are pledged as collateral.

**Debt Service Ratio:** The District maintains control over its debt load by maintaining its debt service to total revenues ratio (the "Debt Service Ratio") at 35% or less with the ad valorem tax rate at 8.033¢ per \$100 of assessed valuation. The District feels that the Debt Service Ratio is more meaningful than the debt to equity ratio because the Debt Service Ratio is a better indicator of the District's ability to service the debt and still be able to pay annual operating expenses. The District's Debt Service Ratio is shown below:

**HAYS COUNTY EMERGENCY SERVICES DISTRICT # 6  
MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)  
SEPTEMBER 30, 2022**

	September 30,		
	2022	2021	2020
Total Debt Service	\$ 2,234,525	\$ 1,215,190	\$ 1,791,233
Total Revenues	11,460,303	10,089,060	8,174,589
Debt Service Ratio	19.50%	12.04%	21.91%

**Economic Factors, Future Years' Budgets and Tax Rates**

North Hays County continues to grow, which provides some property tax revenue growth to offset inflationary trends in operating costs. As with many local government entities, the growth provides funding to help offset inflationary trends with existing programs, but it often leaves little funds available for new or enhanced programs or services.

The tax rate of 8.033¢ per \$100 of assessed valuation can be maintained at the current level of paid vs. volunteer firefighters. However, as the growth of the population overtakes the ability of volunteers to provide the level of service required by the community, the District will need to assess a higher tax rate to pay for the cost of a larger paid staff. The maximum tax rate available to the District is 10¢ per \$100 of assessed valuation.

Therefore, the District is paying close attention to the balance between debt service, operating cost and labor costs to continue the operations needed in the community.

**Requests for Information**

This financial report is designed to provide a general overview of the District's finances for all those with an interest in them. Questions concerning any of the information provided in this report or requests for additional information should be addressed to:

Hays County ESD #6  
PO Box 112  
Dripping Springs, TX 78620

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**  
**STATEMENT OF NET POSITION AND GOVERNMENTAL FUNDS BALANCE SHEET**  
**SEPTEMBER 30, 2022**

	General Fund	Adjustments (Note 9)	Statement of Net Position
<b>ASSETS</b>			
Cash	\$ 540,527		\$ 540,527
Short-term investments	11,339,987		11,339,987
Sales taxes receivable	626,531		626,531
Ad Valorem property taxes receivable	100,987		100,987
Grants receivable	367,499		367,499
Capital assets:			
Land and construction in progress	-	3,997,347	3,997,347
Other capital assets, net of depreciation	-	14,463,297	14,463,297
	-		18,460,644
	<u>12,975,531</u>		<u>31,436,175</u>
<b>DEFERRED OUTFLOWS OF RESOURCES</b>			
Differences between actual and expected experience	-	302,956	302,956
Difference actual and projected plan earnings	-	74,446	74,446
Changes of assumptions	-	258,434	258,434
Contributions subsequent to measurement date	-	240,183	240,183
	-		876,019
	<u>\$ 12,975,531</u>		
<b>LIABILITIES</b>			
Accounts payable	\$ 256,920		256,920
Accrued interest payable		153,090	153,090
Accrued payroll and benefits	103,124		103,124
Long-term liabilities:			
Due within 1 year: loans payable		965,756	965,756
Due in more than 1 year:			
Loans payable	-	9,190,003	9,190,003
Accrued leave	-	258,766	258,766
Net pension liability-TCDRS	-	199,531	199,531
Net pension liability-TESRS	-	201,868	201,868
	<u>360,044</u>		<u>11,329,058</u>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Differences between expected and actual experience	-	68,132	68,132
Net difference between actual and projected plan earnings	-	323,596	323,596
Changes of assumptions	-	5,214	5,214
Unavailable revenue - Ad Valorem taxes	100,987	(100,987)	-
Unavailable revenue - operating grants	367,499	(367,499)	-
	<u>468,486</u>		<u>396,942</u>
<b>FUND BALANCES/NET POSITION</b>			
<b>FUND BALANCES</b>			
Fund balance - committed for reserve funds	4,448,848	(4,448,848)	
Fund balance - committed for capital projects	1,841,122	(1,841,122)	
Fund balance - committed for debt service	158,862	(158,862)	
Fund balance - unassigned	5,698,169	(5,698,169)	
	<u>12,147,001</u>	<u>(12,147,001)</u>	
	<u>\$ 12,975,531</u>	<u>(12,975,531)</u>	
<b>NET POSITION</b>			
Net investment in capital assets		8,304,885	8,304,885
Unrestricted		12,281,309	12,281,309
			<u>\$ 20,586,194</u>

The accompanying notes are an integral part of this financial statement presentation

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**  
**STATEMENT OF ACTIVITIES AND GOVERNMENTAL FUNDS STATEMENT**  
**OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES**  
**YEAR ENDED SEPTEMBER 30, 2022**

	General Fund	Adjustments (Note 9)	Statement of Activities
<b>EXPENDITURES/EXPENSES:</b>			
Labor and benefits			
Salaries & wages	\$ 3,286,014	\$ 46,191	\$ 3,332,205
Employee benefits	433,547	(86,199)	347,348
Medical	248,316		248,316
Payroll processing	19,646		19,646
Payroll taxes	249,057		249,057
	<u>4,236,580</u>		<u>4,196,572</u>
Fire department operations			
Administrative	3,452		3,452
Buildings	93,902		93,902
Fire/Rescue operations	473,260		473,260
Depreciation	-	1,196,105	1,196,105
Training	99,224		99,224
Vehicle operations	353,482		353,482
Utilities	95,304		95,304
	<u>1,118,624</u>		<u>2,314,729</u>
District expenses			
Communications	41,897		41,897
Computer and internet	74,284		74,284
Dues	102,868		102,868
Insurance	196,334		196,334
Office expenses	16,204		16,204
Professional services	37,221		37,221
Tax services	67,937		67,937
	<u>536,745</u>		<u>536,745</u>
Capital outlay	<u>4,148,726</u>	(4,148,726)	<u>-</u>
Debt service			
Interest expense	315,813	(28,019)	287,794
Principal payments	1,946,730	(1,946,730)	-
	<u>2,262,543</u>		<u>287,794</u>
	<u>12,303,218</u>		<u>7,335,840</u>
<b>GENERAL REVENUES:</b>			
Ad Valorem taxes	7,037,828	(152)	7,037,676
Sales taxes	3,480,558		3,480,558
Operating grants	107,038	367,499	474,537
Interest	92,460		92,460
Other	375,072		375,072
	<u>11,092,956</u>		<u>11,460,303</u>
Revenue over/(under) expenditures	(1,210,262)		4,124,463
<b>OTHER FINANCING SOURCES:</b>			
Proceeds from debt	2,890,000	(2,890,000)	-
Net change in fund balance/net position	1,679,738		4,124,463
Beginning fund balance/net position	10,467,263		16,461,731
Ending fund balance/net position	<u>\$ 12,147,001</u>		<u>\$ 20,586,194</u>

The accompanying notes are an integral part of this financial statement presentation

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 1: ORGANIZATION**

The Northwest Hays County Rural Fire Prevention District #4 was confirmed by election in July 1984 and effectively began operations on July 1, 1985. On July 28, 2001 the District converted the Northwest Hays County Rural Fire Prevention District #4 to the Northwest Hays County Emergency Services District #5 and then on October 1, 2006, the District was renamed as the Hays County Emergency Services District #6 (the District) and is operating under the provisions of Chapter 775 of the Health and Safety Code. The District was established to arrange for fire and rescue protection services within its boundaries. The District handles all financial matters for the fire departments. The District is not included in any other governmental reporting entity.

On October 13, 2004, Hays County Fire & Rescue (HCFR) was incorporated under section 501(c)(3) of the Internal Revenue code. As of October 1, 2007 the HCFR was dissolved and all assets and liabilities of became the responsibility of the District.

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The accounting policies of the District conform to U.S. generally accepted accounting principles applicable to governments promulgated by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA). The following is a summary of the significant accounting policies.

#### **GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS**

The District is considered a special purpose government under GASB Statement No. 34. This allows the District to present the required fund and government-wide statements in a single schedule. The requirement for fund financial statements to be prepared on the modified accrual basis of accounting is met with the "General Fund" column. An adjustment column includes those entries needed to convert to the full accrual basis government-wide statements. The Statement of Net Position and the Statement of Activities are government-wide financial statements. They report information on all of the District's activities. The District services are supported primarily by ad valorem taxes. The Statement of Activities demonstrates how the District used revenue. Expenses are grouped into four categories: labor and benefits, fire department operations, district expenses and debt service.

#### **MEASUREMENT FOCUS, BASIS OF ACCOUNTING AND FINANCIAL STATEMENT PRESENTATION**

The government-wide financial statements are presented using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **MEASUREMENT FOCUS, BASIS OF ACCOUNTING AND FINANCIAL STATEMENT PRESENTATION**

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the District considers all revenues available if they are collectible within 31 days after year- end. Expenditures are recognized in the accounting period in which the liability is incurred. Interest and tax revenues associated with the current fiscal year are considered susceptible to accrual and have been recognized as revenues in the current fiscal year. All other revenue is considered measurable and available only when cash is received by the District.

##### **COMPENSATED ABSENCES**

Full-time regular employees work a 40 hour per week schedule. Firefighters are scheduled based on either a day shift or 48 / 96 hour shift schedule. Accruals for leave are based on length of service and the schedule worked. Employees may accrue up to 288 hours of paid leave. If unused, the leave will be paid to the employee.

##### **ESTIMATES**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

##### **NET POSITION**

Net position represents the difference between assets, deferred outflows, liabilities and deferred inflows. Net position invested in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition, construction or improvements of those assets. Net position is reported as restricted when there are limitations imposed on its use either through the enabling legislation adopted by the District or through external restrictions imposed by creditors, grantors or laws or regulations of other governments. When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first and then unrestricted resources as they are needed.

# **HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**

## **NOTES TO FINANCIAL STATEMENTS**

### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

#### **FUND BALANCES**

Fund balance of governmental funds is reported in various categories based on the nature of any limitations requiring the use of resources for specific purposes. The District can establish limitations on the use of resources through either a commitment or an assignment. When both unassigned and committed or assigned funds are available for expenditure, committed or assigned funds are used first.

Committed fund balances include amounts that can only be used for specific purposes determined by a formal action of the Board or adoption of an ordinance. Limitations imposed by commitments remain in place until formal Board action is taken to remove the limitation. Amounts in the assigned fund balances are intended to be used by the District for specific purposes but do not meet the criteria to be committed. Assignments are generally temporary and do not require Board action to be taken to remove the assignment.

#### **CAPITAL ASSETS**

All capital assets are recorded at historical cost (or estimated historical cost) and updated for additions and retirements during the year. The District maintains a capitalization threshold of \$2,500 for assets with a useful life of two years or more. The District does not possess any infrastructure. Improvements are capitalized. The cost of normal repairs and maintenance that do not add to the value of the asset or materially extend the asset's life are recorded as expenses. Depreciation is calculated on a straight-line basis. Estimated useful lives are as follows:

Trucks and equipment	10 years
Furniture and equipment	10 years
Building	25-40 years

#### **DEFERRED OUTFLOWS/INFLOWS OF RESOURCES**

The statement of net position and governmental funds balance sheet report a separate section for deferred outflows of resources representing a consumption of net position that applies to a future period and is not recognized as an outflow of resources in the current period. The District's pension related items qualify for reporting in this category in the government-wide financial statements. See Note 10 for more information.

The statement of financial position and governmental funds balance sheet report a separate section for deferred inflows of resources representing an acquisition of net position that applies to a future period and is not recognized as an inflow of resources or revenue until that time. The District has two types of items which qualify for reporting in this category. Unavailable revenue is reported only in the governmental funds balance sheet.

## **HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**

### **NOTES TO FINANCIAL STATEMENTS**

#### **NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The governmental funds report unavailable revenue from property taxes. These amounts are deferred and recognized as an inflow in the period that they become available. The other item is pension related items reported in the government-wide financial statements. See Note 10 for more information.

#### **PENSIONS**

For purposes of measuring the net pension liability and deferred outflows/inflows of resources related to pensions, and the pension expense, information about the pension plan's fiduciary net position of the Texas County & District Retirement System (TCDRS) and the Texas Emergency Services Retirement System (TESRS) and additions to/deductions from those plans' fiduciary net position have been determined on the same basis as they are reported by TCERS and TESRS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments of TCERS and TESRS are reported at fair value.

#### **NOTE 3: DEPOSITS**

At September 30, 2022, the carrying amount of the District's cash deposits was \$540,527 and the bank balance was \$549,157. All of the District's deposits were fully collateralized with securities held by the pledging financial institution.

#### **NOTE 4: INVESTMENTS**

The Board of Fire Commissioners has authorized the District under a written investment policy to invest funds in compliance with V.A.T.C.S Government Code, Title 10, Chapter 2256 (the Public Funds Investment Act of 1993). Investment vehicles authorized by Chapter 2256 include, but are not limited to, certificates of deposit, obligations backed by the U.S. and state governments, and public fund investment pools. All investments at year end were held in the Texas Local Government Investment Pool (TexPool). TexPool investments are carried at amortized cost, which approximates fair value. The State Comptroller oversees TexPool, with Federated Investors managing the daily operations of the pool under a contract with the State Comptroller. TexPool is a 2(a)7 like fund, which means that it is structured similar to a money market mutual fund. It allows shareholders the ability to deposit or withdraw funds on a daily basis. Such funds seek to maintain a constant net asset value of \$1.00, although this cannot be fully guaranteed. TexPool is rated AAAM (the highest rating a local government investment pool can achieve) and must maintain a dollar weighted average maturity not to exceed 60 days, which is the limit. At September 30, 2022, the TexPool portfolio and the TexPool Prime portfolio had weighted average maturities of 25 and 14 days, respectively. However, the District considers the holdings in these funds to have a one day weighted average maturity because the share position can usually be redeemed each day at the discretion of the shareholder, unless there has been a significant change in value.



# HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

## NOTES TO FINANCIAL STATEMENTS

### NOTE 5: CAPITAL ASSETS

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Deletions</u>	<u>Ending Balance</u>
<u>Capital assets not being depreciated:</u>				
Land	\$2,032,465	\$1,838,774	\$0	\$3,871,239
Construction work in progress	<u>22,430</u>	<u>103,678</u>	<u>0</u>	<u>126,108</u>
	<u>2,054,895</u>	<u>1,942,452</u>	<u>0</u>	<u>3,997,347</u>
<u>Capital assets being depreciated:</u>				
Trucks and equipment	8,835,551	1,667,639	0	10,503,190
Furniture and equipment	1,258,260	407,018	0	1,665,278
Buildings	<u>10,611,013</u>	<u>131,617</u>	<u>0</u>	<u>10,742,630</u>
	<u>20,704,824</u>	<u>2,206,274</u>	<u>0</u>	<u>22,911,098</u>
<u>Accumulated depreciation:</u>				
Trucks and equipment	(5,398,412)	(770,839)	0	(6,169,251)
Furniture and equipment	(628,855)	(158,885)	0	(787,740)
Buildings	<u>(1,224,429)</u>	<u>(266,381)</u>	<u>0</u>	<u>(1,490,810)</u>
Total accumulated depreciation	<u>(7,251,696)</u>	<u>(1,196,105)</u>	<u>0</u>	<u>(8,447,801)</u>
Total capital assets	<u>\$15,508,023</u>	<u>\$2,952,621</u>	<u>\$0</u>	<u>\$18,460,644</u>

### NOTE 6: BUDGET VARIANCES

The District adopts an annual budget for the General Fund. The District amends the budget as needed during the year. There were no current year amendments. Certain revenue and expenses were different than budgeted, resulting in a higher than budgeted fund balance. Ad valorem, sales tax revenues, operating grants, interest and other income were higher than budgeted. Operations expenditures were less than anticipated and capital outlay and debt service were more than anticipated, which was offset largely by proceeds from debt.

### NOTE 7: PROPERTY TAXES

The District has the authority to levy a tax to a maximum of \$0.10 per \$100 of value. Ad valorem taxes are levied each October 1 on the assessed valuation of all taxable property in the District. The tax rate for the October 1, 2021 levy was \$0.08033 per \$100 of value. Taxes are due upon receipt of the bill and are delinquent if not paid before the first day of February in the year following levy. On January 1 of each year, a tax lien attaches to the property to secure the payment of all taxes, penalties and interest ultimately imposed. Taxes are billed and collected by the Hays County Tax Assessor-Collector.

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

## NOTES TO FINANCIAL STATEMENTS

### NOTE 8: LONG-TERM LIABILITIES

<u>Loans</u>	<u>Original Issue</u>	<u>Maturity</u>	<u>Interest Rate</u>	<u>Beginning Balance</u>	<u>Additions</u>	<u>Payments</u>	<u>Ending Balance</u>
95060	\$292,000	2022	2.75%	\$22,352	\$0	\$22,352	\$0
8385	650,000	2025	3.80%	481,181	0	89,231	391,950
8461	1,750,000	2025	3.80%	1,295,486	0	1,295,486	0
2928	870,000	2028	2.79%	767,507	0	101,792	665,715
8862	580,662	2024	2.85%	470,963	0	112,869	358,094
362912	6,500,000	2040	2.85%	6,175,000	0	325,000	5,850,000
369668	1,800,000	2032	3.12%	0	1,800,000	0	1,800,000
369666	<u>1,090,000</u>	2026	2.50%	<u>0</u>	<u>1,090,000</u>	<u>0</u>	<u>1,090,000</u>
	<u>\$13,532,662</u>			<u>\$9,212,489</u>	<u>\$2,890,000</u>	<u>\$1,946,730</u>	<u>\$10,155,759</u>

All loans are secured by the underlying asset (property or equipment) acquired. The loan agreements have provisions that change the timing of repayment of outstanding amounts to become immediately due if the District defaults on its required payments. Maturities of long-term debt as of September 30, 2022 are as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2023	\$965,756	\$297,630	\$1,263,386
2024	984,002	270,430	1,254,432
2025	1,003,246	241,313	1,244,559
2026	896,549	212,315	1,108,864
2027	515,740	186,338	702,078
2028-2032	3,190,466	536,733	3,727,199
2033-2037	1,625,000	281,863	1,906,863
2038-2040	<u>975,000</u>	<u>56,372</u>	<u>1,031,372</u>
	<u>\$10,155,759</u>	<u>\$2,082,994</u>	<u>\$12,238,753</u>

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Deletions</u>	<u>Total</u>
Accrued leave	<u>\$212,575</u>	<u>\$243,036</u>	<u>(\$196,845)</u>	<u>\$258,766</u>

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 9: ADJUSTMENTS TO CONVERT FUND STATEMENTS TO GOVERNMENT-WIDE

Fund balance - general fund	\$12,147,001
Increase net position for capital assets not reported in the fund financial statements	18,460,644
Taxes receivable deferred in the fund financial statements and not in the government-wide financial statements	100,987
Grants receivable deferred in the fund financial statements and not in the government-wide financial statements	367,499
Long-term liabilities not reported in the fund financial statements	(10,815,924)
Accrued interest expense on long-term debt not reported in the fund financial statements	(153,090)
Deferred outflows and inflows of resources related to pensions, net, are applicable to future reporting periods and are not reported in the fund financial statements	<u>479,077</u>
Net position - governmental activities	<u>\$20,586,194</u>
Net change in fund balance - governmental fund	\$1,679,738
Change in taxes receivable deferred in the fund financial statements	(152)
Change in long-term grants receivable deferred in the fund financial statements	367,499
Depreciation expense not recognized in the fund financial statements	(1,196,105)
Long-term debt principal payments recognized as expenditures in the fund financial statements	1,946,730
Change in accrued interest expense on long-term debt not reported in the fund financial statements	28,019
Change in accrued leave not reported in the fund financial statements	(46,191)
Pension contributions are reported as expenditures in the governmental fund when made. Adjustments to the net pension liability and pension expense resulting from changes in deferred outflows and inflows of resources are not recognized in the fund financial statements.	86,199
Proceeds from debt recognized as other financing sources in the fund financial statements	(2,890,000)
Capital outlays recognized as expenditures in the fund financial statements	<u>4,148,726</u>
Change in net position - governmental activities	<u>\$4,124,463</u>

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

##### TEXAS COUNTY & DISTRICT RETIREMENT SYSTEM (TCDRS)

###### Plan Description

The District provides pension benefits for all of its eligible employees through a non-traditional, joint contributory, hybrid defined benefit plan in the state-wide TCDRS, an agent multiple-employer public employee retirement system. TCDRS issues a publicly available comprehensive annual financial report that includes financial statements and required supplementary information (RSI) for TCDRS; the report also provides detailed explanations of the contributions, benefits and actuarial methods and assumptions used by TCDRS. This report may be obtained by calling TCDRS at 800-823-7782; in addition, the report is available on TCDRS' website at [www.tcdrs.org](http://www.tcdrs.org). Plan provisions for the District were as follows:

###### Benefits Provided

The plan provisions that have been adopted by the Board of the District are within the options available in the governing state statutes of TCDRS. TCDRS provides retirement benefits that are calculated based on age, average compensation and service credit as follows:

Employee deposit rate	7%
District contribution rate	10.27%
Years required for vesting	10
Service retirement eligibility (expressed as age/years of service)	60/10, any/20, rule of 80

###### Employees Covered

As of the December 31, 2021 valuation and measurement date, the following employees were covered by the benefit terms:

Inactive employees or beneficiaries receiving benefits	0
Inactive employees entitled to but not yet receiving benefits	22
Active employees	34

###### Contributions

Under the state law governing TCDRS, the contribution rate for each District is determined annually by the actuary, using the Entry Age actuarial cost method. The actuarially determined rate is the estimated amount necessary to finance the cost of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Employees of the District were required to contribute 7% of their annual salary during the year, and the District was required to contribute at the actuarially determined rate of 10.27%. The District's contributions to TCDRS for the year ended September 30, 2022 were \$282,970, which equaled the required contribution.

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

##### Net Pension Liability/(Asset)

The District's net pension liability (asset) of \$199,531 for TCDRS at September 30, 2022 was measured as of December 31, 2021. The total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date.

##### Pension Actuarial Assumptions

The significant actuarial assumptions used to measure the total pension liability are as follows:

Actuarial valuation date:	12/31/2021
Actuarial cost method:	Entry age normal
Investment rate of return (7.50% rate of return plus 0.10% adjustment gross of administrative expenses):	7.60%
Inflation:	2.50%
Projected Salary Increases:	4.70% average
Mortality rates	135% and 120% of Pub-2010 General Retirees Table for males and females, respectively, both projected with 100% of MP-2021 Ultimate Scale after 2010

Actuarial assumptions used in the December 31, 2021 valuation were based on the results of an actuarial experience study for the years 2017 through 2021.

##### Discount Rate

The discount rate used to measure the total TCDRS pension liability was 7.60%. The projection of cash flows used to determine the discount rate assumed that contributions will be made at the rates specified in the funding policy. Based on that assumption, the plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. The discount rate for calculating the total pension liability is equal to the long-term expected rate of return on pension plan investments applied to all periods of projected benefit payments to determine the total pension liability.

The long-term expected rate of return on the TCDRS pension plan investments was determined to be 7.60% using a building-block method in which the best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These real rates of return are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target asset allocation and best estimates of geometric real rates of return for each major asset class are summarized in the following table:

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

## NOTES TO FINANCIAL STATEMENTS

### NOTE 10: PENSION PLANS

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Geometric Real Rate of Return</u>
U.S. Equities	11.50%	3.80%
Private Equity	25.00%	6.80%
Global Equities	2.50%	4.10%
International Equities-Developed	5.00%	3.80%
International Equities-Emerging	6.00%	4.30%
Investment-Grade Bonds	3.00%	-0.85%
Strategic Credit	9.00%	1.77%
Direct Lending	16.00%	6.25%
Distressed Debt	4.00%	4.50%
REIT Equities	2.00%	3.10%
Master Limited Partnerships	2.00%	3.85%
Private Real Estate Partnerships	6.00%	5.10%
Hedge Funds	6.00%	1.55%
Cash Equivalents	2.00%	-1.05%

#### Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued TCDRS financial report.

#### Sensitivity of the Net Pension Liability/(Asset) to Changes in the Discount Rate

The following presents the net pension liability (asset) of the District, calculated using the discount rate of 7.60%, as well as what the District's net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower or 1 percentage point higher than the current rate:

	<u>1% Decrease (6.60%)</u>	<u>Discount Rate (7.60%)</u>	<u>1% Increase (8.60%)</u>
District's net pension liability (asset)	<u>\$984,974</u>	<u>\$199,531</u>	<u>(\$426,998)</u>

# HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

## NOTES TO FINANCIAL STATEMENTS

### NOTE 10: PENSION PLANS

<u>Changes in Net Pension Liability/(Asset)</u>	<u>Total Pension Liability (a)</u>	<u>Plan Fiduciary Net Position (b)</u>	<u>Net Pension Liability/ (Asset) (a)-(b)</u>
Balance at December 31, 2020	<u>\$2,733,656</u>	<u>\$2,340,011</u>	<u>\$393,645</u>
Changes for the year:			
Service cost	333,138	0	333,138
Interest on total pension liability	233,076	0	233,076
Effect of plan changes	0	0	0
Effect of economic/demographic gains or losses	88,526	0	88,526
Effect of assumption changes or inputs	85,202	0	85,202
Refunds of contributions	0	0	0
Benefit payments	0	0	0
Administrative expenses	0	(1,771)	1,771
Member contributions	0	172,041	(172,041)
Net investment income	0	556,331	(556,331)
Employer contributions	0	196,373	(196,373)
Other	<u>0</u>	<u>11,082</u>	<u>(11,082)</u>
Balance at December 31, 2021	<u>\$3,473,598</u>	<u>\$3,274,067</u>	<u>\$199,531</u>

#### Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

For the year ended September 30, 2022, the District recognized pension expense of \$181,732. At September 30, 2022, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Deferred Inflows of Resources</u>	<u>Deferred Outflows of Resources</u>
Differences between expected and actual experience	\$68,132	\$295,272
Changes in actuarial assumptions	\$4,199	\$258,434
Net difference between projected and actual earnings	\$323,596	\$0
Contributions subsequent to the measurement date	N/A	\$228,533

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

\$228,533 reported as deferred outflows of resources related to pensions resulting from contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability for the District year ending September 30, 2023. Other amounts reported as deferred outflows of resources and deferred outflows of resources related to pensions will be recognized as pension expense as follows:

For the plan year ended December 31:

2022	(\$1,528)
2023	(25,137)
2024	(5,500)
2025	14,896
2026	87,766
Thereafter	<u>87,282</u>
	<u>\$157,779</u>

#### TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM (TESRS)

##### Plan Description

The District provides pension benefits for eligible volunteer emergency services personnel who are members in good standing with the District. The Fire Fighters' Pension Commissioner is the administrator of the TESRS, a cost-sharing multiple employer pension system established and administered by the State of Texas to provide pension benefits for emergency services personnel who serve without significant monetary remuneration. TESRS was created by Senate Bill 411, 65<sup>th</sup> Legislature, Regular Session (1977), and established the applicable benefit provisions. The 79<sup>th</sup> Legislature, Regular Session (2005), recodified the provisions and gave TESRS Board of Trustees authority to establish vesting requirements, contribution levels, benefit formulas and eligibility requirements by board rule. TESRS issues a publicly available annual financial report that includes financial statements and RSI for TESRS, as well as detailed explanations of the contributions, benefits and actuarial methods and assumptions used by the plan. This report may be obtained by calling 800-919-3372. The report is also available on TESRS' website at [www.tesrs.texas.gov](http://www.tesrs.texas.gov)

##### Benefits Provided

The benefit provisions include retirement benefits as well as death and disability benefits. Members are 50% vested after the tenth year of service, with the vesting percent increased 10% for each of the next five years of service so that a member becomes 100% vested within 15 years of service. Upon reaching age 55, a vested member may retire and receive a monthly pension equal to his vested percentage multiplied by six times the governing body's average monthly contribution over the member's years of qualified service.



## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

For each year of service in excess of 15 years, this monthly benefit is increased at the rate of 6.2% compounded annually. In addition, member districts may purchase prior service credit for service with the participating department before the department began participating in the plan that is not buyback service and that does not count as qualified service. There is a separate benefit formula for this prior service.

On and off duty death and on duty disability benefits are dependent on whether or not the member was engaged in the performance of duties at the time of death or disability. Death benefits include a lump-sum amount and continuing monthly payments to a member's surviving spouse and dependent children.

##### Contributions

Contributions are not required by individual members of participating departments. The governing bodies of participating departments are required to contribute at least the minimum prescribed amount per month for each active member and may contribute more. The contribution requirement per active emergency services personnel member per month is not actuarially determined. Rather, the minimum contribution provisions were set by the Board.

Additional contributions may be made by a governing body to pay for granting credit for service before the department began participating in TESRS (prior service). The State may also be required to make annual contributions up to a limited amount to make the TESRS actuarially sound. The expected contributions from the state are appropriations equal to (1) the maximum annual contribution (one-third of all contributions to the System by governing bodies of participating departments in a year) as needed in accordance with state law governing the System, and (2) approximately \$675,000 each year to pay for part of the System's administrative expenses. For the fiscal year ended September 30, 2022, the District's contributions to TESRS were \$34,450.

##### Pension Liability

At September 30, 2022, the District reported a liability of \$201,868 for its proportionate share of the TESRS net pension liability. The net pension liability was measured as of August 31, 2022, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of August 31, 2022. The District's proportionate share of the net pension liability for the plan as of August 31, 2022 was .492%.

##### Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

For the year ended September 30, 2022, the District recognized pension expense of \$49,489. At September 30, 2022, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

	Deferred Inflows of Resources	Deferred Outflows of Resources
Differences between expected and actual experience	\$0	\$7,684
Changes in actuarial assumptions	\$1,015	\$0
Net difference between projected and actual earnings	\$0	\$74,446
Contributions subsequent to the measurement date	N/A	\$11,650

\$11,650 reported as deferred outflows of resources related to pensions resulting from contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability for the District year ending September 30, 2023. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized as pension expense as follows:

For the plan year ended August 31:

2023	\$23,406
2024	14,529
2025	15,170
2026	<u>28,010</u>
	<u>\$81,115</u>

#### Actuarial Assumptions

The significant actuarial assumptions used to measure the total pension liability are as follows:

Valuation Date:	8/31/2022
Measurement Date:	8/31/2022
Actuarial Cost Method:	Entry Age Normal
Investment Rate of Return	7.5%
Inflation	3.00%
Projected Salary Increases:	N/A
Mortality Rates:	PubS-2010 mortality tables using projection scale MP-2019

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

The long-term expected rate of return on the TESRS pension plan investments was determined to be 7.5% using a building-block method in which the expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These components are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target asset allocation and expected arithmetic real rates of return for each major asset class are summarized in the following table:

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-term Expected Real Rate of Return</u>
Equities		
Large cap domestic	20%	5.83%
Small cap domestic	10%	5.94%
Developed international	15%	6.17%
Emerging markets	5%	7.36%
Global infrastructure	5%	6.61%
Real estate	10%	4.48%
Multi asset income	5%	3.86%
Fixed income	30%	1.95%

#### Discount Rate

The discount rate used to measure the total TESRS pension liability was 7.5%. No projection of cash flows was used to determine the discount rate because the August 31, 2022 actuarial valuation showed that expected contributions would pay the normal cost and amortize the unfunded actuarial accrued liability in 30 years using the level dollar amortization method. Because of those assumptions, the plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

#### Sensitivity of the Proportionate Share of Net Pension Liability to Changes in the Discount Rate

The following presents the District's proportionate share of the net pension liability calculated using the discount rate noted above, as well as what the District's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower or 1 percentage point higher than the current rate:

## HAYS COUNTY EMERGENCY SERVICES DISTRICT #6

### NOTES TO FINANCIAL STATEMENTS

#### NOTE 10: PENSION PLANS

	1% Decrease (6.5%)	Discount Rate (7.5%)	1% Increase (8.5%)
Proportionate share of net pension liability	<u>\$316,676</u>	<u>\$201,868</u>	<u>\$108,898</u>

##### Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued TESRS financial report.

#### NOTE 11: RISK MANAGEMENT

The District is exposed to various risks of loss including general liability, property damage, and worker's compensation. The District insures against risk through participation in the Texas Municipal League Intergovernmental Risk Pool, a public entity risk pool, consisting of approximately 2,800 member cities/political subdivisions located throughout Texas. The District pays premiums for its general liability, property, auto and workers' compensation coverage. The District's risk is limited to the amount of premiums paid unless the pool should fail, in which case, the District would be liable for its ratable share of the pool deficit.

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**  
**REQUIRED SUPPLEMENTARY INFORMATION -TEXAS COUNTY & DISTRICT RETIREMENT SYSTEM**  
**SCHEDULE OF CHANGES IN THE NET PENSION LIABILITY AND RELATED RATIOS**  
**FOR THE YEAR ENDED SEPTEMBER 30, 2022\***

<b>Total pension liability</b>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Service cost	\$107,101	\$143,696	\$151,459	\$152,595	\$174,124	\$233,634	\$253,071	\$333,138
Interest on total pension liability	38,428	55,563	52,496	72,963	98,003	142,533	178,654	233,078
Effect of plan changes	0	(28,447)	0	0	157,946	0	0	0
Difference between expected & actual experience of the total pension net liability	84,087	(201,441)	(23,097)	71,555	61,963	58,280	110,280	88,525
Changes of assumptions	0	1,412	0	(8,394)	0	0	246,639	85,202
Benefit payments, including refunds of employee contributions	<u>(8,021)</u>	<u>(38,094)</u>	<u>(12,806)</u>	<u>0</u>	<u>(2,253)</u>	<u>(1,350)</u>	<u>(14,769)</u>	<u>0</u>
<b>Net change in total pension liability</b>	221,595	(67,311)	168,052	288,719	489,783	433,097	773,875	739,943
<b>Total pension liability-beginning</b>	<u>425,845</u>	<u>647,440</u>	<u>580,129</u>	<u>748,181</u>	<u>1,036,900</u>	<u>1,526,683</u>	<u>1,959,780</u>	<u>2,733,655</u>
<b>Total pension liability-ending (a)</b>	<u>\$647,440</u>	<u>\$580,129</u>	<u>\$748,181</u>	<u>\$1,036,900</u>	<u>\$1,526,683</u>	<u>\$1,959,780</u>	<u>\$2,733,655</u>	<u>\$3,473,598</u>
<b>Plan fiduciary net position</b>								
Contributions-employer	\$81,461	\$80,886	\$88,212	\$92,954	\$103,867	\$139,673	\$185,378	\$196,373
Contributions-employee	65,889	71,793	76,741	89,235	103,009	130,885	165,095	172,042
Net investment income	23,351	(13,683)	45,760	122,335	(18,659)	215,736	187,506	556,331
Benefit payments, including refunds of employee contributions	(8,021)	(38,094)	(12,806)	0	(2,253)	(1,350)	(14,769)	0
Administrative expenses	(332)	(408)	(498)	(748)	(1,057)	(1,378)	(1,712)	(1,771)
Other	<u>(23)</u>	<u>(49)</u>	<u>13,592</u>	<u>2,435</u>	<u>6,209</u>	<u>9,469</u>	<u>10,113</u>	<u>11,082</u>
<b>Net change in plan fiduciary net position</b>	162,325	100,445	211,001	306,211	191,116	493,035	531,611	934,057
<b>Plan fiduciary net position-beginning</b>	<u>344,266</u>	<u>506,591</u>	<u>607,036</u>	<u>818,037</u>	<u>1,124,248</u>	<u>1,315,364</u>	<u>1,808,399</u>	<u>2,340,010</u>
<b>Plan fiduciary net position-ending (b)</b>	<u>\$506,591</u>	<u>\$607,036</u>	<u>\$818,037</u>	<u>\$1,124,248</u>	<u>\$1,315,364</u>	<u>\$1,808,399</u>	<u>\$2,340,010</u>	<u>\$3,274,067</u>
<b>Net pension liability (a) - (b)</b>	<u>\$140,849</u>	<u>(\$26,907)</u>	<u>(\$69,856)</u>	<u>(\$87,348)</u>	<u>\$211,319</u>	<u>\$151,381</u>	<u>\$393,645</u>	<u>\$199,531</u>
Plan fiduciary net position as a % of the total pension liability	78.25%	104.64%	109.34%	108.42%	86.16%	92.28%	85.60%	94.26%
Covered employee payroll	\$1,098,156	\$1,196,552	\$1,250,292	\$1,487,258	\$1,716,808	\$1,869,789	\$2,358,504	\$2,457,734
Net pension liability as a percentage of covered employee payroll	12.83%	-2.25%	-5.59%	-5.87%	12.31%	8.10%	16.69%	8.12%

**Note:** \* The District implemented GASB 68 in fiscal year 2015. Information prior to 2015 is not available. The beginning Net Pension Liability for 2015 was determined using rollback procedures allowed for initial year of implementation. Fiscal Year 2022 Valuation Date: 12/31/21.

- See Independent Auditor's Report -

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**  
**REQUIRED SUPPLEMENTARY INFORMATION -TEXAS COUNTY & DISTRICT RETIREMENT SYSTEM**  
**SCHEDULE OF CONTRIBUTIONS**  
**FOR THE YEAR ENDED SEPTEMBER 30, 2022\***

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Actuarially determined contribution**	\$81,094	\$87,974	\$89,302	\$102,187	\$126,230	\$150,611	\$196,019	\$282,970
Contributions in relation to the actuarially determined contribution**	\$81,094	\$87,974	\$89,302	\$102,187	\$126,230	\$150,611	\$196,019	\$282,970
Contribution deficiency (excess)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Covered-employee payroll	\$1,092,911	\$1,301,391	\$1,264,901	\$1,634,992	\$1,780,436	\$2,170,585	\$2,505,970	\$3,223,191
Contributions as a percentage of covered-employee payroll	7.42%	6.76%	7.06%	6.25%	7.09%	6.94%	7.82%	8.78%

Notes to Required Supplementary Information:

\* The District implemented GASB 68 in fiscal year 2015. Information prior to 2015 is not available.

\*\* TCDRS calculates actuarially determined contributions on a calendar year basis. GASB 68 indicates the employer should report employer contributions on a fiscal year.

Valuation Date: Actuarially determined contribution rates are calculated each December 31, two years prior to the end of the fiscal year in which contributions are reported.

Methods and assumptions used to determine contribution rates:

Actuarial cost method	Entry age
Amortization Method	Level percentage of payroll, closed
Remaining Amortization Period	19.3 years (based on contribution rate calculated in 12/31/2021 valuation)
Asset Valuation Method	5-year smoothed market
Investment Rate of Return	7.50%, net of investment expenses, including inflation
Inflation	2.50%
Projected Salary Increases	Varies by age and service. 4.70% average over career including inflation.
Retirement Age	Members who are eligible for service retirement are assumed to commence receiving benefit payments based on age. The average age at service retirement for recent retirees is 61.
Mortality rates	Pub-2010 General Retirees Table (135% for males and 120% for females), both projected with 100% of the MP-2021 Ultimate scale after 2010.

Changes in Assumptions and Methods:

2015: New inflation, mortality and other assumptions reflected; 2017: New mortality assumptions reflected

Changes in Plan Provisions:

2015, 2016, 2018, 2020, 2021, 2023: No changes; 2017: New annuity purchase rates reflected for benefits earned after 2017; 2019: member contribution increase to 7%

- See Independent Auditor's Report -

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**  
**REQUIRED SUPPLEMENTARY INFORMATION - TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM**  
**SCHEDULE OF PROPORTIONATE SHARE OF NET PENSION LIABILITY**  
**FOR THE YEAR ENDED SEPTEMBER 30, 2022\***

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Proportion of the net pension liability	.405%	.394%	.364%	.307%	.545%	.524%	.444%	.492%
Proportionate share of the net pension liability	\$73,595	\$114,765	\$87,366	\$66,467	\$154,483	\$132,105	\$47,571	\$201,868
Number of active members **	39	41	36	34	43	44	34	40
Net pension liability per active member	\$1,887	\$2,799	\$2,427	\$1,955	\$3,593	\$3,002	\$1,399	\$5,047
Plan fiduciary net position as a percentage of the total pension liability	83.5%	76.3%	81.4%	84.3%	80.2%	83.2%	93.1%	75.2%

Notes to Required Supplementary Information:

\* The District implemented GASB 68 in fiscal year 2015. Information prior to 2015 is not available. Current year Valuation Date: August 31, 2022 valuation

\*\* There is no compensations for active members. Number of active members is used instead.

*Changes in benefit terms:* There were no changes of benefit terms that affected measurement of the total pension liability during the measurement period.

*Changes in assumptions:* There were no changes of assumptions or other inputs that affected measurement of the total pension liability during the measurement period.

**REQUIRED SUPPLEMENTARY INFORMATION - SCHEDULE OF CONTRIBUTIONS**  
**FOR THE YEAR ENDED SEPTEMBER 30, 2022\***  
**TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM**

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Contractually required contribution **	\$18,360	\$18,468	\$17,604	\$14,684	\$24,440	\$24,450	\$17,716	\$34,450
Contributions in relation to the contractually required contribution	\$18,360	\$18,468	\$17,604	\$14,684	\$24,440	\$24,450	\$17,716	\$34,450
Contribution deficiency (excess)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Number of active members ***	39	41	36	34	43	44	34	40
Contributions per member	\$471	\$450	\$489	\$432	\$568	\$556	\$521	\$861

Note:

\* The District implemented GASB 68 in fiscal year 2015. Information prior to 2015 is not available. Current year Valuation Date: August 31, 2022 valuation

\*\* The contribution requirement per member is not actuarially determined. Rather, minimum contribution provisions are determined by Board rule and there is no maximum contribution rate.

\*\*\* There is no compensations for active members. Number of active members is used instead.

- See Independent Auditor's Report -

**HAYS COUNTY EMERGENCY SERVICES DISTRICT #6**  
**BUDGETARY COMPARISON SCHEDULE**  
**GENERAL FUND**  
**YEAR ENDED SEPTEMBER 30, 2022**

	Original and Final Budget	Actual	Variance Positive (Negative)
General revenues			
Ad valorem taxes	\$ 6,977,825	\$ 7,037,828	\$ 60,003
Sales taxes	2,160,000	3,480,558	1,320,558
Operating grants	-	107,038	107,038
Interest	25,000	92,460	67,460
Other	133,516	375,072	241,556
	<u>9,296,341</u>	<u>11,092,956</u>	<u>1,796,615</u>
Expenditures			
Current:			
Public safety	6,798,675	5,891,949	906,726
Capital outlay	1,312,400	4,148,726	(2,836,326)
Debt service	1,185,008	2,262,543	(1,077,535)
	<u>9,296,083</u>	<u>12,303,218</u>	<u>(3,007,135)</u>
Revenues (under)/over expenditures	<u>258</u>	<u>(1,210,262)</u>	<u>(1,210,520)</u>
Other financing sources			
Proceeds from debt	-	2,890,000	2,890,000
	<u>258</u>	<u>1,679,738</u>	<u>1,679,480</u>
Beginning fund balance	<u>10,467,263</u>	<u>10,467,263</u>	<u>-</u>
Ending fund balance	<u><u>\$ 10,467,521</u></u>	<u><u>\$ 12,147,001</u></u>	<u><u>\$ 1,679,480</u></u>





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Villarreal-Alonzo

Sponsor:

Commissioner Smith

Co-Sponsor:

Commissioner Cohen

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### Agenda Item

Accept the Fiscal Year 2022 Hays County Emergency Services District #8 Audit Report per Texas Health and Safety Code 775.082. **SMITH/COHEN/VILLARREAL-ALONZO**

### Summary

Texas Health and Safety Code 775.082 requires that the District prepare and file with the Commissioners Court by June 1 of each year an audit report of the district's fiscal accounts and records. The District's Audit Report dated June 28, 2023, is attached.

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### Attachments

ESD #8 FY 2022 Final Audit Report

**Hays County  
Emergency Services District #8**

**Independent Auditor's Report**

September 30, 2022

# **Hays County Emergency Services District #8**

## **Table of Contents**

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# S. PATRICIA WHITE, CPA, P.C.

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## Independent Auditor's Report

To the Board of Fire Commissioners  
Hays County Emergency Services District #8  
Buda, Texas

I have audited the accompanying financial statements of the governmental activities of the Hays County Emergency Services District #8 (the "District") as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

### **Management's Responsibility for the Financial Statements**

The District is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

My responsibility is to express an opinion on these financial statements based on my audit. I conducted the audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, I express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### **Opinion**

In my opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the General Fund of the District as of September 30, 2022, and the respective changes in financial position, and the respective budgetary comparison for the General Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### **Other Matters**

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, the budgetary comparison schedule – general fund, the schedule of changes in net pension asset and related ratios, the schedule of District contributions, and the notes to the required supplementary information be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, are required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operation, economic, or historical context. I have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses of our inquiries, the basic financial statements, and other knowledge I obtained during the audit of the basic financial statements. I do not express an opinion on or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

A handwritten signature in black ink that reads "Patricia White CPA". The signature is written in a cursive, flowing style.

June 28, 2023  
Round Rock, Texas

## **Management's Discussion and Analysis**

The discussion and analysis of Hays County Emergency Services District #8's (the "District's") financial performance provides an overview of the District's financial activities for the year ended September 30, 2022. Please read it in conjunction with the District's financial statements, which follow this section.

### **Financial Highlights**

- During the year, the District had expenses of \$9,072,516 compared to total revenues of \$13,376,698 resulting in net increase to net position of \$4,304,182 for the year ended September 30, 2022. For the year ended September 30, 2021, the District had net income of \$2,641,962.
- There were 763 new residential homes and nine new commercial properties during fiscal 2022. This increase is consistent with prior year growth adding to the sales and property tax revenues of the District.
- The District has started the planning and are in the process of getting approval for the financing of a new 42,068 square foot Administrative/Training/Fire Station and 3,600 square foot Support/Maintenance Shop with an estimated construction cost of \$20,000,000.
- 

### **Using This Annual Report**

This annual report consists of a series of financial statements: The Statement of Net Assets and Governmental Funds Balance Sheet and the Statement of Activities and Governmental Funds, Revenues, Expenditures and Changes in Fund Balances provide information about the activities of the District as a whole and present a longer-term view of the District's finances. For governmental activities, these statements tell how these services were financed in the short term as well as what remains for future pending.

## **Reporting the District as a Whole**

One of the most important questions asked about the District's finances is, "Is the District as a whole better off or worse off as a result of the year's activities?" The Statement of Net Position and the Statement of Activities report information about the District as a whole and about its activities in a way that helps answer this question. These statements include all assets and liabilities using the accrual basis of accounting, which is similar to accounting used by most private-sector companies. All of the current year revenues and expenses are considered regardless of when cash is received or paid.

These two statements report on the District's net position and changes in them. You can think of the District's net position, the difference between assets and liabilities, as one way to measure the District's financial health, or financial position. Over time, increases or decreases in the District's net position is one indicator of whether its' financial health is improving or deteriorating. You will need to consider other non-financial factors, however, such as changes in the District's property tax to assess the overall health of the District.

## **The District as a Whole**

Unrestricted net position, the part of net position that can be used to finance day-to-day operations without constraints established by debt covenants.

The District has sufficient revenues to pay expenses of the District.

The actual General Fund had revenues in excess of expenditures of \$980,611.

Summarized Statement of Net Position:

	<u>9/30/2022</u>	<u>9/30/2021</u>
Current assets	30,292,725	29,477,426
Capital assets	<u>10,604,246</u>	<u>8,229,616</u>
Total assets	<u>40,896,971</u>	<u>37,707,042</u>
Deferred outflows of resources	<u>614,428</u>	<u>849,081</u>
Current liabilities	1,673,671	1,755,770
Long-term debt	<u>18,753,755</u>	<u>19,982,412</u>
Total liabilities	<u>20,427,426</u>	<u>21,738,182</u>
Deferred inflows of resources	<u>773,978</u>	<u>812,128</u>
Invested in capital assets, net of long-term debt	9,121,834	5,474,159
Unrestricted	<u>11,188,161</u>	<u>10,531,654</u>
Total net position	<u>20,309,995</u>	<u>16,005,813</u>

Summarized Statement of Activities:

	<u>9/30/2022</u>	<u>9/30/2021</u>
Revenues:		
Property taxes	5,534,051	4,798,343
Sales and use tax	3,418,007	3,068,274
EMS revenue	3,573,009	3,110,099
Other income	<u>851,631</u>	<u>140,370</u>
Total revenues	<u>13,376,698</u>	<u>11,117,086</u>
Expenses:		
Personnel and related costs	6,659,207	6,516,106
Depreciation	493,457	493,457
Debt service	455,890	352,394
Other expenses	<u>1,463,962</u>	<u>1,113,167</u>
Total expenses	<u>9,072,516</u>	<u>8,475,124</u>
Change in net position	<u>4,304,182</u>	<u>2,641,962</u>



### **Capital Assets**

As of September 30, 2022, the District had \$10,604,246 invested in capital assets (net of depreciation). At year end \$4,523,726 is invested in buildings, \$5,768,367 in trucks and equipment, \$4,181,731 in construction in progress and \$725,730 is invested in land. Total accumulated depreciation as of September 30, 2022, was \$4,595,308.

### **Long-Term Debt**

The District's long-term debt on September 30, 2022, totaled \$19,982,412 for all notes payable. The current portion of the long-term debt is \$1,228,657.

### **Economic Factors and Next Year's Budgets and Rates**

The District's elected and appointed officials considered many factors when setting the budget and tax rates. One of those factors is the economy and estimated needs to operate the District in the coming year.

### **Contacting the District's Financial Management**

This financial report is designed to provide the taxpayers with a general overview of the District's finances and to show the District's accountability for the money it receives. If you have questions about this report or need additional financial information, contact the District's office at:

Hays County ESD #8  
P.O. Box 782  
Buda, Texas 78610  
Telephone (512) 295-2232

## Hays County Emergency Services District #8

### Statement of Net Position and Governmental Fund Balance Sheet

September 30, 2022

#### Assets

	<u>General Fund</u>	<u>Adjustments</u>	<u>Total</u>
<b>Assets</b>			
Cash and cash equivalents	29,631,290	-	29,631,290
Accounts receivable	1,463	-	1,463
Taxes receivable	441,545	-	441,545
Prepaid expenses	<u>218,427</u>	<u>-</u>	<u>218,427</u>
Total current assets	<u>30,292,725</u>	<u>-</u>	<u>30,292,725</u>
Capital Assets:			
Land	-	725,730	725,730
Construction in Progress	-	4,181,731	4,181,731
Buildings	-	4,523,726	4,523,726
Equipment	-	5,768,367	5,768,367
Less accumulated depreciation	<u>-</u>	<u>(4,595,308)</u>	<u>(4,595,308)</u>
Net capital assets	<u>-</u>	<u>10,604,246</u>	<u>10,604,246</u>
Total assets	<u>30,292,725</u>	<u>10,604,246</u>	<u>40,896,971</u>
<b>Deferred Outflows of Resources</b>			
Pension contributions after measurement date	-	46,235	46,235
Deferred outflows related to pension asset	<u>-</u>	<u>568,193</u>	<u>568,193</u>
Total Deferred Outflows of Resources	<u>-</u>	<u>614,428</u>	<u>614,428</u>

*Notes to the financial statements are integral to this statement.*

	<u>General Fund</u>	<u>Adjustments</u>	<u>Total</u>
Current liabilities			
Accounts payable	73,017	-	73,017
Accrued payroll liabilities	99,329	-	99,329
Accrued interest payable	-	272,668	272,668
Current portion - loans	-	1,228,657	1,228,657
Total current liabilities	<u>172,346</u>	<u>1,501,325</u>	<u>1,673,671</u>
Long-term liabilities:			
Loans payable	-	19,982,412	19,982,412
Less: current portion of note payable	-	(1,228,657)	(1,228,657)
Total long-term liabilities	<u>-</u>	<u>18,753,755</u>	<u>18,753,755</u>
Deferred Inflows of Resources			
Deferred revenue - property taxes	64,396	(64,396)	-
Deferred inflows related to pension asset	-	773,978	773,978
Total Deferred inflows of resources	<u>64,396</u>	<u>709,582</u>	<u>773,978</u>
Fund Balances/Net Position:			
Unassigned	<u>30,055,983</u>		
Total fund balance	<u>30,055,983</u>		
Total liabilities and net assets	<u>30,292,725</u>		
Investment of capital assets, net of long-term debt			9,121,834
Unrestricted			<u>11,188,161</u>
Total net position			<u>20,309,995</u>

*Notes to the financial statements are integral to this statement.*

## Hays County Emergency Services District #8

### Statement of Activities and Governmental Fund Revenues, Expenditures and Changes in Fund Balance

Year Ended September 30, 2022

	General Fund	Adjustments	Total
Revenues:			
Property tax revenue	\$ 5,469,655	\$ 64,396	\$ 5,534,051
EMS revenue	3,573,009	-	3,573,009
Sales tax revenue	3,418,007	-	3,418,007
Other income	661,544	-	661,544
Operations revenue	131,999	-	131,999
Permit fees	55,956	-	55,956
Grant revenue	2,132	-	2,132
	<u>13,312,302</u>	<u>64,396</u>	<u>13,376,698</u>
Expenditures/expenses:			
Payroll and related costs	6,334,134	325,073	6,659,207
Depreciation	-	493,457	493,457
Debt service	1,728,936	(1,273,046)	455,890
Capital outlay/maintenance	2,950,953	(2,804,659)	146,294
EMS expenses	235,373	-	235,373
Insurance	180,713	-	180,713
Firefighting supplies and programs	452,182	-	452,182
Professional fees	138,830	-	138,830
Utilities and telephone	101,446	-	101,446
Training expense	51,247	-	51,247
Office supplies	74,696	-	74,696
Fuel	83,181	-	83,181
	<u>12,331,691</u>	<u>(3,259,175)</u>	<u>9,072,516</u>
Revenues in excess of expenditures	980,611		
Change in net position			4,304,182
Net position at beginning of year	<u>29,075,372</u>		<u>16,005,813</u>
Net position at end of year	<u>30,055,983</u>		<u>20,309,995</u>

# **Hays County Emergency Services District #8**

## **Notes to Financial Statements**

### **1. Summary of Significant Account Policies**

#### ***The Reporting Entity***

Rural Fire Prevention Districts may be organized in the State of Texas under the provisions of Article III, Section 48-d of the State Constitution. The Northeast Hays County Rural Fire Prevention District was confirmed by election in July 1984 and effectively began operations on July 1, 1985. In July 2003, the organization was converted to Hays County Emergency Services District #8 (the "District"). The District was established to arrange for fire protection services within its boundaries.

The accounting policies of the Hays County Emergency Services District #8 conform to generally accepted accounting principles in the United States of America applicable to state and local governments. The District is included in the basic financial statements of Hays County as a component unit as set forth in Governmental Accounting Standards Board ("GASB") 14, The Financial Reporting Entity".

Additionally, no other entity meets these requirements for inclusion in Hays County ESD #8 financial statements.

#### ***Use of Estimates***

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### ***Government-Wide and Fund Financial Statements***

The District is considered a special purpose government. This allows the District to present the required fund and government-wide statements in a single schedule. The requirement for fund financial statements to be prepared on the modified accrual basis of accounting is met with the "General Fund" column. An adjustment column includes those entries needed to convert to the full accrual basis government-wide statements. The Statement of Net Position and the Statement of Activities are government-wide financial statements. They report information on all of the District's activities. The District services are supported primarily by property tax and sales tax revenues. The Statement of Activities demonstrates how the District used its revenues.

# **Hays County Emergency Services District #8**

## **Notes to Financial Statements**

### **1. Summary of Significant Account Policies (continued)**

#### ***Measurement Focus, Basis of Accounting, and Financial Statement Presentation***

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of the related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Government fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within thirty-one days of the end of the current fiscal period. Expenses generally are recorded when a liability is incurred.

The District has only one governmental fund, the general fund. The general fund is the operating fund of the District.

Interest and taxes associated with the current fiscal period are all considered susceptible to accrual and so have been recognized as revenues of the current fiscal period. All other revenue items are considered measureable and available only when the District receives cash.

#### ***Cash and Cash Equivalents***

Cash and cash equivalents are short-term highly liquid investments that are readily convertible to known amounts of cash and so near maturity that there is no significant risk of changes in value due to changes in interest rates. Cash equivalents include investments with original maturities of three months or less. Cash equivalents are stated at cost which approximates market value.

#### ***Fund Balance***

Fund balance for governmental funds is classified as non-spendable, restricted, committed, and assigned or unassigned in the fund financial statements.

- Non-spendable fund balance includes amounts not available to be spent because they are either not in spendable form or legally or contractually required to be maintained intact.
- Restricted fund balances include those resources that have constraints placed on their use through external parties or by law through constitutional provisions.

# **Hays County Emergency Services District #8**

## **Notes to Financial Statements**

### **1. Summary of Significant Account Policies (continued)**

#### ***Fund Balance***

- Committed fund balances are established and modified by approval of the District Commissioners and can be used only for the specific purposes determined by the District's Commissioners.
- Assigned fund balance is intended to be used by the District for specific purposes but does not meet criteria to be classified as restricted or committed.
- Unassigned fund balance is the residual classification for the District's general fund and includes all spendable amounts not contained in the other classifications.

#### ***Capital Assets***

All capital assets are capitalized at cost (or estimated historical cost) and updated for additions and retirements during the year. The District does not possess any infrastructure. Improvements are capitalized; the cost of normal maintenance and repairs that do not add to the value of the asset or materially extend the asset's life are not. Depreciation is calculated on a straight-line basis. Estimated lives are as follows: building 40 years, vehicles 7 years, and donated items 5 years.

#### ***Pension***

The fiduciary net asset positions of the Texas County and District Retirement System (TCDRS) has been determined using the flow of economic resources measurement focus and full accrual basis of accounting. This includes the purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, pension expense, and information about assets, liabilities, and additions to/from TCERS's fiduciary net position. Benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

#### ***Deferred Revenue***

The District reported unearned deferred revenue in the Statement of Net Assets. Deferred revenues arise when potential revenue does not meet both the measurable and available criteria for recognition in the current period. In general, monies received within thirty-one days after year-end are considerable to have been for prior year services.

#### ***Deferred Outflows and Inflows of Resources***

The District complies with GASB Statement 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*, which provides guidance for reporting the financial statement elements of deferred outflows of resources, which represent the consumption of the District's net position that is applicable to a future reporting period, and deferred inflows of resources, which represent the District's acquisition of net position applicable to a future reporting period.

# **Hays County Emergency Services District #8**

## **Notes to Financial Statements**

### **1. Summary of Significant Account Policies (continued)**

#### ***Deferred Outflows and Inflows of Resources (continued)***

The District also complies with GASB Statement 65, *Items Previously Reported as Assets and Liabilities*, which establishes accounting and financial reporting standards that reclassify, as deferred outflows of resources or deferred inflows of resources, certain items that were previously reported as assets and liabilities and recognizes, as outflows of resources or inflows of resources, certain items that were previously reported as assets and liabilities.

### **2. Deposits and Investments**

At September 30, 2022, the District had \$29,631,290 invested in cash and cash equivalents.

*Custodial Credit Risk* - In the case of deposits, this is the risk that in the event of a bank failure, the District's deposits may not be returned to it. As of September 30, 2022, \$974,183 of the District's total deposit balance was covered by federal depository insurance. The remaining balance of the deposits was invested in TexPool.

*Interest Rate Risk* - The District does have a formal investment policy in place. The District's cash and cash equivalents are currently invested in short-term instruments such as an interest-bearing checking account.

#### ***Investments***

The Board of Directors has authorized the District under a written investment policy to invest funds in compliance with the V.A.T.C.S. Government Code, Title 10, Chapter 2256 (the Public Funds Investment Act of 1993). Investment vehicles authorized by Chapter 2256 include, but are not limited to, certificates of deposit, obligations backed by the U.S. and state governments, and public fund investment pools. Investments are reported at fair value based on quoted market prices.

All investments at year end were held in the Texas Local Government Investment Pool (TexPool). The State Comptroller oversees TexPool, with Texas Treasury Safekeeping Trust Company managing the daily operations of the pool under a contract with the State Comptroller. TexPool is a 2(a)7 like fund, which means that it is constructed similar to a money market mutual fund. It allows shareholders the ability to deposit or withdraw funds on a daily basis. Such funds seek to maintain a constant net asset value of \$1.00 although this cannot be fully guaranteed. TexPool is rated AAAM (the highest rating a local government investment pool can achieve) and must maintain a dollar weighted average maturity not to exceed 60 days which is the limit. As of September 30, 2022, TexPool portfolio had weighted average maturity of 30 days. However, the District considers the holdings in these funds to have a one day weighted average maturity because the share position can usually be redeemed each day at the discretion of the shareholder, unless there has been a significant change in value. As of September 30, 2022, the District had \$28,657,107 invested in TexPool.



## Hays County Emergency Services District #8

### Notes to Financial Statements

#### 3. Property Taxes

The District has the authority to levy a tax to a maximum of \$.10 per \$100 of value. Property taxes are levied each October 1 on the assessed valuation of all taxable property in the District. The tax rate for the October 1, 2021, levy was \$.10 per \$100 of value. Taxes are due on receipt of the bill and are delinquent if not paid before February 1 of the year following the levy. On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed. Taxes are billed and collected by the Hays County Tax Assessors-Collector.

#### 4. Capital Assets

The following is a summary of changes in capital assets for the year:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Retirements and Reclassifications</u>	<u>Ending Balance</u>
Capital assets not being depreciated:				
Land	\$ 725,730	\$ -	\$ -	\$ 725,730
Construction in Progress	1,313,644	2,868,087	-	4,181,731
	<u>2,039,374</u>	<u>2,868,087</u>	<u>-</u>	<u>4,907,461</u>
Capital assets, being depreciated:				
Buildings	4,523,726	-	-	4,523,726
Trucks and equipment	5,768,367	-	-	5,768,367
Less accumulated depreciation	<u>(4,101,851)</u>	<u>(493,457)</u>	<u>-</u>	<u>(4,595,308)</u>
Total capital assets being depreciated, net	<u>6,190,242</u>	<u>(493,457)</u>	<u>-</u>	<u>5,696,785</u>
Capital assets, net	<u>\$ 8,229,616</u>	<u>\$ 2,374,630</u>	<u>\$ -</u>	<u>\$ 10,604,246</u>

# Hays County Emergency Services District #8

## Notes to Financial Statements

### 5. Long-Term Debt

Bank	Description	Maturity Date	Interest Rate	Beginning Balance	Additions	Retirements	Ending Balance
Government Capital	Station 2	3/1/2029	5.683%	\$ 1,067,059	\$ -	\$ 108,029	\$ 959,030
Marquette	Station 3	1/10/2027	3.696%	684,682	-	105,323	579,359
Extraco Banks NA	New Station	51,591	2.450%	18,500,000	-	810,552	17,689,448
Government Capital	New Engines	10/13/2024	2.250%	1,003,717	-	249,142	754,575
				<u>\$ 21,255,458</u>	<u>\$ -</u>	<u>\$ 1,273,046</u>	19,982,412
					Less current maturities		<u>(1,228,657)</u>
							<u>\$ 18,753,755</u>

Annual debt service required for the notes payable are as follows:

Future Payments	Principal
2023	\$ 1,228,657
2024	1,246,137
2025	1,267,166
2026	1,242,510
2027	1,055,868
2028-2032	4,861,215
2033-2037	4,848,039
2038-2042	4,232,820
	<u>\$ 19,982,412</u>

## **Hays County Emergency Services District #8**

### **Notes to Financial Statements**

#### **6. Risk Management**

The District is exposed to various risks of loss including general liability, property damage, and worker's compensation. The District insures against risk through participation in the VFIS, an insurer of emergency organizations.

The District pays premiums to the risk pool for its general liability, property, auto, and workers' compensation coverage. The District's risk is limited to the amount of premiums paid unless the pool should fall, in which case, the District would be liable for its ratable share of the pool deficit.

#### **7. Employee Retirement Plan**

*Plan Description* – The District provides retirement, disability, and death benefits for all of its non-temporary full-time employees through a nontraditional defined benefit pension plan administered by the TCDRS. The Board of Trustees of TCDRS are responsible for the administration of the statewide agent multiple-employer public employee retirement system consisting of over 780 active participating counties and districts throughout Texas. TCDRS in the aggregate issues a comprehensive annual financial report (CAFR) on a calendar basis. The CAFR is available at <http://www.tcdrs.org>.

*Benefits Provided* – Effective the date of employment, the District provides retirement, disability, and death benefits. A percentage of each employee's paycheck is deposited into his or her TCDRS account. That percentage has been set by the District at 7 percent and has elected a matching rate of \$2 to \$1. The employee's savings grow at a rate of 7 percent, compounded annually. At retirement, the employee's account balance is combined with the District's matching and converted into a lifetime monthly benefit. Employees receive a month of service time for each month that they make a deposit into their account. District employees also receive service time for the years worked prior to the District's participation in TCDRS. The amount of service an employee needs to earn a future benefit is called the vesting requirement. When an employee is vested, he or she has the right to a monthly benefit, which includes the employer matching contribution, at age 60 or older.

The District's employees must work five years to be vested. Once vested, an employee has earned the right to receive a lifetime monthly retirement benefit and is eligible to retire at age 60. The District has also adopted the Rule of 75, which gives all vested employees the right to retire and receive a lifetime monthly benefit when the employee's age plus years of service equals 75 or more. Any employee with 30 years of service, regardless of age, will also have the right to retire and receive a lifetime monthly benefit.

## Hays County Emergency Services District #8

### Notes to Financial Statements

#### 7. Employee Retirement Plan (continued)

Employee membership data related to the Plan, as of the valuation date of December 31, 2021, was as follows:

Retirees and beneficiaries receiving benefits	2
Terminated employees entitled to but not yet receiving benefits	17
Active plan members	54
Total	<u>73</u>

Any TCDRS member who is a vested member may terminate employment prior to attaining age 60 and remain eligible to retire and receive a monthly benefit after attaining age 60 provided his or her membership is not terminated other than by retirement.

Any TCDRS member who is a vested member who is totally and permanently disabled is eligible for a disability retirement benefit. A member who is not vested is eligible for disability retirement benefits if total and permanent disability was a result of an on-the-job injury.

Any TCDRS member who has four or more years of service credit with the District is eligible for purposes of the survivor annuity death benefit.

Retirees elect to receive their lifetime benefit by choosing one of seven actuarially equivalent payment options. Prior service gives employees credit for time worked for an eligible organization before it joined the system. Partial lump sum payments at retirement allow employees to withdraw part of their TCDRS account balance as a lump sum at retirement with a reduced monthly benefit. District employees all have the option to receive a lump sum payment at retirement up to the amount of their final account balance.

Any amendments to the plan would be approved by the District.

*Contributions* – The District has elected the annually determined contribution rate plan provision of the TCDRS Act. The plan is funded by monthly contributions from both employees and the employer based on the covered payroll of the employee. Under the TCDRS Act, the contribution rate of the employer is actuarially determined annually. The District contributed using an elected rate of 10% for the year ended September 30, 2022, as adopted by the governing body of the District. The actuarially determined rate for the year ended December 31, 2021, was 8%. The employee contribution rate was 7%. The employee contribution rate and the employer contribution rate may be changed by the governing body of the District within the options available in the TCDRS Act.

## Hays County Emergency Services District #8

### Notes to Financial Statements

#### 7. Employee Retirement Plan (continued)

*Net Pension Asset* – The District’s net pension asset was measured as of December 31, 2021, and the total pension liability used to calculate the net pension asset was determined by an actuarial valuation as of that date. The total pension liability in the December 31, 2021, actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement.

Valuation testing	Actuarially determined contribution rates are calculated as of December 31, two years prior to the end of the fiscal year in which the contributions are reported.
Actuarial Cost Method	Individual entry age normal
Amortization Method	Level percentage of payroll, closed
Amortization Period	5.6 years
Asset Valuation Method	5-year smoothed market
Inflation	2.75%
Salary Increases	Varies with age and service. 4.90% average over career including inflation
Investment Rate of Return	8.10%
Cost of Living Adjustment	Cost of Living Adjustments for the District are not considered to be automatic under GASB 68. Therefore, no assumptions for future cost of living adjustments are included in the GASB 68 calculations. No assumptions for future cost of living adjustments are included in the funding valuation.
Retirement Age	Between ages 40 and 74 with various rates of service retirement by gender: low of 4.5% for age 40-44 to high of 25% for age 65-66 for males and females.
Turnover	New employees are assumed to replace any terminated members and have similar entry ages.
Mortality:	
Depositing Members	90% of the RP-2014 Active Employee Mortality Table for males and 90% of the RP-2014 Active Employee Mortality Tables for females, projected with 110% of the MP-2014 Ultimate scale after 2014.
Service retirees, beneficiaries, and non-depositing members	130% of the RP-2014 Healthy Annuitant Mortality Table for males and 110% of the RP-2014 Healthy Annuitant Mortality Table for females, both projected with 110% of the MP-2014 Ultimate scale after 2014.
Disabled retirees	130% of the RP-2014 Disabled Annuitant Mortality Table for males and 115% of the RP-2014 Mortality Table for females, both projected with 110% of the MP-2014 Ultimate Scale after 2014.

# Hays County Emergency Services District #8

## Notes to Financial Statements

### 7. Employee Retirement Plan (continued)

The actuarial assumptions that determined the total pension liability as of December 31, 2021, were based on the results of an actuarial experience study for the period December 31, 2010, through December 31, 2021, except where required to be different by GASB 68.

*Long-Term Expected Rate of Return* – The long-term rate of return on TCDRS assets is determined by adding expected inflation to expected long-term real returns and reflecting expected volatility and correlation. The capital market assumptions and information shown below are provided by TCDRS' investment consultant, Cliffwater LLC. The numbers shown are based on January 2021 information for a 10-year time horizon.

Asset Class	Benchmark	Target Allocation (a)	Geometric Real Rate of Return (Expected minus Inflation) (b)
US Equities	Dow Jones U.S. Total Stock Market Index	10.50%	5.40%
Private Equity	Cambridge Associates Global Private Equity & Venture Capital Index (c)	18.00%	8.40%
Global Equities	MSCI World (net) Index	2.50%	5.70%
International Equities – Developed	MSCI World Ex USA (net) Index	10.00%	5.40%
International Equities – Emerging	MSCI Emerging Markets (net) Index	7.00%	5.90%
Investment-Grade Bonds	Bloomberg Barclays U.S. Aggregate Bond Index	3.00%	1.60%
Strategic Credit	FTSE High-Yield Cash-Pay Capped Index	12.00%	4.39%
Direct Lending	S&P/LSTA Leveraged Loan Index	11.00%	7.95%
Distressed Debt	Cambridge Associates Distressed Securities Index (d)	2.00%	7.20%
REIT Equities	67% FTSE NAREIT Equity REIT Index + 33% S&P Global REIT (net) Index	2.00%	4.15%
Master Limited Partnerships	Aerian MLP Index	3.00%	5.35%
Private Real Estate Partnerships	Cambridge Associates Real Estate Index (c)	6.00%	6.30%
Hedge Funds	Hedge Funds Research Inc., (HFRI) Fund of Composite	13.00%	3.90%

# Hays County Emergency Services District #8

## Notes to Financial Statements

### 7. Employee Retirement Plan (continued)

- a) Target allocation adopted at the April 2019 TCDRS Board Meeting.
- b) Geometric real rates of return equity the expected return minus the assumed inflation rate of 1.7%, per Cliffwater LLC's 2019 capital market assumptions.
- c) Includes vintage years 2006-present of Quarter Pooled Horizon internal rates of return.
- d) Includes vintage years 2005-present of Quarter Pooled Horizon internal rates of return.
- e) Includes vintages years 2007-present of Quarter Pooled Horizon internal rates of return.

The discount rate used to measure the total pension liability was 8.10%. This rate reflects the long-term rate of return funding valuation assumption of 8.00%, plus 0.10% adjustment to be gross administrative expenses as required by GASB 68. The Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current active, inactive, and retired members. Therefore, the discount rate for calculating the total pension liability is equal to the long-term expected rate of return, and the municipal bond rate does not apply.

*Changes in Net Pension Asset* – Changes in the District's net pension asset for the valuation year ended December 31, 2021, are as follows:

	Total Pension Liability	Increase (Decrease) Fiduciary Net Position	Net Pension (Asset) Liability
	(a)	(b)	(a) - (b)
Balance as of December 31, 2020	\$ 5,734,890	\$ 4,069,087	\$ 1,665,803
Changes for the year:			
Service Cost	682,012	-	682,012
Interest on total pension liability (1)	486,499	-	486,499
Effect of plan changes (2)	-	-	-
Effect of economic/demographic gains or losses	(16,059)	-	(16,059)
Effect of assumption changes or inputs	69,960	-	69,960
Refund of contributions	(10,866)	(10,866)	-
Benefit payments	(20,923)	(20,923)	-
Administrative expenses	-	(3,342)	3,342
Member contributions	-	319,625	(319,625)
Net investment income	-	1,016,082	(1,016,082)
Employer contributions	-	776,233	(776,233)
Other (3)	-	31,267	(31,267)
Balance as of December 31, 2021	\$ 6,925,513	\$ 6,177,163	\$ 748,350

## Hays County Emergency Services District #8

### Notes to Financial Statements

#### 7. Employee Retirement Plan (continued)

(1) reflects the change in the liability due to time value of money. TCDRS does not charge fees or interest.

(2) no plan changes valued.

(3) relates to allocation of system-wide items.

*Security Analysis* – The following presents the net pension asset of the District, calculated using the discounted rate of 7.6%, as well as what the District's net pension asset would be if it were calculated using a discount rate that is 1 percentage point lower (6.6%) or 1 percentage point higher (8.6%) than the current rate.

	1% Decrease (7.60%)	Current Discount Rate	1% Increase (9.60%)
Total pension liability	\$ 8,337,334	\$ 6,925,513	\$ 5,792,134
Fiduciary net position	6,177,162	6,177,162	6,177,162
Net pension liability/(asset)	<u>\$ 2,160,172</u>	<u>\$ 748,351</u>	<u>\$ (385,028)</u>

*Pension Expense, Deferred Outflows of Resources and Deferred Inflows of Resources* – For the year ended September 30, 2020, the District recognized pension expense of \$771,446. As of September 30, 2022, the deferred outflows and inflows of resources are as follows:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 22,780	\$ 331,228
Changes of assumptions	23,455	442,750
Net difference between projected and actual earnings	568,193	-
Contributions made subsequent to measurement date	-	-
Total	<u>\$ 614,428</u>	<u>\$ 773,978</u>



## Hays County Emergency Services District #8

### Notes to Financial Statements

#### 7. Employee Retirement Plan (continued)

The amounts reported as deferred outflows of resources related to pensions resulting from District contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ended September 30, 2022. The remaining amounts currently reported as deferred outflows of resources related to pensions will be recognized in the pension expense as follows:

	Pension Expense Amount
Year ended September 30:	
2023	\$ (34,057)
2024	(60,126)
2025	(36,119)
2026	(31,663)
2027	101,557
Thereafter	219,958
	<u>\$ 159,550</u>

## Hays County Emergency Services District #8

### Notes to Financial Statements

#### 8. Reconciliation of Government Wide and Fund Financial Statements

Amounts reported for governmental activities in the statement of net assets are different because:

Governmental funds total fund balance	\$ 30,055,983
Capital assets used in governmental activities are not financial resources and, therefore, are not reported in the funds.	10,604,246
Other reconciling items	(367,822)
Long-term debt	<u>(19,982,412)</u>
Total net position	<u>\$ 20,309,995</u>

Amounts reported for governmental activities in the statement of activities are different because:

Revenues in excess of expenditures	\$ 980,611
Current year capital outlays	2,804,659
Repayment of long-term debt	1,273,046
Other reconciling items	64,396
Pension plan expense	(325,073)
Depreciation expense	<u>(493,457)</u>
Change in net position	<u>\$ 4,304,182</u>

#### 9. Commitment

The District is in the process of building a new 42,068 square foot Administrative/Training/Fire Station and 3,600 square foot Support/Maintenance Shop. The total commitment to the contractor is \$21,511,500 with \$8,831,259 paid towards this commitment to date.

## Hays County Emergency Services District #8

### Budgetary Comparison Schedule – General Fund

For the Year Ended September 30, 2022

	Original Budget	Final Budget	Actual	Variance Favorable (Unfavorable)
Revenues:				
Property tax revenue	\$ 5,444,980	\$ 5,444,980	\$ 5,469,655	\$ 24,675
Sales tax revenue	2,500,000	2,500,000	3,418,007	918,007
EMS revenue	3,411,426	3,411,426	3,705,008	293,582
Grant revenue	4,000	4,000	2,132	(1,868)
Other income	32,600	32,600	661,544	628,944
Permit fees	-	-	55,956	55,956
Training revenue	500	500	-	(500)
	<u>11,393,506</u>	<u>11,393,506</u>	<u>13,312,302</u>	<u>1,918,796</u>
Expenditures:				
Payroll and related costs	6,532,359	6,532,359	6,334,134	198,225
Debt service	1,743,169	1,743,169	1,728,936	14,233
Maintenance	1,909,903	1,909,903	2,950,953	(1,041,050)
Insurance	175,500	175,500	180,713	(5,213)
Firefighting supplies and programs	438,000	438,000	452,182	(14,182)
EMS expenses	234,950	234,950	235,373	(423)
Utilities and telephone	100,750	100,750	101,446	(696)
Office supplies	91,000	91,000	74,696	16,304
Fuel	72,550	72,550	83,181	(10,631)
Professional fees	171,520	171,520	138,831	32,689
Training expense	55,000	55,000	51,249	3,751
Total expenditures/expenses	<u>11,524,701</u>	<u>11,524,701</u>	<u>12,331,694</u>	<u>(806,993)</u>
Expenditures in excess of revenues	(131,195)	(131,195)	980,608	1,111,803
Fund balance at beginning of year	29,075,375	29,075,375	29,075,375	-
Fund balance at end of year	<u>\$ 28,944,180</u>	<u>\$ 28,944,180</u>	<u>\$ 30,055,983</u>	<u>\$ 1,111,803</u>

*Notes to the financial statements are integral to this statement.*

## Hays County Emergency Services District #8

### Schedule of Changes in Net Pension Asset and Related Ratios

For the Year Ended September 30, 2019

	2018	2017	2016	2015
Total Pension Liability				
Service Cost	\$ 378,488	\$ 348,864	\$ 368,793	\$ 133,167
Interest on total pension liability	235,727	70,072	25,870	5,126
Effect of plan changes	-	1,579,798	-	(4,420)
Effect of assumption changes or inputs	-	(40,210)	-	334
Effect of economic/demographic (gains) or losses	89,273	59,325	(17,012)	4,368
Benefit payment/refunds or contributions	(4,808)	-	-	-
Net change in total pension liability	698,680	2,017,849	377,651	138,575
Total pension liability, beginning	2,534,076	516,226	138,575	-
Total pension liability, ending	<u>\$ 3,232,756</u>	<u>\$ 2,534,075</u>	<u>\$ 516,226</u>	<u>\$ 138,575</u>
Fiduciary Net Position				
Employer contributions	\$ 473,859	\$ 280,476	\$ 228,427	\$ 91,378
Member contributions	189,544	171,394	159,271	65,192
Investment income net of investment expenses	(13,364)	89,771	11,841	(1,330)
Benefit payment/refunds of contributions	(4,808)	-	-	-
Administrative expenses	(1,426)	(740)	(129)	(58)
Other	19,733	6,049	10,641	(7)
Net change in fiduciary net position	663,538	546,950	410,051	155,175
Fiduciary net position, beginning	1,112,176	565,226	155,175	-
Fiduciary net position, ending	<u>1,775,714</u>	<u>1,112,176</u>	<u>565,226</u>	<u>155,175</u>
Net pension liability/ (asset), ending	<u>\$ 1,457,042</u>	<u>\$ 1,421,899</u>	<u>\$ (49,000)</u>	<u>\$ (16,600)</u>
Fiduciary net position as a % of total pension liability	54.93%	43.89%	109.49%	111.98%
Pensionable covered payroll	\$ 3,159,060	\$ 2,856,570	\$ 2,654,519	\$ 2,607,684
Net pension liability/(asset) as a % of	46.12%	49.78%	-1.85%	-0.64%

This schedule is presented to illustrate the requirement to show information for 10 years. Additional years will be displayed as they become available.

*Notes to the financial statements are integral to this statement.*

## Hays County Emergency Services District #8

### Schedule of District Contributions

For the Year Ended September 30, 2019

Year ending December 31,	Actuarially Determined Contribution (1)	Actual Employer Contribution (1)	Contribution Deficiency (Excess)	Pensionable Covered Payroll (2)	Actual Contribution as a % of Covered Payroll
2009					
2010					
2011					
2012					
2013					
2014					
2015	91,378	91,378	-	1,086,535	8.4%
2016	223,245	228,427	(5,182)	2,654,519	8.6%
2017	219,099	280,476	(61,377)	2,856,570	9.8%
2018	440,373	473,859	(33,486)	3,159,060	15.0%

(1) TCDRS calculates actuarially determined contributions on a calendar year basis. GASB Statement NO. 68 indicates the employer should report employer contribution amounts on a fiscal year basis. If additional assistance is needed, please contact TCDRS.

(2) Payroll is calculated based on contributions as reported to TCDRS.

This schedule is presented to illustrate the requirement to show information for 10 years. Additional years will be displayed as they become available.

## Hays County Emergency Services District #8

### Notes to Required Supplementary Information

For the Year Ended September 30, 2019

Valuation date: actuarially determined contribution rates are calculated each December 31, two years prior (if available) to the end of the fiscal year in which contributions are reported.

Actuarial Cost Method	Individual entry age normal
Amortization Method	Level percentage of payroll, closed
Remaining Amortization Period	8.0 years based on contribution rate calculated in 12/31/2018 valuation
Asset Valuation Method	5-year smoothed market
Inflation	2.75%
Salary Increases	Varies with age and service. 4.90% average over career including inflation
Investment Rate of Return	8.00% net of administrative and investment expenses, including inflation
Retirement Age	Members who are eligible for service retirement are assumed to commence receiving benefit payments based on age. The average age at service retirement for recent retirees is 61.
Mortality	130% of the RP-2014 Healthy Annuitant Mortality Table for males and 110% of the RP-2014 Healthy Annuitant Mortality Table for females, both projected with 110% of the MP-2014 Ultimate scale after 2014.
Changes in Assumptions and Methods Reflected in the Schedule of Employee Contributions*	2015 – new inflation, mortality and other assumptions were reflected. 2017 – new mortality assumptions were reflected.
Changes in Plan Provisions Reflected in the Schedule of Employer Contributions*	2015 – no changes in plan provision were reflected in the Schedule. 2016 – no changes in plan provisions were reflected in the Schedule. 2017 – new annuity purchase rates were reflected for benefits earned after 2017. 2018 – employer contributions reflect that the prior service matching rate was increased to 100%

\*- Only changes that affect the benefit amount and that are effective 2015 and later are shown in the Notes to the Schedule.

*Notes to the financial statements are integral to this statement.*



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Smith

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### Agenda Item

Approve specifications for IFB 2023-B09 Sawyer Ranch Road - Remove and Replace Hot Mix and authorize Purchasing to solicit for bids and advertise. **SMITH/BORCHERDING**

### Summary

Hays County issues this Invitation for Bid (IFB) to solicit bids to Remove and Replace 4" Type B Hot Mix on Sawyer Ranch Road.

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### Attachments

IFB 2023-B09 Sawyer Ranch Road - Remove & Replace Hot Mix

Attachment A - IFB 2023-B09 Bid Form

Attachment B - Sawyer Ranch Road Map



## SOLICITATION, OFFER AND AWARD

Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

**Solicitation No.: IFB 2023-B09**  
**Sawyer Ranch Road - Remove & Replace Hot Mix**

**Date Issued: July 13, 2023**

### SOLICITATION

Vendors must submit proposals as listed: One (1) original and one (1) digital copy on a thumb drive at the Hays County Purchasing Office at the address shown above or Electronically through BidNet Direct and one (1) hard copy at the Hays County Purchasing Office at the address shown above until:

**11:30 a.m. local time August 3, 2023.**

**Bids received after the time and date set for submission will be returned unopened.**

Submit questions via email to:  
[purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)

Questions concerning this IFB must be received in writing no later than 5:00 on July 26, 2023.

Phone No.: (512) 393-2283

### OFFER (Must be fully completed by Respondent)

In compliance with the above, the undersigned offers and agrees to furnish all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein. Award shall include all solicitation documents and attachments.

**MANUALLY SIGN ALL COPIES SUBMITTED. SIGNATURE IS MANDATORY.**

Respondent		Respondent's Authorized Representative	
Entity Name:		Name:	
Mailing Address:		Title:	
		Email Address:	
		Phone No.:	
Signature:		Date:	
Name, Email Address and Phone No. of person authorized to conduct negotiations on behalf of Respondent:			

### NOTICE OF AWARD (To be completed by County)

Funding Source:	Awarded as to item(s):	Contract Amount:
Vendor:		Term of Contract:
This contract issued pursuant to award made by Commissioners Court on:	Date:	Agenda Item:

**Important: Award notice may be made on this form or by other Authorized official written notice.**

\_\_\_\_\_  
Hays County Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hays County Clerk

\_\_\_\_\_  
Date



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## I. Summary

- 1. Type of Solicitation:** Invitation for Bid (IFB)
- 2. Solicitation Number:** IFB 2023-B09  
Sawyer Ranch Road - Remove & Replace Hot Mix
- 3. Issuing Office:** Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666
- 4. Responses to Solicitation:** Sealed proposals marked with Solicitation Number and Vendor Name on the outermost envelope  
One (1) Original and one (1) digital copy on a thumb drive, or  
Electronic Bid packets can be submitted through BidNet Direct and one (1) hard copy is required to be received within 24 hours of due date.
- 5. Deadline for Responses:** In issuing office no later than:  
**August 3, 2023, 11:30 a.m. Central Time (CT)**
- 6. Pre-Bid Meeting:** **July 19, 2023, at 9:00 AM (CT)**  
**Hays County Transportation Department**  
**2171 Yarrington Road, San Marcos, TX 78666**
- 7. Bonding Requirements:** Bid Bond: 5% of total bid amount due at bid submittal  
Performance and Payment Bonds: 100% of Contract Price within 10 days of award
- 8. Initial Contract Term:** August 2023-September 2023
- 9. Optional Contract Terms:** None
- 10. Designated Contact:** Hays County Purchasing  
Email: [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)
- 11. Questions & Answers:** **Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than July 26, 2023, 5:00 p.m. CT. Telephone inquiries will not be accepted.** Questions may be submitted by email to the address above. Answers to questions will be provided in the form of an addendum posted after the question deadline on the CivicPlus, BidNet Direct, and ESD websites for the benefit of all potential respondents. The County reserves the right to contact the person submitting a question to clarify the question received, if necessary. Each clarification, supplement, or addenda to this IFB, if any, will be posted on the CivicPlus, BidNet Direct and ESD websites. All potential or actual respondents are responsible for

monitoring the websites for such materials. Respondents are deemed to have notice of, and are required to comply with, any such material posted in accordance with this paragraph. Respondents should not rely upon any other sources of written or oral responses to inquiries.

**12. Addenda**

Any interpretations, corrections or changes to this IFB and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Hays County Purchasing Office. It is the Respondent's responsibility to acknowledge receipt of all addenda with bid submission.

**13. Contact with County Staff:**

Upon issuance of this solicitation, employees and representatives of Hays County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Respondent or its representatives. Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

July 13, 2023	Issuance of IFB
July 19, 2023	Pre-Bid Meeting @ 9:00 AM (CT)
July 26, 2023	Deadline for Submission of Questions (5:00 PM CT)
August 3, 2023	Deadline for Submission of Proposals (11:30 AM CT) <b>Late bids will not be accepted.</b>
August 2023	Anticipated contract award date

## II. IFB Submittal Checklist

This checklist is provided for the Vendor's convenience and identifies the documents that **MUST** be submitted for the bid/proposal to be considered responsive, as well as the required forms requested by Hays County.

### **A COMPLETE SOLICITATION RESPONSE PACKAGE INCLUDES:**

**The following forms MUST be returned for the bid/proposal to be considered responsive:**

- \_\_\_\_ 1. Solicitation, Offer and Award Form completed and signed
- \_\_\_\_ 2. Mandatory Bid Form: Attachment A
- \_\_\_\_ 3. Vendor Reference Form
- \_\_\_\_ 4. Bid Bond for 5% of total bid amount

### **Required Forms by Hays County:**

- \_\_\_\_ 1. Conflict of Interest Questionnaire completed and signed
- \_\_\_\_ 2. Code of Ethics signed
- \_\_\_\_ 3. HUB Practices signed
- \_\_\_\_ 4. House Bill 89 Verification signed and notarized
- \_\_\_\_ 5. Senate Bill 252 Certification
- \_\_\_\_ 6. Debarment & Licensing Certification signed and notarized
- \_\_\_\_ 7. Vendor/Bidder's Affirmation completed and signed
- \_\_\_\_ 8. Related Party Disclosure Form
- \_\_\_\_ 9. Federal Affirmations and Solicitation Acceptance
- \_\_\_\_ 10. Any addenda applicable to this solicitation

### **Hays County will accept bids, by the stated due date by one of the following methods:**

- \_\_\_\_ 1. Electronic Submission of Bid Packet through BidNet Direct and one (1) hard copy delivered to the Hays County Purchasing Office within 24 hours of bid due date, OR
- \_\_\_\_ 2. One (1) original of the proposal and one (1) digital copy on a thumb drive in a sealed envelope with the Solicitation Number and Vendor's Name on the outermost envelope, addressed to the Hays County Purchasing Office:

Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666

### III. Specifications

#### A. Introduction

Hays County issues this Invitation for Bid (IFB) to solicit bids to Remove and Replace 4" Type B Hot Mix on Sawyer Ranch Road.

#### B. Scope of Work

##### **Special Specification:**

- Specification Item 351, SS 3076, SS 3077, and SS 3084 of the Texas Department of Transportation's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges shall govern this project. Contractor shall provide QA/QC with the required bulk samples and cores per specification for each day's work for conformance with density and specification requirements.

- 

##### **Milling/ Failure Repair Paving:**

- In locations determined by the Hays County Representative pavement will be milled to 4" of depth from existing paving. The Contractor will provide the trucking and dumpsite for haul off materials. After milling the location will be free of loose material and a tack coat applied prior to paving. B mix shall not be placed until underlying base is approved by Hays County. Proof rolling of the prepared base may be required, rutting or pumping will require rework. 4" of TXDOT Special Specification 3076 Type B shall be placed and compacted per specifications.

##### **Crack Sealing Paving Joint Operations:**

- Once paving repairs are complete the Contractor shall crack seal all perimeter joints of repair locations per TXDOT Specification Item 712. Payment of crack sealing will be added into the SYD unit price of the project.

##### **Post-Paving Cleanup:**

- All post-paving clean-up will be the responsibility of the Contractor.

##### **Traffic Control/Safety Operations:**

- Safety warning signage, flagger operations, pilot car, and traffic control shall be the responsibility of the Contractor and shall meet TxDOT standards.
- School Zone locations will only be worked during non-peak times for student drop off and pickup.
- Contractor supplied temporary reflective centerline tabs shall be placed after each day's paving operation.

##### **Scheduling:**

- All paving operations shall be scheduled through the Hays County Transportation Department.

##### **All named roadways shall be completed no later than:**

- September 29, 2023

##### **Notification:**

- One week prior to paving the Contractor shall notify all residents of upcoming operations with message boards at each end of project, giving instructions regarding the paving operations.

Hays County reserves the right to refuse or reject any materials that do not meet the requirements of the specifications. Any materials refused or rejected based on non-conformance with the specifications shall be removed at no cost to the County.

### C. Project Description

#### Paving Worksites: Bid according to bid sheet instructions:

1. Sawyer Ranch Road Repair
  - a. 4" depth mill and replace with SS-Tx dot 3076 (B mix) 30,000 SYD and crack seal joints.
2. Contractor is responsible for removing, by milling to a depth of 4".
  - a. Milling Operations: Contractor is responsible for milling, rolling, and otherwise preparing the underlying base to accept the new hot mix surface. Edges will be tacked.
  - b. **The Contractor will provide trucking and haul off site for materials.**
  - c. Reference Attachment B: Sawyer Ranch Road Map (locations are estimated/actual locations will be determined by a Hays County Representative)
  - d. B mix shall not be placed until underlying prepared base is approved by Hays County. Proof rolling of the prepared base may be required, rutting or pumping will require rework.

### D. Qualifications

RESPONSIBILITY: A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must meet the following requirements:

- Have adequate financial resources, or the ability to obtain such resources as required
- Be able to comply with required or proposed delivery schedule
- Have a satisfactory record of performance
- Be otherwise qualified and eligible to receive an award
- Have the proper equipment to fulfill the terms and conditions of this contract such as proper equipment for weighing materials, loading materials, delivering materials, etc.

COMPLIANCE WITH LAWS: The successful bidder shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of the duties under the bid.

INSURANCE: The successful bidder will be required to furnish proof of insurance for Workers' Compensation, Auto Liability and General Liability before any work may begin.

It is the practice of Hays County to encourage local participation and to promote and encourage contracting and subcontracting opportunities for locally owned businesses and labor in all contracts.

The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services.

### E. Mandatory Bid Form

Respondent must provide its total bid amount by completing the mandatory bid form included as Attachment A: IFB 2023-B09 Bid Form.

Per Square Yard Bid for project:

- Pricing per square yard should include a turn-key install and include all cost of the project.
- Submit bid pricing as cost per square yard of all locations combined.
- Award will be based on qualifications and total per square yard bid for all projects combined based on estimated square yardage. Contract payment will be made by square yards completed. Price per square yard to be used if square yardage is increased due to miscalculations or if additional paving work is requested at or near each site.

Hays County is exempt from federal excise and state sales tax; therefore, tax must not be included in this bid.

ESTIMATED QUANTITIES: Quantities listed on the bid form are approximations of job quantities per ton and will be used for the comparison of bids. Individual jobs and payments will be made in accordance with delivery tickets. Hays County is not obligated to purchase any minimum amount, and the County may purchase any reasonable amount greater than the estimate for the same unit price. Any limit on quantities available must be stated expressly in the bid.

#### **F. Submittal Requirements**

Respondent must deliver their proposal to the Hays County Purchasing Department by one of the following methods by the specified deadline:

Mailed or Dropped off Proposals:

- One (1) original proposal with required forms manually signed by the Vendor with original signatures
- One (1) digital copy of the full proposal with all required forms on a thumb drive

Electronic Proposals:

- Upload proposal with required forms manually signed by the Vendor. (through BidNet Direct)
- One (1) original proposal with required forms manually signed by the Vendor, delivered to the Hays County Purchasing Office. Either the original or Electronic Proposal (through BidNet Direct) MUST be received by the due date and time to be considered responsive.
- Hard copy must be received within 24 hours of bid due date.

#### **LATE SUBMITTALS WILL NOT BE ACCEPTED.**

ALTERING BIDS: Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the bid, guaranteeing authenticity.

WITHDRAWING OF BID: A bid may be withdrawn at any time prior to the official opening. After the official opening, bids may not be amended, altered or withdrawn without the recommendation of the County Purchasing Manager and the approval of Commissioners Court.

FORMS: All bids must be submitted on the forms provided in this bid document. Changes to bid forms made by bidders shall disqualify the bid.

REFERENCES: Hays County requires respondent to supply a list of at least three (3) references (See Section IV for Vendor Reference Form) where like services have been supplied by their company. Include name of company, address, telephone number and name of representative.

#### **G. Award of Contract**

BASIS OF AWARD: The County reserves the right to award a contract to a bidder on the basis of unit price low bid and/or the best value for the County. The County reserves the right to accept in part or in whole any bids submitted and waive any technicalities for the best interest of the County.

The bid award shall be based on but not necessarily limited to, the following factors:

- Total price
- Special needs and requirements of Hays County
- Hays County's evaluation of vendor's ability to perform
- Vendor's references

CONTRACT: This bid, when properly accepted by Hays County shall constitute a contract equally binding between the successful bidder and Hays County. No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any discussions with any County employee. Only those communications that are in writing from the Purchasing Manager shall be considered as a duly

authorized expression on behalf of the County. No oral agreements either expressed or implied will be considered in fulfilling this contract. No additional terms will become part of this contract with the exception of Commissioners Court approved change orders.

BIDDER AGREES, if this bid is accepted, to furnish any and all services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of the bid will be sixty (60) calendar days.

The successful bidder expressly warrants that all services specified in the IFB will be performed with care and diligence and in accordance with all specifications of the IFB. The successful bidder agrees to correct any deficiencies in its performance of services upon notification by the County and without additional expense to the County.

The County reserves the right to accept in part or in whole any bids submitted and waive any technicalities for the best interest of the County.

If the bid is accepted and approved by Commissioners Court, this document shall be made part of the contract. No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any discussions with any County employee. No oral agreements either expressed or implied will be considered in fulfilling this contract.

CONTRACT TERM: The term of this contract will begin on the effective date of this contract and remain in effect until September 29, 2023, or until successful project completion. Contract may be extended by the Commissioners Court of Hays County.

#### **H. Bond Requirements**

BID BOND: A Bid Bond shall be submitted with your offer. It shall be in the amount of 5% of the total bid amount and in the form of a certified or cashier's check or bid bond issued by a surety company authorized to do business in Texas. Within Ten (10) days of award, it may be returned to you, if you are the unsuccessful offer. If you are the awardee, it shall be held until a Performance Bond is received as explained below.

PERFORMANCE & PAYMENT BONDS: Contractor shall furnish Performance and Payment Bonds to the County Purchasing Manager within ten (10) calendar days of notification of contract award. Each shall be in the amount at least equal to the contract price, as security for the faithful performance and payment of all of contractor's obligations under the contract documents. Even though a contract may be awarded, no contract is deemed to exist until the proper Performance Bond has been received. The bonds are to be issued from a surety company holding a license from the State of Texas to act as a surety. These bonds shall remain in effect until final acceptance by the Engineer and until a Maintenance Bond, which will run for a period of two (2) years after the successful completion of all work under the contract and acceptance of Hays County, is obtained and provided to the county. A Maintenance Bond guarantees all work under the contract to be free from faulty materials and free from improper workmanship, and against injury from proper and usual wear, and guarantees to replace or to re-execute, without cost to Hays County, such work as may be found to be improper or imperfect, and to make good all damage caused to the other work of materials, due to such required replacement or re-execution. At your request, the Performance Bond shall be returned by the County upon completion of the contract and final acceptance of all items in the contract. Neither the final certificate, nor payment, nor any provision in the contract documents shall relieve the contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the Maintenance Bond. If the awardee fails to perform any of the services required by the contract within ten (10) days of receipt of written demand for performance from County or if the awardee fails to correct or replace defective goods or products within ten (10) days from receipt of written demand, the contract is deemed BREACHED and is



cause for termination of the contract. A contract terminated for cause results in retention of the Bond by County for liquidated damages.

**I. Warranty of Performance**

The successful respondent expressly warrants that all services specified in the IFB will be performed with care and diligence and in accordance with all specifications of the IFB. The successful bidder agrees to correct any deficiencies in performance of services upon notification by the County and without additional expense to the County.

CONTINUING NON-PERFORMANCE of the bidder, in terms of specifications, shall be basis for the termination of the contract by the County. The County shall not pay for merchandise/services that are unsatisfactory. Failure to perform any provision will constitute a default of contract, in which case, corrective action shall take place within ten (10) days from the date of written notice citing the nature of breach. Failure to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed ten (10) days will authorize the County to terminate this agreement by written notice.

LIQUIDATED DAMAGES FOR DELAYS: If the work is not substantially complete by September 29, 2023, the Contractor shall pay to the County as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$500 (five hundred dollars) for each calendar day of delay, until the work is completed. The Contractor and Contractor's sureties shall be liable to the County for the amount thereof.

EXCUSABLE DELAYS: The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:

1. Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
2. Any acts of the County;
3. Causes not reasonably foreseeable by the parties to this Contract at the time of execution which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, terrorism, war, acts of another Contractor in the performance of some other contract with the County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions;

Provided, however, that the Contractor promptly notifies the County within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the County shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

## IV. General Terms and Conditions for Solicitations

### Applicable To: Invitations for Bid (IFB)

#### 1. GENERAL DEFINITIONS:

- a. "Auditor" means the Hays County Auditor or his/her designee.
- b. "Commissioners Court" means Hays County Commissioners Court.
- c. "Contract" means the contract awarded pursuant to the IFB.
- d. "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- e. "County" means Hays County, Texas, a political subdivision of the State of Texas.
- f. "County Building" means any County owned buildings and does not include buildings leased by County.
- g. "Is doing business" and "has done business" mean:
  - i. Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
  - ii. Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - iii. But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- h. "Purchasing Manager" means the Hays County Purchasing Manager.
- i. "Sub-contractor" means a person or firm doing business with a Contractor.

2. FUNDING: Funds for payment on this Contract have been provided through the County budget approved by Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of Hays County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Contract. However, County cannot guarantee the availability of funds, and enters into this Contract only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. FUNDING OUT: Despite anything to the contrary in this Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this Contract after giving Contractor thirty (30) calendar days written notice that this Contract is terminated due to the failure to fund it.

#### 4. INVOICING/PAYMENTS:

- a. Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- b. As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in this Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- c. Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:  
Hays County Auditor  
Attention: Accounts Payable  
712 S Stagecoach Trail, Suite 1071

San Marcos, Texas 78666

- d. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.
  - e. Accrual and payment of interest on overdue payments shall be governed by Tex. Gov't Code Ann., ch. 2251.
5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
7. FOB POINT: Delivery of all products under this contract, if any, shall be made Free on Board to final destination, at the address shown in this contract or as indicated on each Purchase Order placed against this contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at the F.O.B. point.
8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.
9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.
10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:
- a. Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
  - b. Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] if Contractor were an entity bound to comply with these laws.

12. CHANGES:

- a. This Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF THIS CONTRACT OR OTHERWISE AMEND THIS CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.
- b. Contractor shall submit all requests for changes to this Contract or any attachment(s) to it to the Purchasing Manager. The Purchasing Manager shall present Contractor's requests to Commissioners Court for consideration.

### 13. REPRESENTATIONS:

- a. Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- b. The Contractor's delivery time includes weekends and holidays.
- c. Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.
- d. Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of this contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.
- e. The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.
- f. Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Manager. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

### 14. SUBCONTRACTS:

- a. Contractor shall not enter into any subcontracts for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.
- b. If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this Contract. Contractor must obtain County approval of all proposed HUB subcontractors through the Purchasing Manager. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Contract and may result in termination of this Contract.

15. ASSIGNMENT:

- a. The parties to this Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this Contract unless that specific authority is expressly granted by Commissioners Court.
- b. The terms, provisions, covenants, obligations and conditions of this Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Contract if the assignment or transfer is made in compliance with the provisions of this Contract.
- c. Contractor remains responsible for the performance of this Contract when there is a change of name or change of ownership. If a change of name is required, the Purchasing Manager shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Manager acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Manager or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Manager, or other authorized County person, the Contractor must submit a written notice to the Purchasing Manager within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Manager, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE: If the performance by either party of any of its obligations under this Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

- a. No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. No official, agent, employee or representative of County may waive any breach of any term or condition of this Contract unless expressly granted that specific authority by the Commissioners Court.
- b. All rights of County under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. TERMINATION FOR DEFAULT: Failure by either County or Contractor to perform any provisions of this Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days

shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why this Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Manager or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Manager or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Manager or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of this Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this Contract.

21. **TERMINATION FOR CONVENIENCE:** County reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with this Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Manager. County shall not be liable for loss of any profits anticipated under this Contract.
22. **GRATUITIES:** Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Contract. County may terminate this Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect of this contract. If this Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.
23. **COVENANT AGAINST CONTINGENT FEES:** Contractor represents and warrants that no persons or selling agency has been retained to solicit this Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate this Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
24. **COUNTY ACCESS:** Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of this Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under this Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.

25. FORFEITURE OF CONTRACT:

- a. The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
- b. The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
- c. The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.

26. CONTRACTOR CLAIMS NOTIFICATION:

- a. If any claim, or other action, that relates to Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:
  - i. The existence of the claim, or other action;
  - ii. The name and address of the person, firm, corporation or their entity that made a claim or that instituted any type of action or proceeding;
  - iii. The alleged basis of the claim, action or proceeding;
  - iv. The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
  - v. The name or names of any person against whom this claim is being made.
- b. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

27. CERTIFICATION OF ELIGIBILITY: This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/respondent certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/respondent will notify the Hays County Purchasing Manager. Failure to do so may result in terminating this Contract for default.

28. CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION: Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

29. CONSTRUCTION OF CONTRACT:

- a. This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas.
- b. If any portion of this Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- c. Headings and titles at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing this Contract.

- d. When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Hays County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in this Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- e. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- f. Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

### 30. ADDITIONAL GENERAL PROVISIONS:

- a. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract.
- b. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- c. Contractor must pay all taxes and license fees imposed by the Federal and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.
- d. Despite anything to the contrary in this Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under this Contract equal to the amount Contractor is delinquent in property tax payments to the Hays County Tax Assessor-Collector for the payment of the delinquent taxes.
- e. In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

### 31. INTERPRETATION OF CONTRACT:

- a. This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Manager. No official, representative, employee, or agent of the County has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court.
- b. If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:
  - i. The Schedule of Items/Services
  - ii. Terms and Conditions of Request for Proposals;
  - iii. General Provisions;
  - iv. Other provisions, whether incorporated by reference or otherwise; and
  - v. The specifications.
- c. If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and this contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.
- d. This contract shall be governed by the laws of Texas and all obligations are performable in Hays County, Texas.
- e. If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.
- f. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.



- g. The headings in this contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.
- h. Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to this contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

**32. MODIFICATIONS:**

- a. The County Purchasing Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:
  - i. Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
  - ii. Method of shipment or packing.
  - iii. Place of deliveries.
  - iv. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
  - v. Description of items to be provided.
  - vi. Time of performance (i.e. hours of day, days of week, etc.)
- b. If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Manager decides that the facts justify it, the County Purchasing Manager may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**33. PRICE CHANGES:** The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Hays County substantiating the changes to the bid prices. Any price changes must be approved by Hays County.

- 34. INSURANCE AND LIABILITY:** During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall;
- a. Name County as additional insured as its interests may appear.
  - b. Provide County a waiver of subrogation.
  - c. Provide County with a thirty (30) calendar day advance written notice of cancellation or material change to said insurance.
  - d. Provide the County Purchasing Manager at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. Also, ensure your certificate contains the contract number as indicated on the Contract Award form when issued by Hays County.
  - e. Submit an original certificate of insurance reflecting coverage as follows:

Automobile Liability:	
Bodily Injury (Each person)	\$250,000.00
Bodily Injury (Each accident)	\$500,000.00
Property Damage	\$1,000,000.00
Commercial General Liability (Including Contractual Liability):	

Bodily Injury (Each accident)	\$1,000,000.00
Property Damage	\$100,000.00
Excess Liability:	
Umbrella Form	Not Required
Labor Liability:	
Worker's Compensation	Meeting Statutory Requirements

## V. Vendor Reference Form

List three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

REFERENCE ONE
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE TWO
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE THREE
-----------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

## VI. Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Hays County purchases, a vendor or other person who is awarded a contract or purchase approved by Hays County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Hays County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

If you do not have access to the link provided above or have any questions, contact Purchasing at 512-393-5532.

## VII. Conflict of Interest Questionnaire

### CONFLICT OF INTEREST QUESTIONNAIRE

**FORM CIQ**

**For vendor doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

#### OFFICE USE ONLY

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## VIII. CODE OF ETHICS FOR HAYS COUNTY

Public employment is a public trust. It is the policy of Hays County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Hays County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Hays County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Hays County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## IX. Hays County Practices Related to Historically Underutilized Businesses

### 1. STATEMENT OF PRACTICES

Hays County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Hays County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

### 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Hays County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

### 3. GUIDELINES

- a. Hays County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL). Hays County will solicit bids from certified HUB's for state purchasing and public works contracts.

4. Hays County will actively seek and encourage HUBs to participate in all facets of the procurement process by:



- a. Continuing to increase and monitor a database of certified HUB vendors, professionals and contractors. The database will be expanded to include products, areas of expertise and capabilities of each HUB firm.
  - b. Continuing to seek new communication links with HUB vendors, professionals and contractors to involve them in the procurement process.
  - c. Continuing to advertise bids on the County's website and in the newspapers including newspapers that target socially and economically disadvantaged communities.
5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms in the procurement process by:
  - a. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements.
  - b. Where feasible, assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work.
  - c. Specifications of reasonable, realistic delivery schedules consistent with the County's actual requirements.
  - d. Specifications, terms and conditions reflecting the County's actual requirements are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. A HUB practice statement shall be included in all specifications. The County will consider the bidder's responsiveness to the HUB Practices in the evaluation of bids and proposals. Failure to demonstrate a good faith effort to comply with the County's HUB practices may result in a bid or proposal being considered non-responsive to specifications.
7. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Sign for acknowledgement of the Hays County HUB Practices:

---

Signature

---

Date

X. Hays County House Bill 89 Verification

I, \_\_\_\_\_ (Person name), the undersigned representative of  
\_\_\_\_\_(Company or Business name, hereafter referred to as Company) being an adult  
over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and  
verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter  
2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

*Pursuant to Section 2270.001, Texas Government Code:*

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Date

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, the  
above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

\_\_\_\_\_  
Notary Public in and for the State of Texas

(if other than Texas, Write state in here \_\_\_\_\_)

\_\_\_\_\_  
Date

## XI. Hays County Purchasing Department Senate Bill 252 Certification

Pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named below is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the Hays County Purchasing Department.

---

Company Name

---

Print Name of Company Representative

---

Signature of Company Representative

---

Date

### CERTIFICATION CHECK PERFORMED BY HAYS COUNTY PURCHASING:

On this day, the Purchasing Representative for Hays County in San Marcos, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253 and I have ascertained that the above-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

---

Print Name of Hays County Purchasing Representative

---

Signature of Hays County Purchasing Representative

---

Date

---

Solicitation Number

## XII. Vendor/Bidder's Affirmation

1. Vendor/Bidder affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
2. Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
3. Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County

\_\_\_\_\_  
Name of Contracting Company

If taxable property is owned in Hays County, list property ID numbers:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

### XIII. Related Party Disclosure Form

Hays County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Hays County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Hays County employee (including elected or appointed official)(Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package

<u>Section A: Current Hays County Employee</u>		
Employee Name	Title	

<u>Section B: Former Hays County Employee</u>		
Employee Name	Title	Date of Separation from County

<u>Section C: Person Related to Current or Former Hays County Employee</u>		
Employee or Former Employee Name	Title	
Name of Related Person	Title	Relationship

<u>Section D: No Known Relationships</u>		
If no relationships in accordance with the above exist or are known to exist, provide a written explanation below:		

that does not include this completed form will be considered non-responsive and will not be eligible for an award.

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
Person	1st Degree	2nd Degree	3rd Degree*	4th Degree*
	child or parent	grandchild, sister, brother or grand- parent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great- grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great- great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
Person	1st Degree	2nd Degree
	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Hays County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a sharehold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.

## XIV. FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

### 1. **Debarment and Suspension**

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Order 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

### 2. **Americans with Disabilities Act**

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

### 3. **Discrimination**

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j. The requirements of any other nondiscrimination statute(s) that may apply to the application.

### 4. **Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**5. Wages**

Under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**7.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**8.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

**9. Lobbying**

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in Section 1352, Title 31 of the U.S. Code, which are implemented in 15 CFR Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**10. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under



that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**11. Minority and Women’s Businesses**

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women’s business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

**12. Environmental Standards**

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- b. Notification of violating facilities pursuant to EO 11738;
- c. Protection of wetlands pursuant to EO 11990;
- d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- i. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- j. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- k. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded
  - \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**13. Historic Properties**

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

**14. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_ Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

**Attachment A: IFB 2023-B09 BID FORM  
SAWYER RANCH ROAD - REMOVE & REPLACE HOT MIX**

**All Projects are TXDOT Special Specification 3076 Type B.**

Per Square Yard Bid for project:

- Pricing per square yard should include a turn-key install and include all cost of the project.
- Submit bid pricing as cost per square yard of all locations combined.

**Per Square Yard Bid includes Milling 4" Depth, replacing 4" Type B Mix and crack seal joints.**

Roadway	Price per Square Yard	Estimated Square Yards*			Total Job Cost
Sawyer Ranch Road	\$	30,000			\$
Total Bid of Job					\$

**Total Amount of entire bid:**

\$

**Total amount of entire bid (written out):**

---

\*Award will be based on qualifications and total per square yards on all projects combined based on estimated square yardage. Contract payment will be made by square yard completed. Price per square yard to be used if square yard is increased due to miscalculations or if additional work is requested at or near site. Estimated square yardage shown are for bid purposes only.

**The undersigned by his/her signature, represents that he/she is authorized to bind the bidder to fully comply with the terms and conditions of the attached Invitation for Bid, specifications and the amount(s) shown on the accompanying bid sheet(s). By signing below, you have read the entire document and agree to the terms herein.**

---

(Signature of person authorized to sign bid)

---

(Printed name and title of signer)

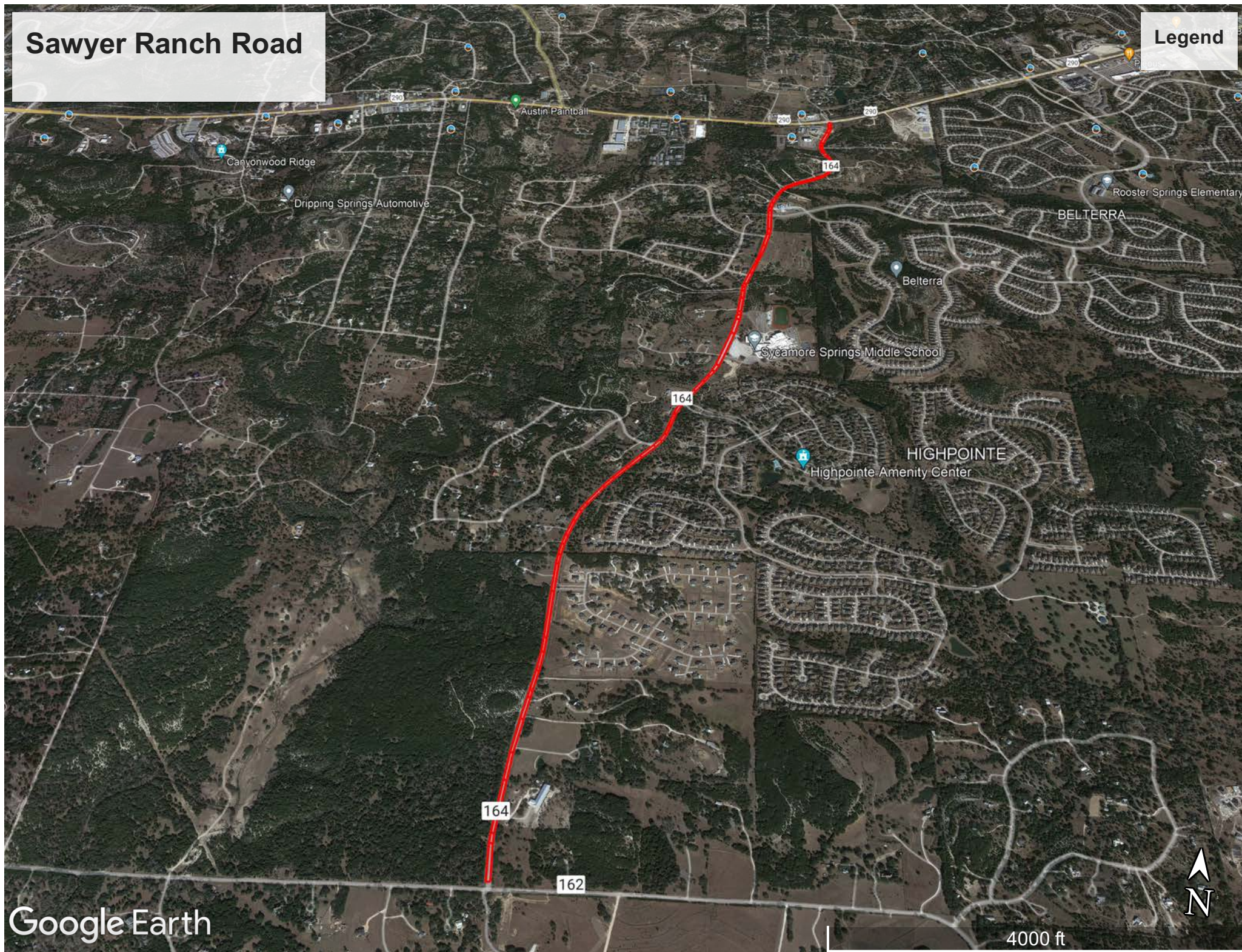
---

(Date)



# Sawyer Ranch Road

Legend



Google Earth

4000 ft





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Cohen

---

### Agenda Item

Approve specifications for IFB 2023-B17 Jack Rabbit Lane - Remove and Replace Hot Mix and authorize Purchasing to solicit for bids and advertise. **COHEN/BORCHERDING**

### Summary

Hays County issues this Invitation for Bid (IFB) to solicit bids to Remove existing 6" and replace with 4" of Type B Hot Mix and 2" Type D Hot Mix Overlay on Jack Rabbit Lane.

---

### Attachments

IFB 2023-B17 Jack Rabbit Lane - Remove & Replace Hot Mix

Attachment A - IFB 2023-B17 Bid Form

Attachment B - Jack Rabbit Lane Map



# SOLICITATION, OFFER AND AWARD

Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

Solicitation No.: IFB 2023-B17  
Jack Rabbit Lane - Remove & Replace Hot Mix

Date Issued: July 13, 2023

## SOLICITATION

Vendors must submit proposals as listed: One (1) original and one (1) digital copy on a thumb drive at the Hays County Purchasing Office at the address shown above or Electronically through BidNet Direct and one (1) hard copy at the Hays County Purchasing Office at the address shown above until:

**11:00 a.m. local time August 3, 2023**

**Bids received after the time and date set for submission will be returned unopened.**

Submit questions via email to:  
[purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)

Questions concerning this IFB must be received in writing no later than 5:00 on, July 26, 2023

Phone No.: (512) 393-2283

## OFFER (Must be fully completed by Respondent)

In compliance with the above, the undersigned offers and agrees to furnish all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein. Award shall include all solicitation documents and attachments.

**MANUALLY SIGN ALL COPIES SUBMITTED. SIGNATURE IS MANDATORY.**

Respondent		Respondent's Authorized Representative	
Entity Name:		Name:	
Mailing Address:		Title:	
		Email Address:	
		Phone No.:	
Signature:		Date:	
Name, Email Address and Phone No. of person authorized to conduct negotiations on behalf of Respondent:			

## NOTICE OF AWARD (To be completed by County)

Funding Source:	Awarded as to item(s):	Contract Amount:
Vendor:		Term of Contract:
This contract issued pursuant to award made by Commissioners Court on:	Date:	Agenda Item:

**Important: Award notice may be made on this form or by other Authorized official written notice.**

\_\_\_\_\_  
Hays County Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hays County Clerk

\_\_\_\_\_  
Date

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## I. Summary

1. **Type of Solicitation:** Invitation for Bid (IFB)
2. **Solicitation Number:** IFB 2023-B17  
Jack Rabbit Lane - Remove & Replace Hot Mix
3. **Issuing Office:** Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666
4. **Responses to Solicitation:** Sealed proposals marked with Solicitation Number and Vendor Name on the outermost envelope  
One (1) Original and one (1) digital copy on a thumb drive, or  
Electronic Bid packets can be submitted through BidNet Direct and one (1) hard copy is required to be received within 24 hours of bid due date.
5. **Deadline for Responses:** In issuing office no later than:  
**August 3, 2023, 11:00 a.m. Central Time (CT)**
6. **Pre-Bid Meeting:** **July 19, 2023, at 9:00 AM (CT)**  
**Hays County Transportation Department**  
**2171 Yarrington Road, San Marcos, TX 78666**
7. **Bonding Requirements:** Bid Bond: 5% of total bid amount due at bid submittal  
Performance and Payment Bonds: 100% of Contract Price within 10 days of award
8. **Initial Contract Term:** August 2023-September 2023
9. **Optional Contract Terms:** None
10. **Designated Contact:** Hays County Purchasing  
Email: [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)
11. **Questions & Answers:** **Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than July 26, 2023, 5:00 p.m. CT. Telephone inquiries will not be accepted.** Questions may be submitted by email to the address above. Answers to questions will be provided in the form of an addendum posted after the question deadline on the CivicPlus, BidNet Direct, and ESD websites for the benefit of all potential respondents. The County reserves the right to contact the person submitting a question to clarify the question received, if necessary. Each clarification, supplement, or addenda to this IFB, if any, will be posted on the CivicPlus, BidNet Direct and ESD websites. All potential or actual respondents are responsible for



monitoring the websites for such materials. Respondents are deemed to have notice of, and are required to comply with, any such material posted in accordance with this paragraph. Respondents should not rely upon any other sources of written or oral responses to inquiries.

**12. Addenda**

Any interpretations, corrections or changes to this IFB and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Hays County Purchasing Office. It is the Respondent's responsibility to acknowledge receipt of all addenda with bid submission.

**13. Contact with County Staff:**

Upon issuance of this solicitation, employees and representatives of Hays County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Respondent or its representatives. Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

July 13, 2023	Issuance of IFB
July 19, 2023	Pre-Bid Meeting @ 9:00 AM (CT)
July 26, 2023	Deadline for Submission of Questions (5:00 PM CT)
August 3, 2023	Deadline for Submission of Proposals (11:00 AM CT) <b>Late bids will not be accepted.</b>
August 2023	Anticipated contract award date

## II. IFB Submittal Checklist

This checklist is provided for the Vendor's convenience and identifies the documents that **MUST** be submitted for the bid/proposal to be considered responsive, as well as the required forms requested by Hays County.

### **A COMPLETE SOLICITATION RESPONSE PACKAGE INCLUDES:**

**The following forms MUST be returned for the bid/proposal to be considered responsive:**

- \_\_\_\_ 1. Solicitation, Offer and Award Form completed and signed
- \_\_\_\_ 2. Mandatory Bid Form: Attachment A
- \_\_\_\_ 3. Vendor Reference Form
- \_\_\_\_ 4. Bid Bond for 5% of total bid amount

### **Required Forms by Hays County:**

- \_\_\_\_ 1. Conflict of Interest Questionnaire completed and signed
- \_\_\_\_ 2. Code of Ethics signed
- \_\_\_\_ 3. HUB Practices signed
- \_\_\_\_ 4. House Bill 89 Verification signed and notarized
- \_\_\_\_ 5. Senate Bill 252 Certification
- \_\_\_\_ 6. Debarment & Licensing Certification signed and notarized
- \_\_\_\_ 7. Vendor/Bidder's Affirmation completed and signed
- \_\_\_\_ 8. Related Party Disclosure Form
- \_\_\_\_ 9. Federal Affirmations and Solicitation Acceptance
- \_\_\_\_ 10. Any addenda applicable to this solicitation

### **Hays County will accept bids, by the stated due date by one of the following methods:**

- \_\_\_\_ 1. Electronic Submission of Bid Packet through BidNet Direct and one (1) hard copy delivered to the Hays County Purchasing Office within 24 hours of bid due date, OR
- \_\_\_\_ 2. One (1) original of the proposal and one (1) digital copy on a thumb drive in a sealed envelope with the Solicitation Number and Vendor's Name on the outermost envelope, addressed to the Hays County Purchasing Office:

Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666

### III. Specifications

#### A. Introduction

Hays County issues this Invitation for Bid (IFB) to solicit bids to Remove existing 6" and replace with 4" of Type B Hot Mix and 2" Type D Hot Mix Overlay on Jack Rabbit Lane.

#### B. Scope of Work

##### **Special Specification:**

- Specification Item 351, SS 3076, SS 3077, and SS 3084 of the Texas Department of Transportation's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges shall govern this project. A TRAIL tack coat placed prior to paving with Type D mix is specified. Contractor shall provide QA/QC with the required bulk samples and cores per specification for each day's work for conformance with density and specification requirements.

##### **Milling/ B mix Paving:**

- In locations determined by the Hays County Representative pavement will be milled to 6" of depth from existing paving. The Contractor will be responsible for repairs/damage to utilities while removing around manhole castings to a depth of 6". The Contractor will provide the trucking and dumpsite for haul off materials. After milling the location will be free of loose material and a tack coat applied to the gutter face and manholes prior to paving. The Contractor will be responsible to provide safe access for resident's driveways prior to B mix installation. B mix shall not be placed until underlying base is approved by Hays County. Proof rolling of the prepared base may be required, rutting or pumping will require rework. 4" of TXDOT Special Specification 3076 Type B shall be placed and compacted per specifications.

##### **Overlay Paving Operations:**

- A TRAIL tack coat to be applied along with curb/pavement edges and manhole rings followed by a 2" overlay of TXDOT Special Specification 3077 D mix. Finished pavement will match existing curb, manhole and pavement unless specified by the County Representative. Paving will be conducted per specifications.

##### **Post-Paving Cleanup:**

- All post-paving clean-up will be the responsibility of the Contractor.

##### **Traffic Control/Safety Operations:**

- Safety warning signage, flagger operations, pilot car, and traffic control shall be the responsibility of the Contractor and shall meet TxDOT standards.

##### **Scheduling:**

- All paving operations shall be scheduled through the Hays County Transportation Department.

##### **All named roadways shall be completed no later than:**

- September 29, 2023

##### **Notification:**

- One week prior to paving the Contractor shall notify all residents of upcoming operations with message boards at each end of project along with fliers/doorhangers, giving instructions regarding the paving operations.

Hays County reserves the right to refuse or reject any materials that do not meet the requirements of the specifications. Any materials refused or rejected based on non-conformance with the specifications shall be removed at no cost to the County.

### **C. Project Description**

**Paving Worksites: Bid according to bid sheet instructions:**

1. Jack Rabbit Lane
  - a. Mill 6" depth
  - b. Replace 4" (B mix) 3,500 SYD
2. Jack Rabbit Lane 2" Overlay
  - a. 2" D mix overlay 3,500 SYD
  - b. Trail tack to be applied prior to overlay
3. Contractor is responsible for removing, by milling to a depth of 6".
  - a. Milling Operations: Contractor is responsible for milling, rolling, and otherwise preparing the underlying base to accept the new hot mix surface. Edges will be tacked.
  - b. Contractor will be responsible for utility locates and any damages/repairs to utilities.
  - c. **The Contractor will provide trucking and haul off site for materials.**
  - d. Reference Attachment B: Jack Rabbit Lane Road Map (locations are estimated/actual locations will be determined by a Hays County Representative)
  - e. B mix shall not be placed until underlying prepared base is approved by Hays County. Proof rolling of the prepared base may be required, rutting or pumping will require rework.

### **D. Qualifications**

**RESPONSIBILITY:** A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must meet the following requirements:

- Have adequate financial resources, or the ability to obtain such resources as required
- Be able to comply with required or proposed delivery schedule
- Have a satisfactory record of performance
- Be otherwise qualified and eligible to receive an award
- Have the proper equipment to fulfill the terms and conditions of this contract such as proper equipment for weighing materials, loading materials, delivering materials, etc.

**COMPLIANCE WITH LAWS:** The successful bidder shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of the duties under the bid.

**INSURANCE:** The successful bidder will be required to furnish proof of insurance for Workers' Compensation, Auto Liability and General Liability before any work may begin.

It is the practice of Hays County to encourage local participation and to promote and encourage contracting and subcontracting opportunities for locally owned businesses and labor in all contracts.

The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services.

### **E. Mandatory Bid Form**

Respondent must provide its total bid amount by completing the mandatory bid form included as Attachment A: IFB 2023-B17 Bid Form.

Per Square Yard Bid for project:

- Pricing per square yard should include a turn-key install and include all cost of the project.

- Submit bid pricing as cost per square yard of all locations combined.
- Award will be based on qualifications and total per square yard bid for all projects combined based on estimated square yardage. Contract payment will be made by square yards completed. Price per square yard to be used if square yardage is increased due to miscalculations or if additional paving work is requested at or near each site.

Hays County is exempt from federal excise and state sales tax; therefore, tax must not be included in this bid.

**ESTIMATED QUANTITIES:** Quantities listed on the bid form are approximations of job quantities per ton and will be used for the comparison of bids. Individual jobs and payments will be made in accordance with delivery tickets. Hays County is not obligated to purchase any minimum amount, and the County may purchase any reasonable amount greater than the estimate for the same unit price. Any limit on quantities available must be stated expressly in the bid.

#### **F. Submittal Requirements**

Respondent must deliver their proposal to the Hays County Purchasing Department by one of the following methods by the specified deadline:

**Mailed or Dropped off Proposals:**

- One (1) original proposal with required forms manually signed by the Vendor with original signatures
- One (1) digital copy of the full proposal with all required forms on a thumb drive

**Electronic Proposals:**

- Upload proposal with required forms manually signed by the Vendor. (through BidNet Direct)
- One (1) original proposal with required forms manually signed by the Vendor, delivered to the Hays County Purchasing Office. Either the original or Electronic Proposal (through BidNet Direct) MUST be received by the due date and time to be considered responsive.
- Provide hard copy within 24 hours of bid due date

#### **LATE SUBMITTALS WILL NOT BE ACCEPTED.**

**ALTERING BIDS:** Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the bid, guaranteeing authenticity.

**WITHDRAWING OF BID:** A bid may be withdrawn at any time prior to the official opening. After the official opening, bids may not be amended, altered or withdrawn without the recommendation of the County Purchasing Manager and the approval of Commissioners Court.

**FORMS:** All bids must be submitted on the forms provided in this bid document. Changes to bid forms made by bidders shall disqualify the bid.

**REFERENCES:** Hays County requires respondent to supply a list of at least three (3) references (See Section IV for Vendor Reference Form) where like services have been supplied by their company. Include name of company, address, telephone number and name of representative.

#### **G. Award of Contract**

**BASIS OF AWARD:** The County reserves the right to award a contract to a bidder on the basis of unit price low bid and/or the best value for the County. The County reserves the right to accept in part or in whole any bids submitted and waive any technicalities for the best interest of the County.

The bid award shall be based on but not necessarily limited to, the following factors:

- Total price
- Special needs and requirements of Hays County
- Hays County's evaluation of vendor's ability to perform
- Vendor's references

**CONTRACT:** This bid, when properly accepted by Hays County shall constitute a contract equally binding between the successful bidder and Hays County. No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any discussions with any County employee. Only those communications that are in writing from the Purchasing Manager shall be considered as a duly authorized expression on behalf of the County. No oral agreements either expressed or implied will be considered in fulfilling this contract. No additional terms will become part of this contract with the exception of Commissioners Court approved change orders.

**BIDDER AGREES,** if this bid is accepted, to furnish any and all services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of the bid will be sixty (60) calendar days.

The successful bidder expressly warrants that all services specified in the IFB will be performed with care and diligence and in accordance with all specifications of the IFB. The successful bidder agrees to correct any deficiencies in its performance of services upon notification by the County and without additional expense to the County.

The County reserves the right to accept in part or in whole any bids submitted and waive any technicalities for the best interest of the County.

If the bid is accepted and approved by Commissioners Court, this document shall be made part of the contract. No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any discussions with any County employee. No oral agreements either expressed or implied will be considered in fulfilling this contract.

**CONTRACT TERM:** The term of this contract will begin on the effective date of this contract and remain in effect until September 29, 2023, or until successful project completion. Contract may be extended by the Commissioners Court of Hays County.

#### **H. Bond Requirements**

**BID BOND:** A Bid Bond shall be submitted with your offer. It shall be in the amount of 5% of the total bid amount and in the form of a certified or cashier's check or bid bond issued by a surety company authorized to do business in Texas. Within Ten (10) days of award, it may be returned to you, if you are the unsuccessful offer. If you are the awardee, it shall be held until a Performance Bond is received as explained below.

**PERFORMANCE & PAYMENT BONDS:** Contractor shall furnish Performance and Payment Bonds to the County Purchasing Manager within ten (10) calendar days of notification of contract award. Each shall be in the amount at least equal to the contract price, as security for the faithful performance and payment of all of contractor's obligations under the contract documents. Even though a contract may be awarded, no contract is deemed to exist until the proper Performance Bond has been received. The bonds are to be issued from a surety company holding a license from the State of Texas to act as a surety. These bonds shall remain in effect until final acceptance by the Engineer and until a Maintenance Bond, which will run for a period of two (2) years after the successful completion of all work under the contract and acceptance of Hays County, is obtained and provided to the county. A Maintenance Bond guarantees all work under the contract to be free from faulty materials and free from improper workmanship, and against injury from proper and usual wear, and guarantees to replace or to re-execute, without cost to Hays County, such work as may be found to be improper or imperfect, and to

make good all damage caused to the other work of materials, due to such required replacement or re-execution. At your request, the Performance Bond shall be returned by the County upon completion of the contract and final acceptance of all items in the contract. Neither the final certificate, nor payment, nor any provision in the contract documents shall relieve the contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the Maintenance Bond. If the awardee fails to perform any of the services required by the contract within ten (10) days of receipt of written demand for performance from County or if the awardee fails to correct or replace defective goods or products within ten (10) days from receipt of written demand, the contract is deemed BREACHED and is cause for termination of the contract. A contract terminated for cause results in retention of the Bond by County for liquidated damages.

#### **I. Warranty of Performance**

The successful respondent expressly warrants that all services specified in the IFB will be performed with care and diligence and in accordance with all specifications of the IFB. The successful bidder agrees to correct any deficiencies in performance of services upon notification by the County and without additional expense to the County.

CONTINUING NON-PERFORMANCE of the bidder, in terms of specifications, shall be basis for the termination of the contract by the County. The County shall not pay for merchandise/services that are unsatisfactory. Failure to perform any provision will constitute a default of contract, in which case, corrective action shall take place within ten (10) days from the date of written notice citing the nature of breach. Failure to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed ten (10) days will authorize the County to terminate this agreement by written notice.

LIQUIDATED DAMAGES FOR DELAYS: If the work is not substantially complete by September 29, 2023, the Contractor shall pay to the County as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$500 (five hundred dollars) for each calendar day of delay, until the work is completed. The Contractor and Contractor's sureties shall be liable to the County for the amount thereof.

EXCUSABLE DELAYS: The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:

1. Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
2. Any acts of the County;
3. Causes not reasonably foreseeable by the parties to this Contract at the time of execution which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, terrorism, war, acts of another Contractor in the performance of some other contract with the County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions;

Provided, however, that the Contractor promptly notifies the County within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the County shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

## IV. General Terms and Conditions for Solicitations

### Applicable To: Invitations for Bid (IFB)

#### 1. GENERAL DEFINITIONS:

- a. "Auditor" means the Hays County Auditor or his/her designee.
- b. "Commissioners Court" means Hays County Commissioners Court.
- c. "Contract" means the contract awarded pursuant to the IFB.
- d. "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- e. "County" means Hays County, Texas, a political subdivision of the State of Texas.
- f. "County Building" means any County owned buildings and does not include buildings leased by County.
- g. "Is doing business" and "has done business" mean:
  - i. Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
  - ii. Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - iii. But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- h. "Purchasing Manager" means the Hays County Purchasing Manager.
- i. "Sub-contractor" means a person or firm doing business with a Contractor.

2. FUNDING: Funds for payment on this Contract have been provided through the County budget approved by Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of Hays County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Contract. However, County cannot guarantee the availability of funds, and enters into this Contract only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. FUNDING OUT: Despite anything to the contrary in this Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this Contract after giving Contractor thirty (30) calendar days written notice that this Contract is terminated due to the failure to fund it.

#### 4. INVOICING/PAYMENTS:

- a. Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- b. As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in this Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- c. Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:  
Hays County Auditor  
Attention: Accounts Payable  
712 S Stagecoach Trail, Suite 1071



San Marcos, Texas 78666

- d. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.
  - e. Accrual and payment of interest on overdue payments shall be governed by Tex. Gov't Code Ann., ch. 2251.
5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
7. FOB POINT: Delivery of all products under this contract, if any, shall be made Free on Board to final destination, at the address shown in this contract or as indicated on each Purchase Order placed against this contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at the F.O.B. point.
8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.
9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.
10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:
- a. Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
  - b. Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] if Contractor were an entity bound to comply with these laws.

12. CHANGES:

- a. This Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF THIS CONTRACT OR OTHERWISE AMEND THIS CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.
- b. Contractor shall submit all requests for changes to this Contract or any attachment(s) to it to the Purchasing Manager. The Purchasing Manager shall present Contractor's requests to Commissioners Court for consideration.

### 13. REPRESENTATIONS:

- a. Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- b. The Contractor's delivery time includes weekends and holidays.
- c. Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.
- d. Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of this contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.
- e. The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.
- f. Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Manager. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

### 14. SUBCONTRACTS:

- a. Contractor shall not enter into any subcontracts for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.
- b. If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this Contract. Contractor must obtain County approval of all proposed HUB subcontractors through the Purchasing Manager. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Contract and may result in termination of this Contract.

15. ASSIGNMENT:

- a. The parties to this Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this Contract unless that specific authority is expressly granted by Commissioners Court.
- b. The terms, provisions, covenants, obligations and conditions of this Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Contract if the assignment or transfer is made in compliance with the provisions of this Contract.
- c. Contractor remains responsible for the performance of this Contract when there is a change of name or change of ownership. If a change of name is required, the Purchasing Manager shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Manager acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Manager or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Manager, or other authorized County person, the Contractor must submit a written notice to the Purchasing Manager within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Manager, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE: If the performance by either party of any of its obligations under this Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

- a. No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. No official, agent, employee or representative of County may waive any breach of any term or condition of this Contract unless expressly granted that specific authority by the Commissioners Court.
- b. All rights of County under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. TERMINATION FOR DEFAULT: Failure by either County or Contractor to perform any provisions of this Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days

shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why this Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Manager or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Manager or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Manager or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of this Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this Contract.

21. **TERMINATION FOR CONVENIENCE:** County reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with this Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Manager. County shall not be liable for loss of any profits anticipated under this Contract.
22. **GRATUITIES:** Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Contract. County may terminate this Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect of this contract. If this Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.
23. **COVENANT AGAINST CONTINGENT FEES:** Contractor represents and warrants that no persons or selling agency has been retained to solicit this Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate this Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
24. **COUNTY ACCESS:** Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of this Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under this Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.

**25. FORFEITURE OF CONTRACT:**

- a. The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
- b. The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
- c. The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.

**26. CONTRACTOR CLAIMS NOTIFICATION:**

- a. If any claim, or other action, that relates to Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:
  - i. The existence of the claim, or other action;
  - ii. The name and address of the person, firm, corporation or their entity that made a claim or that instituted any type of action or proceeding;
  - iii. The alleged basis of the claim, action or proceeding;
  - iv. The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
  - v. The name or names of any person against whom this claim is being made.
- b. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

**27. CERTIFICATION OF ELIGIBILITY:** This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/respondent certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/respondent will notify the Hays County Purchasing Manager. Failure to do so may result in terminating this Contract for default.

**28. CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION:** Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

**29. CONSTRUCTION OF CONTRACT:**

- a. This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas.
- b. If any portion of this Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- c. Headings and titles at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing this Contract.

- d. When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Hays County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in this Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- e. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- f. Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

### 30. ADDITIONAL GENERAL PROVISIONS:

- a. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract.
- b. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- c. Contractor must pay all taxes and license fees imposed by the Federal and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.
- d. Despite anything to the contrary in this Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under this Contract equal to the amount Contractor is delinquent in property tax payments to the Hays County Tax Assessor-Collector for the payment of the delinquent taxes.
- e. In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

### 31. INTERPRETATION OF CONTRACT:

- a. This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Manager. No official, representative, employee, or agent of the County has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court.
- b. If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:
  - i. The Schedule of Items/Services
  - ii. Terms and Conditions of Request for Proposals;
  - iii. General Provisions;
  - iv. Other provisions, whether incorporated by reference or otherwise; and
  - v. The specifications.
- c. If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and this contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.
- d. This contract shall be governed by the laws of Texas and all obligations are performable in Hays County, Texas.
- e. If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.
- f. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.

- g. The headings in this contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.
- h. Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to this contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

**32. MODIFICATIONS:**

- a. The County Purchasing Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:
  - i. Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
  - ii. Method of shipment or packing.
  - iii. Place of deliveries.
  - iv. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
  - v. Description of items to be provided.
  - vi. Time of performance (i.e. hours of day, days of week, etc.)
- b. If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Manager decides that the facts justify it, the County Purchasing Manager may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**33. PRICE CHANGES:** The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Hays County substantiating the changes to the bid prices. Any price changes must be approved by Hays County.

- 34. INSURANCE AND LIABILITY:** During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall;
- a. Name County as additional insured as its interests may appear.
  - b. Provide County a waiver of subrogation.
  - c. Provide County with a thirty (30) calendar day advance written notice of cancellation or material change to said insurance.
  - d. Provide the County Purchasing Manager at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. Also, ensure your certificate contains the contract number as indicated on the Contract Award form when issued by Hays County.
  - e. Submit an original certificate of insurance reflecting coverage as follows:

Automobile Liability:	
Bodily Injury (Each person)	\$250,000.00
Bodily Injury (Each accident)	\$500,000.00
Property Damage	\$1,000,000.00
Commercial General Liability (Including Contractual Liability):	

Bodily Injury (Each accident)	\$1,000,000.00
Property Damage	\$100,000.00
Excess Liability:	
Umbrella Form	Not Required
Labor Liability:	
Worker's Compensation	Meeting Statutory Requirements



## V. Vendor Reference Form

List three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

REFERENCE ONE
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE TWO
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE THREE
-----------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

## VI. Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Hays County purchases, a vendor or other person who is awarded a contract or purchase approved by Hays County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Hays County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

If you do not have access to the link provided above or have any questions, contact Purchasing at 512-393-5532.

**CONFLICT OF INTEREST QUESTIONNAIRE****FORM CIQ****For vendor doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## VIII. CODE OF ETHICS FOR HAYS COUNTY

Public employment is a public trust. It is the policy of Hays County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Hays County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Hays County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Hays County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## IX. Hays County Practices Related to Historically Underutilized Businesses

### 1. STATEMENT OF PRACTICES

Hays County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Hays County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

### 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Hays County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

### 3. GUIDELINES

- a. Hays County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL). Hays County will solicit bids from certified HUB's for state purchasing and public works contracts.

4. Hays County will actively seek and encourage HUBs to participate in all facets of the procurement process by:

- a. Continuing to increase and monitor a database of certified HUB vendors, professionals and contractors. The database will be expanded to include products, areas of expertise and capabilities of each HUB firm.
  - b. Continuing to seek new communication links with HUB vendors, professionals and contractors to involve them in the procurement process.
  - c. Continuing to advertise bids on the County's website and in the newspapers including newspapers that target socially and economically disadvantaged communities.
5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms in the procurement process by:
  - a. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements.
  - b. Where feasible, assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work.
  - c. Specifications of reasonable, realistic delivery schedules consistent with the County's actual requirements.
  - d. Specifications, terms and conditions reflecting the County's actual requirements are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. A HUB practice statement shall be included in all specifications. The County will consider the bidder's responsiveness to the HUB Practices in the evaluation of bids and proposals. Failure to demonstrate a good faith effort to comply with the County's HUB practices may result in a bid or proposal being considered non-responsive to specifications.
7. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Sign for acknowledgement of the Hays County HUB Practices:

---

Signature

---

Date

X. Hays County House Bill 89 Verification

I, \_\_\_\_\_ (Person name), the undersigned representative of  
\_\_\_\_\_(Company or Business name, hereafter referred to as Company) being an adult  
over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and  
verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter  
2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

*Pursuant to Section 2270.001, Texas Government Code:*

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Date

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, the  
above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

\_\_\_\_\_  
Notary Public in and for the State of Texas

(if other than Texas, Write state in here \_\_\_\_\_)

\_\_\_\_\_  
Date



## XI. Hays County Purchasing Department Senate Bill 252 Certification

Pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named below is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the Hays County Purchasing Department.

---

Company Name

---

Print Name of Company Representative

---

Signature of Company Representative

---

Date

### CERTIFICATION CHECK PERFORMED BY HAYS COUNTY PURCHASING:

On this day, the Purchasing Representative for Hays County in San Marcos, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253 and I have ascertained that the above-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

---

Print Name of Hays County Purchasing Representative

---

Signature of Hays County Purchasing Representative

---

Date

---

Solicitation Number

## XII. Vendor/Bidder's Affirmation

1. Vendor/Bidder affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
2. Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
3. Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County

\_\_\_\_\_  
Name of Contracting Company

If taxable property is owned in Hays County, list property ID numbers:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

### XIII. Related Party Disclosure Form

Hays County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Hays County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Hays County employee (including elected or appointed official)(Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package

<u>Section A: Current Hays County Employee</u>		
Employee Name	Title	

<u>Section B: Former Hays County Employee</u>		
Employee Name	Title	Date of Separation from County

<u>Section C: Person Related to Current or Former Hays County Employee</u>		
Employee or Former Employee Name	Title	
Name of Related Person	Title	Relationship

<u>Section D: No Known Relationships</u>		
If no relationships in accordance with the above exist or are known to exist, provide a written explanation below:		

that does not include this completed form will be considered non-responsive and will not be eligible for an award.

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
Person	1st Degree	2nd Degree	3rd Degree*	4th Degree*
	child or parent	grandchild, sister, brother or grand- parent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great- grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great- great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
Person	1st Degree	2nd Degree
	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Hays County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a sharehold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.

## XIV. FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

### 1. **Debarment and Suspension**

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Order 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

### 2. **Americans with Disabilities Act**

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

### 3. **Discrimination**

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j. The requirements of any other nondiscrimination statute(s) that may apply to the application.

### 4. **Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**5. Wages**

Under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**7.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**8.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

**9. Lobbying**

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in Section 1352, Title 31 of the U.S. Code, which are implemented in 15 CFR Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**10. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under

that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**11. Minority and Women’s Businesses**

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women’s business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

**12. Environmental Standards**

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- b. Notification of violating facilities pursuant to EO 11738;
- c. Protection of wetlands pursuant to EO 11990;
- d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- i. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- j. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- k. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded
  - \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**13. Historic Properties**

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

**14. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_ Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.



**Attachment A: IFB 2023-B17 BID FORM  
JACK RABBIT LANE: REMOVE & REPLACE HOT MIX**

**All Projects are TXDOT Special Specification 3076 Type B and TXDOT Special Specification 3077 Type D Hot Mix.**

Per Square Yard Bid for project:

- Pricing per square yard should include a turn-key install and include all cost of the project.
- Submit bid pricing as cost per square yard of all locations combined.

**Per Square Yard Bid includes Milling 6" Depth, Replacing 4" Type B Mix**

Roadway	Price per Square Yard	Estimated Square Yards*	Total Job Cost
Jack Rabbit Lane	\$	3,500	\$
Total Bid of Job			\$

**Per Square Yard Bid includes 2" Type D Mix Overlay**

Roadway	Price per Square Yard	Estimated Square Yards*	Total Job Cost
Jack Rabbit Lane	\$	3,500	\$
Total Bid of Job			\$

**Total Amount of entire bid:**

\$

**Total amount of entire bid (written out):**

---

\*Award will be based on qualifications and total per square yards on all projects combined based on estimated square yardage. Contract payment will be made by square yard completed. Price per square yard to be used if square yard is increased due to miscalculations or if additional work is requested at or near site. Estimated square yardage shown are for bid purposes only.

**The undersigned by his/her signature, represents that he/she is authorized to bind the bidder to fully comply with the terms and conditions of the attached Invitation for Bid, specifications and the amount(s) shown on the accompanying bid sheet(s). By signing below, you have read the entire document and agree to the terms herein.**

---

(Signature of person authorized to sign bid)

---

(Printed name and title of signer)

---

(Date)

## Attachment B – Jack Rabbit Lane Map





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Shell

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### Agenda Item:

Authorize the Sheriff's Office to use existing funds of \$771.96 to purchase law enforcement equipment for the Jail Division for training purposes. **SHELL/CUTLER**

### Summary:

The Jail is requesting to purchase a pebberball launcher and supplies for the Training Academy. Correction Officers (CO's) will use the equipment for training purposes. Pebberball provides safety and flexibility for almost any situation in the Jail, allowing CO's to deploy it for cell extractions, riots, and disturbances. It can keep inmates under control without sacrificing the safety of inmates and officers. This purchase costs \$772 with GT Distributors, utilizing buyboard #698-23. No additional funds are needed; savings are identified in the Jail's Miscellaneous Equipment Operating general ledger.

### Fiscal Impact:

Amount Requested: \$771.96

Line Item Number: 001-618-03.5719\_400

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, Buyboard Contract #698-23

G/L Account Validated Y/N?: Yes, Miscellaneous Equipment Operating

New Revenue Y/N?: N/A

Comments:

---

### Attachments

GT QUOTE #QTE0171171



GT Distributors - Austin  
1124 New Meister Ln., Ste 100  
Pflugerville TX 78660  
(512) 451-8298 Ext. 0000

Quote	QTE0171171
Date	4/7/2023
Page:	1

**Bill To:**

Hays County Sheriffs Office (TX)  
Attn: Accounts Payable  
1303 Uhland Road  
San Marcos TX 78666

**Ship To:**

Hays County Sheriffs Office (TX)  
1307 Uhland Road  
San Marcos TX 78666

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
PBT 040723	000262	BF	FACTORY DIRECT	NET 15	0/0/0000	2,738,269
Quantity	Item Number	Description	UOM	Unit Price	Ext. Price	
1	PBT-720-01-0002	PepperBall FTC Basic - Black (Gravity Hopper	EA	\$591.30	\$591.30	
2	PBT-370-01-0013	PepperBall 13 Cubic Inch HPA Tank, Black	EA	\$75.33	\$150.66	
1	NOTES:	Notes:  Quotation reflects BuyBoard Contract 698-23. Contract period 4/1/23-3/31/24. Email BuyBoard PO's to info@buyboard.com	EA	\$0.00	\$0.00	

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE  
PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR  
REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Thank you, your salesman was Adam Balak

Subtotal	\$741.96
Misc	\$0.00
Tax	\$0.00
Freight	\$30.00
Total	\$771.96

**From:** [Contract Admin](#)  
**To:** [Linda Rodriguez](#)  
**Subject:** RE: Verify GT Dist Quote #QTE0171171 / BB#698-23  
**Date:** Tuesday, June 27, 2023 2:33:36 PM

---

Information provided is in accordance with vendors awarded BuyBoard contract.

---

**From:** Linda Rodriguez <linda.rodriguez@co.hays.tx.us>  
**Sent:** Tuesday, June 27, 2023 2:29 PM  
**To:** Contract Admin <ContractAdmin@buyboard.com>  
**Subject:** Verify GT Dist Quote #QTE0171171 / BB#698-23

Good afternoon,

We received a quote from GT Distributors, Inc. for supplies, see attached. I would like to verify the quoted items; price is compliance with Buyboard contract #698-23.

Thank you,

*Linda Rodríguez*

Budget Coordinator  
Hays County Sheriff's Office  
1307 Uhland Road  
San Marcos, TX 78666  
512-393-7635





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Shell

---

### Agenda Item:

Authorize the Sheriff's Office to use existing funds to purchase four Glock 17 training pistols with supplies valued at \$3,497.00 for training purposes. **SHELL/CUTLER**

### Summary:

The Sheriff's Office Training Academy is seeking approval to purchase four Glock 17 Training pistols with supplies. Each pistol is valued at \$459.00 and will be used for law enforcement training. This purchase costs \$3,497.00 with GT Distributors, utilizing buyboard #698-23. No additional funds are needed; the S.O. will use existing funds within the Training Academy Expense general ledger.

### Fiscal Impact:

Amount Requested: \$3,497

Line Item Number: 001-618-00.5333

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, Buyboard Contract 698-23

G/L Account Validated Y/N?: Yes, Training Academy Expenses

New Revenue Y/N?: N/A

Comments:

---

### Attachments

GT Quote #QTE0174015



GT Distributors - Austin  
1124 New Meister Ln., Ste 100  
Pflugerville TX 78660  
(512) 451-8298 Ext. 0000

Quote	QTE0174015
Date	6/6/2023
Page:	1

**Bill To:**

Hays County Sheriffs Office (TX)  
Attn: Accounts Payable  
1303 Uhland Road  
San Marcos TX 78666

**Ship To:**

Hays County Sheriffs Office (TX)  
1307 Uhland Road  
Attn: Ryan Hayden  
San Marcos TX 78666

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
GLOCK/SIMS 060623	000262	BF	FACTORY DIRECT	NET 15	0/0/0000	2,766,105
Quantity	Item Number	Description	UOM	Unit Price	Ext. Price	
4	GLOCK-UA175ST202M	GLOCK 17T Gen5 FS FXD 5.5lb MOS	EA	\$459.00	\$1,836.00	
1	GLOCK-3706	Glock Guide Rod Spring Assembly For Glock 17	EA	\$5.00	\$5.00	
4	SIM-5308990*	Simunition 5.56mm Bolt Conversion Kit	EA	\$298.00	\$1,192.00	
1.00	SIM-5306003*	Simunition SECURIBLANK 9mm Loud	M	\$464.00	\$464.00	
Quotation reflects BuyBoard Contract 698-23. Contract period 4/1/23-3/31/24. Email BuyBoard PO's to info@buyboard.com						

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE  
PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR  
REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Your salesman was Brad.  
Thank-you for your business.

Subtotal	\$3,497.00
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Total	\$3,497.00



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Shell

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### Agenda Item:

Authorize the Sheriff's Office to use existing funds to purchase a vehicle partition valued at \$1,392.00 for the transport unit.  
**SHELL/CUTLER**

### Summary:

Currently, the Sheriff's Office needs to purchase a vehicle partition to convert a vehicle into a transportation unit. Adding a partition will keep officers safe while transporting prisoners. This purchase costs \$1,392.00 with Dana Safety Supply Inc., using TIPS USA Contract number 210102. No additional funds are needed; savings are identified in the Sheriff's Office Law Enforcement Equipment Operating general ledger.

### Fiscal Impact:

Amount Requested: \$1,392.00

Line Item Number: 001-618-00.5717\_400

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, TIPS USA Contract 210102

G/L Account Validated Y/N?: Yes, Law Enforcement Equipment Operating

New Revenue Y/N?: N/A

Comments:

---

## Attachments

Dana Safety Quote #485685



**DANA SAFETY SUPPLY, INC**  
**4809 KOGER BLVD**  
**GREENSBORO, NC 27407**

# Sales Order

**Telephone:** 800-845-0405

<b>Sales Order No.</b>	485685
<b>Customer No.</b>	HAYSCOSO

<b>Bill To</b>
HAYS COUNTY SHERIFFS OFFICE 1307 UHLAND RD SAN MARCOS, TX 78666

<b>Ship To</b>
HAYS COUNTY SHERIFFS OFFICE 1307 UHLAND RD SAN MARCOS, TX 78666

**Contact:** CAPT. SHANE SMITH  
**Telephone:** 512-393-2823  
**E-mail:** yvette.faulkner@co.hays.tx.us

**Contact:** MARTIN GONZALES  
**Telephone:**  
**E-mail:**

Order Date	Ship Via			F.O.B.	Customer PO Number	Payment Method	
05/08/23	GROUND SHIPMENT			QUOTED FREIGHT		NET30	
Entered By			Salesperson		Ordered By		Resale Number
Scott Beal			SCOTT BEAL ROUND ROCK		MARTIN GONZALES		
Order Quantity	Open Quantity	Tax	Item Number / Description			Unit Price	Extended Price
1	1	N	INFO TIPS USA CONTRACT #210102 Warehouse: RROC			0.0000	0.00
1	1	Y	475-0063 JOTTO 2020 JOTTO PI UTILTY CAGE Warehouse: RROC MSRP: \$1,214.82			911.0000	911.00
1	1	Y	475-0968 JOTTO 2020 FORD PI EXTENSION PANEL Warehouse: RROC MSRP: \$175.47			131.0000	131.00

<b>Print Date</b>	06/30/23
<b>Print Time</b>	12:57:10 PM
<b>Page No.</b>	1

<b>Amount Shipped</b>	0.00
<b>Open Order</b>	1,042.00

<b>Subtotal</b>	1,042.00
<b>Freight</b>	350.00
<b>Order Total</b>	1,392.00

Printed By: Scott Beal



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item:

Authorize the Sheriff's Jail Division to use savings of \$28,439.00 from FY 2023 capital improvements to cover additional expenses for replacement A/C units approved in the FY 2023 budget process and amend the budget accordingly.

**INGALSBE/CUTLER**

### Summary:

In the FY 2023 budget, the Jail is approved to replace three ac units. Funding of \$29,300 for the replacement AC units is budgeted in fund 170 - Infrastructure Imp fee. The Jail needs an additional \$28,439 to cover labor and crane rental fees to install each unit.

The cost to replace the ac units is \$57,739 with SI Mechanical, who currently holds contract number RFP 2022-P08 HVAC - Maintenance and Repair Services. The Jail requests to use savings from their FY 2023 Misc Capital Improvement general ledger to cover the additional funding.

### Fiscal Impact:

Amount Requested: \$57,739

Line Item Number: 001-618-03.5719\_700 (\$28,439)

170-657-00.5719\_700 (\$29,300)

### Budget Office:

Source of Funds: General Fund & Infrastructure Improvement Fee Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$28,439 - Increase Jail Misc. Equipment\_Capital 001-618-03.5719\_700

(\$28,439) - Decrease Jail Misc. Capital Improvements 001-618-03.5741

\$29,300 - Increase IFF Fund Misc. Equipment\_Capital 170-657-00.5719\_700

(\$29,300) - Decrease IFF Fund Misc. Capital Improvements 170-657-00.5741

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, Request For Proposal 2022-P08 HVAC - Maintenance and Repair Services

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

---

### Attachments

SI Mechanical Quote



PO Box 1589 • Buda, Texas • 78610  
Office (512) 593-6001

## Estimate

April 27, 2023

TACLA00045892C  
M-40866

To: Hays County - Jail  
Attn: Erica Hernandez

Re: Replace (1) 5-Ton, (1) 7.5-Ton, & (1) 10-Ton Carrier RTU

We propose to install the follow **HVAC** work as outlined below per RFP 2022-P08 HVAC - Maintenance & Repair Services Contract.

Labor	Hours	Rate	Materials & Tools	Rentals / Subcontractors
Tech(s).....	60	\$105.00	Materials..... \$33,444.32	Rental(s)..... \$0.00
Hepler(s)....	56	\$75.00	Markup per contract..... 25%	Subs/Crane..... \$5,133.60
<b>Total.....</b>	<b>116</b>	<b>\$10,500.00</b>	<b>Total..... \$41,805.40</b>	<b>Total..... \$5,133.60</b>

**HVAC Work ..... \$ 57,739.00**

### Scope of Work:

1. Furnish and install: (1) 5-Ton AAON RTU, (1) 7.5-Ton AAON Rtu, (1) 10-Ton AAON RTU, & Msic. Supplies.
2. Lock-out, Tag-out & Deenergize energy source.
3. Disconnect all piping / electrical for existing unit(s) and remove via crane.
4. Set new unit(s) in place via crane and reconnect all piping/ electrical.
5. Startup unit(s) and verify all operations.
6. Clean up work area.
7. Haul off old units.

**Note: Lead time for new units is about 26 weeks. New unit will not require curb adpt.**

**Note: This is an estimate only, additional parts and labor may be required. Project will be invoiced as Time & Materials.**

### Bid Clarifications:

1. No Payment or Performance Bonds
2. No sales tax included.
3. All work performed during normal hours.
4. No electrical of any kind (besides disconnecting from the unit if the unit has a disconnect).
5. No painting of duct or anything else.
6. No cutting and patching.
7. No temporary facilities or temporary air.
8. No fire alarm or smoke detectors.
9. No concrete work.
10. No DDC controls.
11. No structural steel framing or roofing.
12. No ceiling removal
13. Professional Engineering, Design Intent and Delegated Design is strictly excluded.

**Note: No refrigerant included. If existing refrigerant is not reusable, new will be installed for an additional cost of (R-22 = \$95 per lbs / 410A = \$45 per lbs).**

This proposal is based on acceptance of a mutually agreed upon subcontract agreement and may be withdrawn if not accepted within 30 days.

Sincerely,

**SI MECHANICAL, LLC**

**Josh Abbott**

**Service Department Manager**

**Office# 512-593-6001 ext. 103**

**Cell# 512-423-2970**

**Email# [Josh@siemechanical.com](mailto:Josh@siemechanical.com)**



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item:

Authorize an amendment for the Sheriff's Office to purchase law enforcement equipment and supplies from Sheriff Drug Forfeiture Funds. **INGALSBE/CUTLER**

### Summary:

The Sheriff has authorized using Sheriff Drug Forfeiture Funds to purchase various law enforcement equipment and supplies requested by the Law Enforcement Bureau and Support Services Bureau. A budget amendment approved by the court is needed to complete the purchases.

An amendment is needed to purchase nine 40mm launchers to equip the Mobile Field Force Team and the Special Services Division. The launcher has proven to be a much more effective use of less-than-lethal force due to its ability to carry chemical agents as part of the less-than-lethal projectile. The 40mm also allows a closer minimum engagement distance which provides a better ability to overwhelm the suspect at a close distance and allows an engagement, if necessary, with a projectile. This purchase is valued at \$10,054 with GT Distributors, using buyboard contract number 698-23. Munitions and slings will be purchased and do not require an amendment.

An amendment is needed to purchase eight EOTech SPX2 sights for the Mobile Field Force Team. This sight is built for close-quarter engagements with fast-moving targets. This purchase is valued at \$4,632 with GT Distributors, using buyboard contract number 698-23.

An amendment to purchase a truck bed cover is requested for a vehicle issued to a deputy assigned to the Training Academy. The deputy often hauls law enforcement equipment to and from training courses. A cover will protect equipment from inclement weather and theft. The total cost of this purchase is \$1,200 and will be purchased from Amazon.

Lastly, an amendment is needed to purchase six Wrap Restraint systems for Patrol. The vendor, Safe Restraints, Inc., offers the only restraint system designed to stop conflicts quickly, achieve rapid de-escalation, and provide quick recovery for both the subject and personnel. It is designed to protect subjects and personnel by reducing the possibility of injury and death. This purchase is valued at \$8,373.

### Fiscal Impact:

Amount Requested: \$24,259

Line Item Number: 053-618-00.5717\_400

### Budget Office:

Source of Funds: Sheriff Drug Forfeiture Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$24,259 - Increase Law Enforcement Eqpt\_Ops 053-618-00.5717\_400

(\$10,000) - Decrease Law Enforcement Supplies 053-618-00.5206

(\$9,259) - Decrease Criminal Investigation 053-618-00.5362

(\$5,000) - Decrease Continuing Education 053-618-00.5551

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Forfeiture Funds and Buyboard Contract #698-23

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

---

### Attachments

GT QUOTE #QTE0172541

Safe Restraints, Inc. #PP032123HCSO

GT QUOTE #QTE0171867





GT Distributors - Austin  
1124 New Meister Ln., Ste 100  
Pflugerville TX 78660  
(512) 451-8298 Ext. 0000

Quote	QTE0172541
Date	6/27/2023
Page:	1

**Bill To:**

Hays County Sheriff's Office (TX)  
Attn: Accounts Payable  
1303 Uhland Road  
San Marcos TX 78666

**Ship To:**

Hays County Sheriff's Office (TX)  
1307 Uhland Road  
San Marcos TX 78666

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
SMITH 062723	000262	BF	FACTORY DIRECT	NET 15	0/0/0000	2,750,827

Quantity	Item Number	Description	UOM	Unit Price	Ext. Price
8	DT-1425*	DefTec *FEL* LMT 40mm L.W. Single Launche	EA	\$1,087.07	\$8,696.56
90	DT-6325*	Def Tec *FEL* 40Mm Exact Impact Munitions	EA	\$31.68	\$2,851.20
8	EOT-XPS2-2	Eotech Transverse Model 1 CR123 Battery 65M	EA	\$579.00	\$4,632.00
8	VTAC-MK2	Viking Tactics Padded Sling Black	EA	\$49.95	\$399.60
1	NOTES:	Notes:  Quotation reflects BuyBoard Contract 698-23. Contract period 4/1/23-3/31/24. Email BuyBoard PO's to info@buyboard.com	EA	\$0.00	\$0.00

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE  
PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR  
REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Thank you, your salesman was Adam Balak

Subtotal	\$16,579.36
Misc	\$0.00
Tax	\$0.00
Freight	\$250.00
Total	\$16,829.36



# Quote

Make Checks Payable to:  
**Safe Restraints, Inc.**  
1701 EL Nido #771  
Diablo, CA 94528

**DATE** May 3, 2023  
**Quote Number** PP032123HCSO



*Prepared by* Patrick Pethel  
*Phone:* 408 603 9007

**Bill To:**  
Shane Smith  
Hays County Sheriff's Department  
1307 Uhland RD  
San Marcos, TX 78666

**Comments or special instructions:** Tax will be assessed by purchaser on items ordered out of the state of California. 4% service charge on payment by Credit Card. Return Policy:

Qty	Description	Amount
6	WRAP Restraint @ \$1500	\$9,000.00
	Loyalty Discount	(\$900.00)
	Conditional Repair Support	Included
	Full Instructor Training	Included
	Shipping/Handling	\$272.64
<b>TOTAL:</b>		\$8,372.64
<b>Sales Tax:</b>		
<b>GRAND TOTAL:</b>		\$ 8,372.64

**THANK YOU FOR YOUR BUSINESS!**



GT Distributors - Austin  
 1124 New Meister Ln., Ste 100  
 Pflugerville TX 78660  
 (512) 451-8298 Ext. 0000

Quote	QTE0171867
Date	4/21/2023
Page:	1

**Bill To:**

Hays County Sheriffs Office (TX)  
 Attn: Accounts Payable  
 1303 Uhland Road  
 San Marcos TX 78666

**Ship To:**

Hays County Sheriffs Office (TX)  
 1307 Uhland Road  
 San Marcos TX 78666

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
DT 042123	000262	BF	FACTORY DIRECT	NET 15	0/0/0000	2,744,750

Quantity	Item Number	Description	UOM	Unit Price	Ext. Price
1	DT-1425*	DefTec *FEL* LMT 40mm L.W. Single Launche	EA	\$1,087.07	\$1,087.07
1	NOTES:	Notes:  Quotation reflects BuyBoard Contract 698-23. Contract period 4/1/23-3/31/24. Email BuyBoard PO's to info@buyboard.com	EA	\$0.00	\$0.00

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE  
 PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR  
 REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Thank you, your salesman was Adam Balak

Subtotal	\$1,087.07
Misc	\$0.00
Tax	\$0.00
Freight	\$20.00
Total	\$1,107.07



Shopping Cart



UnderCover Flex Hard Folding Truck Bed Tonneau Cover | FX21026 | Fits 2017 - 2022 Ford F-250/F-350 Superduty 8' 2" Bed (98.1")

**In Stock**  
Shipped from: [iSave](#)  
Gift options not available. [Learn more](#)  
**Color:** High Gloss Black  
**Size:** 8' 2" Bed  
**Configuration:** Flush Fit

Qty: 1 [Delote](#) [Save for later](#) [Compare with similar items](#) [Share](#)

Price  
**\$1,140.94**  
[Business Price](#)

Subtotal (1 item): **\$1,140.94**

Subtotal (1 item): **\$1,140.94**  
[Proceed to checkout](#)

Customers who shopped for UnderCover Flex Hard Folding Truck Bed Tonneau Cov... also shopped for:



**BAK BAKBox 2 Fold-Away Utility Box** |...  
★★★★☆ 11  
**\$376.34**  
Only 1 left in stock (more...)  
[Add to Cart](#)



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item:

Authorize payment to Drippin' Towin' Service, Inc. of \$500.00 for two invoices where no purchase order was in place as per the County Purchasing Policy. **INGALSBE/CUTLER**

### Summary:

The vendor provided towing services for patrol vehicles, one in the morning and one later that evening, and purchase orders were not requested for service. Each invoice totals \$250.00, and funding is available for payment to the vendor.

### Fiscal Impact:

Amount Requested: \$500.00

Line Item Number: 001-618-00.5413

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: No

G/L Account Validated Y/N?: Yes, Vehicle Maintenance and Repair

New Revenue Y/N?: N/A

Comments:

---

### Attachments

Invoices 24894 & 24895

Unit 1027



**DRIPPIN' TOWIN' SERVICE, INC.**

TDLR #005350299C • VSF #0537956

Phone (512) 264-2757

**ADDRESS:**

12015 Bonham Ranch Road  
Dripping Springs, TX 78620

Driver: Gabe P. Root  
TDLR # 40138  
Truck # 3

DATE <u>3-10-2023</u>	TIME <u>9:15</u>	A.M. P.M.	REQUESTED BY <u>HCSO</u>
LOCATION OF VEHICLE <u>19615 GREAT EAGLE TRL TRAVIS COUNTY</u>			
NAME <u>HCSO</u>			
ADDRESS <u>UHLAND R.D</u>			
YEAR <u>2011</u>	MAKE / MODEL / COLOR <u>DODGE CHARGER WHITE</u>		
STATE <u>TX</u>	LIC. NO. <u>13665483</u>	VEHICLE I.D. NO. <u>2B3AA4CV4AH303314</u>	
VEHICLE TOWED TO <u>HCSO VEHICLE MAINTENANCE</u>			
<input type="checkbox"/> SNATCH BLOCKS <input type="checkbox"/> WHEEL LIFT <input checked="" type="checkbox"/> FLAT BED/RAMP <input checked="" type="checkbox"/> SINGLE LINE WINCHING <input type="checkbox"/> LOCK OUT		<input type="checkbox"/> FLAT TIRE <input type="checkbox"/> DOLLY <input type="checkbox"/> WRECK <input type="checkbox"/> RECOVERY	
REMARKS <u>CHARGE TO HCSO</u> <u>Received In The Office</u> <u>APR 10 REC'D</u> <u>Hays County Auditor</u>		TOW CHARGES	
		MILEAGE CHARGE	
		TOWING CHARGE <u>250.00</u>	
		LABOR CHARGE	
		VSF CHARGES	
STORAGE CHARGE			
NOTIFICATION			
IMPOUND FEE			
TAX			
TOTAL <u>250.00</u>			

Direct all complaints to: Texas Department of Licensing & Regulations  
P.O. Box 12157  
Austin, TX 78711  
Phone 1-800-803-9202  
[www.tdlr.texas.gov/complaints](http://www.tdlr.texas.gov/complaints)  
[enforcement@tdlr.texas.gov](mailto:enforcement@tdlr.texas.gov)

24894

DELUXE FOR BUSINESS 1-800-888-6327

Net No. G. 158007125



Unit # 1404



**DRIPPIN' TOWIN' SERVICE, INC.**

TDLR #005350299C • VSF #0537956

Phone (512) 264-2757

**ADDRESS:**

12015 Bonham Ranch Road  
Dripping Springs, TX 78620

Driver: Garrett DeGroot

TDLR # 40138

Truck # 3

DATE <u>7-10-2023</u>	TIME <u>4:11</u>	A.M. P.M.	REQUESTED BY <u>HCSO</u>
LOCATION OF VEHICLE <u>194 ROGER HARKS HCSO SUBSTATION</u>			
NAME <u>HCSO</u>		PHONE	
ADDRESS <u>UHLAND R.D.</u>		ZIP	
YEAR <u>2013</u>	MAKE / MODEL / COLOR <u>CHEVY TAHOE WHITE</u>		
STATE <u>TX</u>	LIC. NO. <u>1127604</u>	VEHICLE I.D. NO. <u>1GNCC2E01ER16573</u>	
VEHICLE TOWED TO <u>HCSO VEH. MAINT. UHLAND R.D.</u>			
<input type="checkbox"/> SNATCH BLOCKS <input type="checkbox"/> WHEEL LIFT <input checked="" type="checkbox"/> FLAT BED/RAMP <input checked="" type="checkbox"/> SINGLE LINE WINCHING <input type="checkbox"/> LOCK OUT		<input type="checkbox"/> FLAT TIRE <input type="checkbox"/> DOLLY <input type="checkbox"/> WRECK <input type="checkbox"/> RECOVERY	
REMARKS <u>Unit 1404</u> <u>Charge to HCSO</u> <u>Received In The Office</u> <u>APR 10 REC'D</u> <u>Hays County Auditor</u> OPERATOR'S SIGNATURE <u>[Signature]</u> #9062 AUTHORIZED SIGNATURE		TOW CHARGES	
		MILEAGE CHARGE	
		TOWING CHARGE <u>250.00</u>	
		LABOR CHARGE	
		VSF CHARGES	
		STORAGE CHARGE	
		NOTIFICATION	
		IMPOUND FEE	
		TAX	
		TOTAL <u>250.00</u>	

Direct all complaints to: Texas Department of Licensing & Regulations  
P.O. Box 12157  
Austin, TX 78711  
Phone 1-800-803-9202  
[www.tdlr.texas.gov/complaints](http://www.tdlr.texas.gov/complaints)  
[enforcement@tdlr.texas.gov](mailto:enforcement@tdlr.texas.gov)

24895

DELUXE FOR BUSINESS 1-800-888-6327

Ref No G 158007126



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Approve specifications for IFB 2023-B16 Centerpoint Road and authorize Purchasing to solicit for bids and advertise.  
**INGALSBE/BORCHERDING**

### Summary

The Hays County Transportation Department is requesting bids for IFB 2023-B16 Centerpoint Road. The project consists of lowering the hill at Centerpoint Road and Viewpoint Road intersections, as well as, improving the culvert crossing on Centerpoint Road.

---

### Attachments

IFB 2023-B16 Centerpoint Road



**HAYS COUNTY**  
**PROJECT CONSTRUCTION MANUAL**


**FOR**  
**Centerpoint Road**

**Bid No. IFB2023-B16**

**Bid Date: August 3, 2023**  
**Bid Time: 10:00 AM CST**

**Hays County, Texas**  
**Purchasing Department**  
**712 South Stagecoach Trail, Suite 1071**  
**San Marcos, TX 78667**



  
DENNIS K. SEAL, P.E.

**July 2023**

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**SECTION 1**  
**IFB SUBMITTAL CHECKLIST**



## IFB Submittal Checklist

This checklist is provided for convenience and identifies documents that must be submitted with the bid/proposal in order to be considered responsive. Any bids/proposals received without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

### The following forms **MUST** be returned for the bid/proposal to be considered responsive:

- \_\_\_\_ 1. Completed Bid Form
- \_\_\_\_ 2. Completed Schedule of Rates and Prices
- \_\_\_\_ 3. Vendor References Completed
- \_\_\_\_ 4. Bid Bond for 5% of total bid amount

### Required Forms by Hays County:

- \_\_\_\_ 1. Conflict of Interest Questionnaire Completed and Signed
- \_\_\_\_ 2. Certificate of Interested Parties – Form 1295 filed online with the Texas Ethics Commission and Signed
- \_\_\_\_ 3. Code of Ethics for Hays County Signed
- \_\_\_\_ 4. Hays County Practices Related to Historically Underutilized Businesses Signed
- \_\_\_\_ 5. Hays County House Bill 89 Verification Signed and Notarized
- \_\_\_\_ 6. Hays County Purchasing Department Senate Bill 252 Certification Signed
- \_\_\_\_ 7. Vendor/Bidder's Affirmation Completed and Signed
- \_\_\_\_ 8. Related Party Disclosure Form Completed and Signed
- \_\_\_\_ 9. Debarment & Licensing Certification Signed and Notarized
- \_\_\_\_ 10. Federal Affirmation and Solicitation Acceptance
- \_\_\_\_ 11. System for Award Management ([www.SAM.gov](http://www.SAM.gov)) Entity Registration Page
- \_\_\_\_ 12. Any addenda applicable to this solicitation

### Hays County will accept bids, by the stated due date by one of the following methods:

- \_\_\_\_ 1. Electronic Submission of Bid Packet through BidNet Direct and one (1) hard copy delivered within 24 hours of due date, in a sealed envelope with the Solicitation Number and Vendor's name on the outermost envelope addressed to:  
Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666
- OR
- \_\_\_\_ 2. One (1) original bid packet and one (1) digital copy on a thumb drive in a sealed envelope with the Solicitation Number and Vendor's Name on the outermost envelope, addressed to:  
Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666

**SECTION 2**  
**INVITATION FOR BIDS**

**PUBLIC NOTICE  
HAYS COUNTY  
INVITATION FOR BIDS**

**Hays County will be accepting sealed Bids for:**

**IFB 2023-B16 Centerpoint Road**

Sealed Bids will be received by Hays County, through either hardcopy at the Purchasing Office, Hays County Government Center, 712 South Stagecoach Trail, Suite 1071, San Marcos, TX 78666 or electronically through [www.bidnetdirect.com/hayscounty](http://www.bidnetdirect.com/hayscounty) (the BidNet Direct website) until 10:00 AM local time on July 20, 2023, at which time and place the bids will be publicly opened and read.

**Bids received after the time and date set for submission will be returned unopened.**

**DETAIL SUMMARY**

- |                                      |   |
|--------------------------------------|---|
| <b>1. Issuing Office:</b>            | Hays County Auditor<br>Purchasing Office<br>712 S. Stagecoach Trail, Suite 1071<br>San Marcos, TX 78666   |
| <b>2. Responses to Solicitation:</b> | Sealed bids marked with Solicitation Number and Respondent name on the outermost envelope: One (1) original and one (1) digital copy on a thumb drive<br>OR<br>Electronic bid packets can be submitted through BidNet Direct and one (1) hard copy is required to be received. Within 24 hours of due date. |
| <b>3. Deadline for Responses:</b>    | In issuing office or submitted to BidNet Direct no later than: <b>August 3, 2023, 10:00 AM Central Time (CT)</b>  |
| <b>4. Pre-Bid Meeting:</b>           | <b>Recommended</b><br><b>July 19, 2023; 10:00 a.m. Central Time (CT)</b><br>Hays County Transportation Department<br>2171 Yarrington Road, San Marcos, TX 78666   |
| <b>5. Bonding Requirements:</b>      | Bid Bond: 5% of total bid amount due at bid submittal<br>Performance and Payment Bonds: 100% of Contract price within 10 days of award  |
| <b>6. Retainage</b>                  | The owner will withhold 5% retainage of the Contractor. The Contractor may withhold retainage on subcontractors in accordance with state and federal regulations.   |
| <b>7. Initial Contract Term:</b>     | 113 Working Days  |
| <b>8. Optional Contract Terms:</b>   | None  |
| <b>9. Designated Contact:</b>        | Hays County Purchasing<br>Email: <a href="mailto:purchasing@co.hays.tx.us">purchasing@co.hays.tx.us</a>   |

**10. Questions & Answers:**

Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than July 26, 2023; 5:00 p.m. CT. Telephone inquiries will not be accepted. Questions may be submitted by email to the purchasing address above. Answers to questions will be provided in the form of an addendum after the question deadline has passed. All addenda will be posted on CivicPlus, BidNet Direct and ESDB websites.

**11. Addenda**

Any interpretations, corrections or changes to this IFB and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Hays County Purchasing Office. It is the Respondent's responsibility to acknowledge receipt of all addenda with bid submission.

**12. Contact with County Staff:**

Upon issuance of this solicitation, employees and representatives of Hays County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Respondent or its representatives. Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

<b>July 13, 2023</b>	<b>Issuance of IFB</b>
<b>July 19, 2023</b>	<b>Pre-Bid Meeting in-person (10:00 AM, CT)</b>
<b>July 26, 2023</b>	<b>Deadline for Submission of Questions (5:00 PM, CT)</b>
<b>August 3, 2023</b>	<b>Deadline for Submission of Bids (10:00 AM, CT) Late bids will not be accepted</b>
<b>August 2023</b>	<b>Anticipated Contract Award Date</b>

**SECTION 3**  
**BID INSTRUCTIONS / REQUIREMENTS**

**BID INSTRUCTIONS/REQUIREMENTS**

**The Contract bid instruction shall be as set forth in  
SECTION 14 TECHNICAL SPECIFICATIONS.**

**SECTION 4**

**BID FORM**

**BID FORM: SCHEDULE OF RATES AND PRICES**

**VENDOR/BIDDER'S AFFIRMATION**

**VENDOR REFERENCES**

**CONFLICT OF INTEREST QUESTIONNAIRE**

**CERTIFICATION OF INTERESTED PARTIES**

**CODE OF ETHICS FOR HAYS COUNTY**

**HAYS COUNTY PRACTICES RELATED TO HISTORICALLY UNDERUTILIZED BUSINESSES**

**HOUSE BILL 89 VERIFICATION**

**SENATE BILL 252 CERTIFICATION**

**VENDOR/BIDDER'S AFFIRMATION**

**RELATED PARTY DISCLOSURE FORM**

**DEBARMENT AND LICENSING CERTIFICATION**

**FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

# BID FORM

**PROJECT IDENTIFICATION**

Project No. IFB 2023-B16 Centerpoint Road

**THIS BID IS SUBMITTED TO:**

Electronically: BidNet Direct: [www.bidnetdirect.com//hayscounty](http://www.bidnetdirect.com//hayscounty)

**Manually:**

Hays County Purchasing Department  
Attn: Stephanie Hunt  
712 South Stagecoach Trail, Suite 1071 San  
Marcos, Texas 78666

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with COUNTY in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

All Bids will be considered non-responsive if the following forms are not signed and submitted with the Bid

BIDDER accepts all of the terms and conditions of the Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within 10 working days after the date of COUNTY’s Notice of Award.

This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over COUNTY.

BIDDER will complete the work in accordance with the Contract Documents and the accompanying Schedule of Rates and Prices, and will pay not less than the Prevailing Wage Rates for Hays County, Texas. The work will be completed within 113 Working Days from the date for commencing work as set forth in the "Notice to Proceed" to be issued by the COUNTY.

Communications concerning this Bid shall be addressed to the address of BIDDER indicated below:



Terms used in this Bid which are defined in the General Provisions or Instructions will have the meanings indicated in the General Provisions or Instructions.

SUBMITTED ON \_\_\_\_\_, 20\_\_\_\_.

State Contractor License Number \_\_\_\_\_

IF BIDDER is:

An Individual

By \_\_\_\_\_ (SEAL)

(Individual's Name)

\_\_\_\_\_

(Signature)

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

A Partnership

By \_\_\_\_\_ (SEAL)

(Firm Name)

\_\_\_\_\_

(General Partner)

\_\_\_\_\_

(Signature)

Business address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

A Corporation

By \_\_\_\_\_ (SEAL)

(Corporate Name)

\_\_\_\_\_

(State of Incorporation)

By \_\_\_\_\_ (SEAL)

(Name of Person Authorized to Sign)

\_\_\_\_\_

(Signature)

(Corporate Seal)

Attest: \_\_\_\_\_

(Secretary)

Business Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Email: \_\_\_\_\_

Date of Qualification to Do Business is \_\_\_\_\_

A Joint Venture

By \_\_\_\_\_ (SEAL)  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Signature)

Phone & Fax Numbers, Email & mailing addresses for receipt of official communications:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Each joint venturer must sign. The manner for signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner above.)

## Vendor Reference Form

List three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

### REFERENCE ONE

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

### REFERENCE TWO

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

### REFERENCE THREE

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Hays County purchases, a vendor or other person who is awarded a contract or purchase approved by Hays County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Hays County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

If you do not have access to the link provided above or have any questions, contact Purchasing at 512-393-2283.

## CODE OF ETHICS FOR HAYS COUNTY

Public employment is a public trust. It is the policy of Hays County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Hays County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Hays County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Hays County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation, therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_



# Hays County Practices Related to Historically Underutilized Businesses

## 1. STATEMENT OF PRACTICES

Hays County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Hays County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

## 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Hays County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

## 3. GUIDELINES

- a. Hays County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL). Hays

County will solicit bids from certified HUB's for state purchasing and public works contracts.

4. Hays County will actively seek and encourage HUBs to participate in all facets of the procurement process by:
  - a. Continuing to increase and monitor a database of certified HUB vendors, professionals and contractors. The database will be expanded to include products, areas of expertise and capabilities of each HUB firm.
  - b. Continuing to seek new communication links with HUB vendors, professionals and contractors to involve them in the procurement process.
  - c. Continuing to advertise bids on the County's website and in the newspapers including newspapers that target socially and economically disadvantaged communities.
5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms in the procurement process by:
  - a. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements.
  - b. Where feasible, assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work.
  - c. Specifications of reasonable, realistic delivery schedules consistent with the County's actual requirements.
  - d. Specifications, terms and conditions reflecting the County's actual requirements are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. A HUB practice statement shall be included in all specifications. The County will consider the bidder's responsiveness to the HUB Practices in the evaluation of bids and proposals. Failure to demonstrate a good faith effort to comply with the County's HUB practices may result in a bid or proposal being considered non-responsive to specifications.
7. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Please sign for acknowledgement of the Hays County HUB Practices:

---

Signature

---

Date

## Hays County House Bill 89 Verification

I, \_\_\_\_\_ (Person name), the undersigned representative of  
\_\_\_\_\_(Company or Business name, hereafter referred to as Company) being an adult over the age  
of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the  
company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

*Pursuant to Section 2270.001, Texas Government Code:*

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Date

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

\_\_\_\_\_  
Notary Public in and for the State of Texas

(if other than Texas, Write state in here \_\_\_\_\_)

\_\_\_\_\_  
Date

## Hays County Purchasing Department Senate Bill 252 Certification

Pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named below is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the Hays County Purchasing Department.

---

Company Name

---

Print Name of Company Representative

---

Signature of Company Representative

---

Date

### CERTIFICATION CHECK PERFORMED BY HAYS COUNTY PURCHASING:

On this day; the Purchasing Representative for Hays County in San Marcos, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253 and I have ascertained that the above-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

---

Print Name of Hays County Purchasing Representative

---

Signature of Hays County Purchasing Representative

---

Date

---

IFB/RFP/RFQ Number

## Vendor/Bidder Affirmation

1. Vendor/Bidder affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
2. Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
3. Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County

\_\_\_\_\_  
Name of Contracting Company

\_\_\_\_\_  
If taxable property is owned in Hays County, list property ID numbers:

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

## Related Party Disclosure Form

Hays County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Hays County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Hays County employee (including elected or appointed official) (Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package that does not include this completed form will be considered non-responsive and will not be eligible for an award.

### Section A: Current Hays County Employee

Employee Name	Title

### Section B: Former Hays County Employee

Employee Name	Title	Date of Separation from County

### Section C: Person Related to Current or Former Hays County Employee

Employee or Former Employee Name	Title	
Name of Related Person	Title	Relationship

### Section D: No Known Relationships

If no relationships in accordance with the above exist or are known to exist, provide a written explanation below:


Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
	1st Degree	2nd Degree	3rd Degree*	4th Degree*
<b>Person</b>	child or parent	grandchild, sister, brother or grand-parent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great-grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great- great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
	1st Degree	2nd Degree
<b>Person</b>	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Hays County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a sharehold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.

## Debarment and Licensing Certification

STATE OF (\_\_\_\_\_) §  
§  
COUNTY OF HAYS §

I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Firm named herein below and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- d. Have not within a three-year period preceding this application/proposal had one or more public (federal, state or local) transactions terminated for cause or default;
- e. Are registered and licensed in the State of Texas to perform the professional services which are necessary for the project; and
- f. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

Where the Firm is unable to certify to any of the statements in this certification, such Firm shall attach an explanation to this certification.

SUBSCRIBED and sworn to before me the undersigned authority by \_\_\_\_\_ on this the day of \_\_\_\_\_, 20\_\_\_\_, on behalf of said Firm.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
(If other than Texas, Write state in here \_\_\_\_\_)

My commission expires: \_\_\_\_\_



## Federal Affirmations and Solicitation Acceptance

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

**1. Debarment and Suspension (2 CFR 180.220)**

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Order 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

**2. Americans with Disabilities Act**

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

**3. Discrimination**

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j. The requirements of any other nondiscrimination statute(s) that may apply to the application.

**4. Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided

under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**5. Wages**

Under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5 (40 U.S.C. 3141-3148), as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**7.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**8.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

**9. Lobbying**

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in Section 1352, Title 31 of the U.S. Code, which are implemented in 15 CFR Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of

any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**10. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**11. Minority and Women’s Businesses**

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women’s business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

**12. Environmental Standards**

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- b. Notification of violating facilities pursuant to EO 11738;
- c. Protection of wetlands pursuant to EO 11990;
- d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non- Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- i. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- j. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- k. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a

satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded

- \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**13. Historic Properties**

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

**14. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_ Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

**SECTION 5**  
**STANDARD FORM OF CONTRACT**

**STANDARD FORM OF CONTRACT**  
**Hays County, Texas**

**STATE OF TEXAS**

**HAYS COUNTY**

**THIS STANDARD FORM OF CONTRACT** (the "Contract") is by and between **HAYS COUNTY, TEXAS**, a political subdivision of the State of Texas (hereinafter called "County") and (hereinafter called Contractor").

The County and Contractor, in consideration of the mutual covenants hereinafter set forth, agrees as follows:

**Article 1. Work**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The "Project is generally described as follows:

Project No. **IFB 2023-B16 – Centerpoint Road**  
(Project Name)

**Article 2. Engineer of Record**

The Project has been designed by **Pape-Dawson Engineers, Inc.** who is hereinafter called the "Engineer of Record" and who is to act as the County's design professional.

**Article 3. Contract Time**

The Work shall be Substantially Completed in **113 Working Days** (the "Contract Time"). Following Substantial Completion, the Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the time specified in the Special Conditions.

**Article 4. Contract Price**

County shall pay Contractor for completions of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 4.1 below (the "Contract Price")

- 4.1 For all Unit price Work, an amount equal to the sum of the established unit price for each separately identified item of the Unit Price Work times the estimated quantity if that item as indicated in the Bid Form Schedule of Rates and Prices. And as totaled below:

TOTAL OF ALL UNIT PRICES: (written out)

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As provided in the Standard Specifications, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer of Record.

#### **Article 5. Contractor's Representations**

In order to induce County to enter into this Contract, Contractor makes the following representations:

- 5.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents including the "technical data".
- 5.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 5.3 Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 5.4 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which has been identified. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that the County and Engineer of Record do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.
- 5.5 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 5.6 Contractor has given Engineer of Record written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer of Record is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of Work.
- 5.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under the Contract Documents.
- 5.8 Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing to conduct business in the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Contract, and the individual executing the Contract on behalf of the Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has necessary partnership power and has secured all necessary approvals to execute and deliver this Contract and perform all its obligations under the

Contract Documents; and the individual executing this Contract on behalf of Contractor has been duly authorized to act for and bind Contractor.

5.9 Neither the execution and delivery of this Contract by Contractor nor the performance of its obligations under the Contract Documents will result in the violation of any provision, if a corporation, of its articles of incorporation or bylaws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of the Contractor's knowledge and belief, will conflict with any order or decree of any court of governmental instrumentality relating to Contractor.

5.10 Except for the obligation of the County to pay Contractor the Contract Price pursuant to the terms of the Contract Documents, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth in the Contract Documents, County shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of the Contract. Notwithstanding any obligation or liability of County to Contractor, no present or future partner or affiliate of County or any agent, officer, director, or employee of County, or of the various departments comprising Hays County, or anyone claiming through or under Contractor by reason of the execution or performance of this Contract.

#### **Article 6. Contract Documents**

The "Contract Documents", which comprise the entire agreement between Hays County and Contractor concerning the Work, consist of the following:

- 6.1 This Standard Form of Contract
- 6.2 Performance Bond
- 6.3 Payment Bond
- 6.4 Maintenance Bond
- 6.5 Certificate of Insurance
- 6.6 Wage Rates
- 6.7 Standard Specifications
- 6.8 Special Provisions
- 6.9 Special Conditions
- 6.10 Technical Specifications
- 6.11 Plan Drawings
- 6.12 Addendum numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive



- 6.13 Contractor's Bid Form
- 6.14 Documentation submitted by Contractor prior to Notice of Award
- 6.15 The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to applicable sections in the Standard Specifications.

The documents listed in paragraphs 6.2 et seq. above are attached to this Contract (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented as provided in the Standard Specifications.

#### **Article 7. Miscellaneous**

- 7.1 Terms used in this contract which are defined in the Standard Specifications will have the meanings included in the Standard Specifications.
- 7.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 7.3 The County and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 7.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the County and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention if the stricken position.
- 7.5 Each Party to this Contract hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connections with this Contract shall lie exclusively in Hays County, Texas. Furthermore, this Contract shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however its choice of law rules.
- 7.6 The parties to this Contract agree that during the performance of the services under this Contract they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Contract will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion,

sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training including apprenticeship.

- 7.7 This Contract is for the sole and exclusive benefit of the parties hereto, and nothing in this Contract, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- 7.8 Each party to this Contract acknowledges that it and its counsel have reviewed this Contract and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Contract.
- 7.9 Each party to the Contract, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- 7.10 Nothing in this Contract shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- 7.11 To the extent, if any, that any provision in this Contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and the County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- 7.12 County and Contractor have signed this Contract in triplicate. One counterpart each has been delivered to the County, Contractor and Engineer of Record. All portions of the Contract Documents have been signed, initialed, or identified by County and Contractor or identified by Engineer of Record on their behalf.
- 7.13 This Contract and Contract Documents represent the entire and integrates agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Contract may be amended only by written instrument signed by each party to this Contract. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE HAYS COUNTY COMMISSIONERS COURT.

This Contract will be effective on \_\_\_\_\_, 20\_\_\_\_ (which is the “Effective Date” of the Contract)

COUNTY\_\_\_\_\_ CONTRACTOR\_\_\_\_\_

By:\_\_\_\_\_ By:\_\_\_\_\_

Printed Name: Rueben Becerra,\_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: Hays County Judge\_\_\_\_\_ Title: \_\_\_\_\_

(CORPORATE SEAL)

Attest:\_\_\_\_\_ Attest: \_\_\_\_\_  
Dr. Elaine H. Cardenas, County Clerk

**SECTION 6**  
**WAGE RATES**

The wage rates listed herein are those predetermined by the Secretary of Labor and State Statute and listed in the United States Department of Labor's (USDOL) General Decisions dated **01-06-2023** and are the minimum wages to be paid accordingly for each specified classification. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed herein and not in the USDOL's general decision, must be submitted to the Engineer for approval. **IMPORTANT NOTICE FOR STATE PROJECTS:** only the controlling wage rate zone applies to the contract. Effective 01-06-2023.

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 *(TX20230002)	ZONE TX03 *(TX20230003)	ZONE TX04 *(TX20230004)	ZONE TX05 *(TX20230005)	ZONE TX06 *(TX20230006)	ZONE TX07 *(TX20230007)	ZONE TX08 *(TX20230008)	ZONE TX24 *(TX20230024)	ZONE TX25 *(TX20230025)	ZONE TX27 *(TX20230027)	ZONE TX28 *(TX20230028)	ZONE TX29 *(TX20230029)	ZONE TX30 *(TX20230030)	ZONE TX37 *(TX20230037)	ZONE TX38 *(TX20230038)	ZONE TX42 *(TX20230042)
1428	Agricultural Tractor Operator						\$12.69					\$12.35			\$11.75		
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88	\$15.72	\$15.58	\$15.55	\$15.72	\$13.28	\$15.32	\$15.62	\$14.36	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87	\$14.05	\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21	\$11.65	\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	\$11.78
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						\$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.08	\$11.99		\$11.04	\$11.62		\$11.74	\$11.41	\$10.30		\$10.23	\$10.60	\$12.68	\$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85	\$12.64	\$12.56	\$12.77	\$12.44	\$14.12	\$13.04	\$13.38	\$12.64	\$12.80	\$12.79	\$12.98	\$13.32
1318	Concrete Pavement Finishing Machine Operator				\$16.05		\$15.48			\$16.05		\$19.31				\$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											\$16.34				\$11.71	
1333	Concrete Saw Operator				\$14.67					\$14.48	\$17.33					\$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less				\$18.22		\$18.36			\$18.12	\$18.04	\$20.21			\$18.63	\$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$16.82	\$14.39	\$13.85	\$17.27		\$15.87			\$17.27		\$14.67			\$16.42	\$14.97	\$13.87
1343	Crane Operator, Lattice Boom Over 80 Tons				\$20.52		\$19.38			\$20.52		\$17.49			\$25.13	\$15.80	
1306	Crawler Tractor Operator	\$13.96	\$16.63	\$13.62	\$14.26		\$15.67			\$14.07	\$13.15	\$13.38			\$14.60	\$13.68	\$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						\$11.67										
1445	Directional Drilling Operator				\$20.32		\$17.24										
1139	Electrician	\$20.96		\$19.87	\$19.80		\$26.35		\$20.27	\$19.80		\$20.92				\$27.11	\$19.87
1347	Excavator Operator, 50,000 pounds or less	\$13.46	\$12.56	\$13.67	\$17.19		\$12.88	\$14.38	\$13.49	\$17.19		\$13.88			\$14.09	\$12.71	\$14.42
1348	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.52	\$17.04		\$17.71			\$16.99	\$18.80	\$16.22				\$14.53	\$13.52
1150	Flagger	\$9.30	\$9.10	\$8.50	\$10.28	\$8.81	\$9.45	\$8.70		\$10.06	\$9.71	\$9.03	\$8.81	\$9.08	\$9.90	\$10.33	\$8.10
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91	\$12.71	\$12.87	\$12.38	\$12.26	\$13.84	\$12.98	\$13.07	\$13.61	\$12.82	\$14.73	\$12.23	\$12.25
1160	Form Setter, Paving & Curb	\$12.36	\$12.16	\$13.93	\$11.83	\$10.71	\$12.94			\$13.16	\$12.54	\$11.33	\$10.69		\$13.33	\$12.34	\$13.93
1360	Foundation Drill Operator, Crawler Mounted				\$17.99					\$17.99						\$17.43	
1363	Foundation Drill Operator, Truck Mounted		\$16.86	\$22.05	\$21.51		\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	\$22.05
1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40	\$13.85		\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33	\$14.96		\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	\$13.02
1329	Joint Sealer																
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.03	\$10.54	\$11.02	\$10.15
1175	Laborer, Utility	\$11.80	\$11.53	\$12.70	\$12.17	\$11.81	\$12.27	\$12.11	\$11.33	\$12.32	\$11.80	\$11.53	\$11.23	\$11.50	\$11.95	\$11.73	\$12.37
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$15.68		\$14.12			\$15.18	\$13.58	\$12.87		\$13.21	\$14.13	\$14.29	\$12.90
1187	Mechanic	\$20.14	\$15.47	\$17.47	\$17.74	\$17.00	\$17.10			\$17.68	\$18.94	\$18.58	\$17.00	\$16.61	\$18.46	\$16.96	\$17.47
1380	Milling Machine Operator	\$15.54	\$14.64	\$12.22	\$14.29		\$14.18			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	\$12.80

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX02 *(TX20230002)	ZONE TX03 *(TX20230003)	ZONE TX04 *(TX20230004)	ZONE TX05 *(TX20230005)	ZONE TX06 *(TX20230006)	ZONE TX07 *(TX20230007)	ZONE TX08 *(TX20230008)	ZONE TX24 *(TX20230024)	ZONE TX25 *(TX20230025)	ZONE TX27 *(TX20230027)	ZONE TX28 *(TX20230028)	ZONE TX29 *(TX20230029)	ZONE TX30 *(TX20230030)	ZONE TX37 *(TX20230037)	ZONE TX38 *(TX20230038)	ZONE TX42 *(TX20230042)
1390	Motor Grader Operator, Fine Grade	\$17.49	\$16.52	\$16.88	\$17.12	\$18.37	\$18.51	\$16.69	\$16.13	\$17.19	\$18.35	\$17.07	\$17.74	\$17.47	\$17.08	\$15.69	\$20.01
1393	Motor Grader Operator, Rough	\$16.15	\$14.62	\$15.83	\$16.20	\$17.07	\$14.63	\$18.50		\$16.02	\$16.44	\$15.12	\$16.85	\$14.47	\$17.39	\$14.23	\$15.53
1413	Off Road Hauler			\$10.08	\$12.26		\$11.88			\$12.25		\$12.23			\$13.00	\$14.60	
1196	Painter, Structures Pavement Marking Machine Operator	\$16.42		\$13.10	\$13.55		\$19.17	\$12.01		\$13.63	\$14.60	\$13.17		\$16.65	\$10.54	\$11.18	\$13.10
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															\$14.95	
1205	Pipelayer		\$11.87	\$14.64	\$13.17	\$11.17	\$12.79		\$11.37	\$13.24	\$12.66	\$13.24	\$11.17	\$11.67		\$12.12	\$14.64
1384	Reclaimer/Pulverizer Operator	\$12.85				\$11.90	\$12.88			\$11.01		\$10.46					
1500	Reinforcing Steel Worker	\$13.50	\$14.07	\$17.53	\$16.17		\$14.00			\$16.18	\$12.74	\$15.83		\$17.10		\$15.15	\$17.72
1402	Roller Operator, Asphalt	\$10.95		\$11.96	\$13.29		\$12.78	\$11.61		\$13.08	\$12.36	\$11.68			\$11.71	\$11.95	\$11.50
1405	Roller Operator, Other	\$10.36		\$10.44	\$11.82		\$10.50	\$11.64		\$11.51	\$10.59	\$10.30		\$12.04	\$12.85	\$11.57	\$10.66
1411	Scraper Operator	\$10.61	\$11.07	\$10.85	\$12.88		\$12.27		\$11.12	\$12.96	\$11.88	\$12.43		\$11.22	\$13.95	\$13.47	\$10.89
1417	Self-Propelled Hammer Operator																
1194	Servicer	\$13.98	\$12.34	\$14.11	\$14.74		\$14.51	\$15.56	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	\$14.11
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									\$15.96							
1515	Spreader Box Operator	\$12.60		\$13.12	\$14.71		\$14.04			\$14.73	\$13.84	\$13.68		\$13.45	\$11.83	\$13.58	\$14.05
1705	Structural Steel Welder															\$12.85	
1509	Structural Steel Worker						\$19.29									\$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						\$16.00										
1440	Trenching Machine Operator, Heavy						\$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	\$14.46	\$13.63	\$13.41	\$15.00	\$15.93	\$15.66			\$16.24	\$16.39	\$14.30	\$16.62	\$15.63	\$14.28	\$16.03	\$13.41
1612	Truck Driver Transit-Mix				\$14.14					\$14.14							
1600	Truck Driver, Single Axle	\$12.74	\$10.82	\$10.75	\$13.04	\$11.61	\$11.79	\$13.53	\$13.16	\$12.31	\$13.40	\$10.30	\$11.61		\$11.97	\$11.46	\$10.75
1606	Truck Driver, Single or Tandem Axle Dump Truck	\$11.33	\$14.53	\$11.95	\$12.95		\$11.68		\$14.06	\$12.62	\$11.45	\$12.28		\$13.08	\$11.68	\$11.48	\$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	\$12.49	\$12.12	\$12.50	\$13.42		\$12.81	\$13.16		\$12.86	\$16.22	\$12.50			\$13.80	\$12.27	\$12.50
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		\$14.02		\$14.86		\$15.97		\$13.74	\$14.84					\$13.78		
1520	Work Zone Barricade Servicer	\$10.30	\$12.88	\$11.46	\$11.70	\$11.57	\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.96	\$10.54	\$11.67	\$11.76

Notes:

\*Represents the USDOL wage decision.

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week.

For reference, the titles and descriptions for the classifications listed here are detailed further in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas* posted on the AGC's Web site for any contractor.

**TEXAS COUNTIES IDENTIFIED BY  
WAGE RATE ZONES: 2, 3, 4, 5, 6, 7, 8, 24, 25, 27, 28, 29, 30, 37, 38, 42**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	28	Donley	37	Karnes	27	Reagan	37
Andrews	37	Duval	30	Kaufman	25	Real	37
Angelina	28	Eastland	37	Kendall	7	Red River	28
Aransas	29	Ector	2	Kenedy	30	Reeves	8
Archer	25	Edwards	8	Kent	37	Refugio	27
Armstrong	2	El Paso	24	Kerr	27	Roberts	37
Atascosa	7	Ellis	25	Kimble	37	Robertson	7
Austin	38	Erath	28	King	37	Rockwall	25
Bailey	37	Falls	28	Kinney	8	Runnels	37
Bandera	7	Fannin	28	Kleberg	27	Rusk	4
Bastrop	7	Fayette	27	Knox	37	Sabine	28
Baylor	37	Fisher	37	Lamar	28	San Augustine	28
Bee	27	Floyd	37	Lamb	37	San Jacinto	38
Bell	7	Foard	37	Lampasas	7	San Patricio	29
Bexar	7	Fort Bend	38	LaSalle	30	San Saba	37
Blanco	27	Franklin	28	Lavaca	27	Schleicher	37
Borden	37	Freestone	28	Lee	27	Scurry	37
Bosque	28	Frio	27	Leon	28	Shackelford	37
Bowie	4	Gaines	37	Liberty	38	Shelby	28
Brazoria	38	Galveston	38	Limestone	28	Sherman	37
Brazos	7	Garza	37	Lipscomb	37	Smith	4
Brewster	8	Gillespie	27	Live Oak	27	Somervell	28
Briscoe	37	Glasscock	37	Llano	27	Starr	30
Brooks	30	Goliad	29	Loving	37	Stephens	37
Brown	37	Gonzales	27	Lubbock	2	Sterling	37
Burleson	7	Gray	37	Lynn	37	Stonewall	37
Burnet	27	Grayson	25	Madison	28	Sutton	8
Caldwell	7	Gregg	4	Marion	28	Swisher	37
Calhoun	29	Grimes	28	Martin	37	Tarrant	25
Callahan	25	Guadalupe	7	Mason	27	Taylor	2
Cameron	3	Hale	37	Matagorda	27	Terrell	8
Camp	28	Hall	37	Maverick	30	Terry	37
Carson	2	Hamilton	28	McCulloch	37	Throckmorton	37
Cass	28	Hansford	37	McLennan	7	Titus	28
Castro	37	Hardeman	37	McMullen	30	Tom Green	2
Chambers	38	Hardin	38	Medina	7	Travis	7
Cherokee	28	Harris	38	Menard	37	Trinity	28
Childress	37	Harrison	42	Midland	2	Tyler	28
Clay	25	Hartley	37	Milam	28	Upshur	4
Cochran	37	Haskell	37	Mills	37	Upton	37
Coke	37	Hays	7	Mitchell	37	Uvalde	30
Coleman	37	Hemphill	37	Montague	37	Val Verde	8
Collin	25	Henderson	28	Montgomery	38	Van Zandt	28
Collingsworth	37	Hidalgo	3	Moore	37	Victoria	6
Colorado	27	Hill	28	Morris	28	Walker	28
Comal	7	Hockley	37	Motley	37	Waller	38
Comanche	37	Hood	28	Nacogdoches	28	Ward	37
Concho	37	Hopkins	28	Navarro	28	Washington	28
Cooke	37	Houston	28	Newton	28	Webb	3
Coryell	7	Howard	37	Nolan	37	Wharton	27
Cottle	37	Hudspeth	8	Nueces	29	Wheeler	37
Crane	37	Hunt	25	Ochiltree	37	Wichita	5
Crockett	8	Hutchinson	37	Oldham	37	Wilbarger	37
Crosby	2	Irion	2	Orange	38	Willacy	30
Culberson	8	Jack	28	Palo Pinto	28	Williamson	7
Dallam	37	Jackson	27	Panola	28	Wilson	7
Dallas	25	Jasper	28	Parker	25	Winkler	37
Dawson	37	Jeff Davis	8	Parmer	37	Wise	25
Deaf Smith	37	Jefferson	38	Pecos	8	Wood	28
Delta	25	Jim Hogg	30	Polk	28	Yoakum	37
Denton	25	Jim Wells	27	Potter	2	Young	37
DeWitt	27	Johnson	25	Presidio	8	Zapata	30
Dickens	37	Jones	25	Rains	28	Zavala	30
Dimmit	30			Randall	2		

**SECTION 7**  
**PERFORMANCE BOND**



# PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_

\_\_\_\_\_ of the City of \_\_\_\_\_

County of \_\_\_\_\_, and State of \_\_\_\_\_, as principal, and

\_\_\_\_\_  
authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and  
firmly bound unto Hays County (County), in the penal sum of

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, their heirs,  
administrators, executors, successors, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Agreement with the County, dated the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ (the "Agreement"), to which the  
said Agreement, along with the Contract Documents referenced therein are hereby referred to and made a part  
hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said  
Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all  
and singular the covenants, conditions and agreements in and by the Agreement agreed and covenanted by the  
Principal to be observed and performed, and according to the true intent and meaning of said Agreement and the  
Contract Documents hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas  
Government Code, as amended and all liabilities on this bond shall be determined in accordance with the  
provisions of said Chapter to the same extent as if it were copied at length herein.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition  
to the terms of the Agreement or to the work performed thereunder, or to the Contract Documents referenced  
therein, shall in anyway affect the obligations on this bond, and it does hereby waive notice of such change, extension  
of time, alteration or addition to the terms on the Agreement, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME & TITLE

\_\_\_\_\_  
NAME & TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

( ) \_\_\_\_\_  
PHONE NUMBER

( ) \_\_\_\_\_  
PHONE NUMBER

The name and address of the Resident Agency of Surety is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) \_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
SIGNATURE OF LICENSED LOCAL  
RECORDING AGENT appointed to countersign on  
behalf of Surety (Required by Art. 21.09 of the  
Insurance Code)

\*\*\*\*\*

I, \_\_\_\_\_, having executed Bonds  
SIGNATURE

for \_\_\_\_\_ do hereby affirm I have  
NAME OF SURETY

verified that said Surety is now certified with Authority from either: (a) the Secretary of the Treasury of the United States if the project funding includes Federal monies; or (b) the State of Texas if none of the project funding is from Federal sources; and further, said Surety is in no way limited or restricted from furnishing Bond in the State of Texas for the amount and under conditions stated herein.

**SECTION 8**  
**PAYMENT BOND**

# PAYMENT BOND

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_

\_\_\_\_\_ of the City of \_\_\_\_\_

County of \_\_\_\_\_, and State of \_\_\_\_\_, as Principal  
(hereinafter referred to as the "Principal"), and

\_\_\_\_\_ authorized under the laws of the State of Texas to act as Surety on bonds for principals (hereinafter referred to as the "Surety"), are held and firmly bound unto Hays County, (hereinafter referred to as the "County"), in the penal sum of

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written agreement with the County, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to \_\_\_\_\_

\_\_\_\_\_ (hereinafter referred to as the "Agreement"), which said Agreement and the Contract Documents incorporated therein are hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the Work provided for in said Agreement, then, this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Work performed thereunder, or to the other Contract Documents accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of such change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder or to the other Contract Documents accompanying the same.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_day  
of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME & TITLE

\_\_\_\_\_  
NAME & TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

(\_\_\_\_\_)\_\_\_\_\_  
PHONE NUMBER

(\_\_\_\_\_)\_\_\_\_\_  
PHONE NUMBER

The name and address of the Resident Agency of Surety is:

\_\_\_\_\_  
\_\_\_\_\_

(\_\_\_\_\_)\_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
SIGNATURE OF LICENSED LOCAL  
RECORDING AGENT appointed to countersign on  
behalf of Surety (Required by Art. 21.09 of the  
Insurance Code)

**SECTION 9**  
**CERTIFICATE OF INSURANCE**

## CERTIFICATE OF INSURANCE

THIS IS TO CERTIFY THAT \_\_\_\_\_

(Name and address of insured)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to the standard policy noted on reverse side hereof.

TYPE OF INSURANCE			
POLICY NO.	EFFECTIVE	EXPIRES	LIMITS OF LIABILITY
Workmen's			
Compensation		1 Person	\$ _____
Public Liability		1 Accident	\$ _____
Contingent		1 Person	\$ _____
Liability		1 Accident	\$ _____
Property Damage			
Builder's Risk			
Automobile			
Other			

The foregoing Policies (do) (do not) cover all sub-contractors.

Locations Covered: \_\_\_\_\_

Descriptions of Operations Covered: \_\_\_\_\_

The above policies either in the body thereof or by appropriate endorsement provide that they may not be changed or canceled by the insurer in less than five days after the insured has received written notice of such change or cancellation.

Where applicable local laws or regulations require more than five days actual notice of change or cancellation to the assured, the above policies contain such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

(Name of Insurer) \_\_\_\_\_

By: \_\_\_\_\_

Phone No. (     ) \_\_\_\_\_

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

**SECTION 10**  
**GENERAL CONDITIONS**



## General Conditions

THE CONTRACT GENERAL CONDITIONS SHALL BE ASSET FORTH IN THE STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS, STREETS AND BRIDGES, ADOPTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION NOVEMBER 1, 2014, INCLUSIVE OF ITEMS 1L – 9L GENERAL REQUIRMENTS AND COVENANTS, AND APPLICABLE SPECIAL PROVISIONS (See Section 13 “Technical Specifications”).

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## **SPECIAL CONDITIONS**

### **I. County**

Hays County, a political subdivision of the State of Texas, acting through its County Judge, or his designee, agents or employees, whom Contractor has entered into the Agreement and for whom the Work is to be performed, is referred to as "County". The County shall be contacted through its Purchasing Department for contract related subjects and through the County Engineer's office for design and construction related subjects:

**Hays County Purchasing Department**  
**712 S. Stagecoach Trl., Ste. 1071**  
**San Marcos, TX 78666**

**Hays County Engineer**  
**2171 Yarrington Road**  
**San Marcos, TX 78666**

### **II. The Construction Inspector**

**To Be Determined** is the "Construction Inspector" referred to herein and in the Contract Documents. The Construction Inspector will be responsible for performing construction engineering and inspection services on the Project.

### **III. Engineer of Record**

**PAPE-DAWSON ENGINEERS, INC.** is the County's design professional, who shall provide professional engineering services as defined in the Texas Government Code Chapter 2254, Subchapter A, and referred to as the "Engineer of Record" in Article 2 of the "Standard Form of Contract" contained in the Contract Documents. Nothing contained in the Contract Documents shall create any contractual or agency relationship between the Engineer of Record and the Contractor.

### **IV. Insurance**

The Contractor will carry Workmen's Compensation Insurance, Public Liability and Property Damage Insurance, and Automobile Insurance sufficient to provide adequate protection against damage claims which may arise from operations under the Contract Documents, in compliance with the following:

Contractors Insurance: Without limiting any of the other obligations or liabilities of the Contractor, during the term of the Agreement and prior to Final Completion, the Contractor and each subcontractor, at their own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the County. Certificates of each policy shall be delivered to the County before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without 30 days advance written notice being given to the County. Prior to the effective date of cancellation, Contractor must deliver to the County a replacement certificate of insurance or

proof of reinstatement. A model Certificate of Insurance is illustrated herein. Coverage shall be of the following types and not less than the specified amounts:

- (a) workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the County; employer's liability insurance of not less than \$500,000 for each accident, \$500,000 disease--each employee,  
\$500,000 disease-policy limit.
- (b) commercial general liability insurance, including independent contractor's liability, completed operations and contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of the Contract Documents, fully insuring Contractor's (or subcontractor's) liability for injury to or death of County's employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$1,000,000	The policy shall include
Operations Aggregate	\$1,000,000	
Personal and Advertising Injury	\$600,000	
Each Occurrence	\$600,000	
Fire Damage (any one fire)	\$50,000	
Medical Expense (any one person)	\$5,000	

coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after Final Completion and acceptance of the Work, with evidence of same filed with County.

- (c) comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident) and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

"Umbrella" Liability Insurance: The Contractor shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring Contractor for an amount of not less than \$1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required herein above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. County and Project Engineer shall be named as additional insured.

Policy Endorsements and Special Conditions

- (a) Each insurance policy to be furnished by Contractor shall include the following conditions by endorsement to the policy:
  - (1) name the County, the Program Manager/GEC, the County's Representatives, the Construction Inspector and the Engineer of Record as an additional insureds to all applicable coverage;
  - (2) each policy shall require that 30 days prior to the cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to County by certified mail.
  - (3) the term "County" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the County and individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of the County;
  - (4) the "Program Manager" represents and assists the County in the planning, design, review, and coordination of the design and construction phases of the project.
  - (5) the policy phrase "other insurance" shall not apply to the County where the County is an additional insured on the policy; and
  - (6) all provisions of the Contract Documents concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
  
- (b) Insurance furnished by the Contractor shall also be in accordance with the following requirements:
  - (1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Contractor. The County's decision thereon shall be final;
  - (2) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
  - (3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.
  
- (c) Contractor agrees to the following:
  - (1) Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the County, it being the intention that the insurance policies shall protect all parties to the Agreement and be primary coverage for all losses covered by the policies;
  - (2) companies issuing the insurance policies and Contractor shall have no recourse against the County for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor;
  - (3) approval, disapproval or failure to act by the County regarding any insurance supplied by the Contractor (or any subcontractors) shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the

bankruptcy, insolvency or denial of liability by the insurance company exonerate the Contractor from liability; and

- (4) no special payments shall be made for any insurance that the Contractor and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of such insurance policies required under the Contract Documents may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

The Contractor shall furnish the County with satisfactory proof that it has provided adequate insurance coverage in amounts and by approved carriers as required by the Contract Documents.

#### **V. Record ("As-Built") Drawings**

The Contractor shall mark all changes and revisions on all of its copies of the working drawings during the course of the Project as they occur. Upon completion of the Project and prior to Final Acceptance and Payment, the Contractor shall submit to the Construction Inspector one set of its working drawings, dated and signed by the Contractor and its project superintendent and labeled as "As-Built", that shows all changes and revisions outlined above and that shows field locations of all above ground appurtenances including, but not limited to valves, fire hydrants and manholes. These as-built drawings shall be forwarded to the GEC and then to the County and become the property of the County. Each appurtenance shall be located by at least two (2) horizontal distances measured from existing, easily identifiable, immovable appurtenances such as fire hydrants or valves. Property pins can be used for as-builts tie-ins provided no existing utilities as previously described are available. Costs for delivering as-built drawings shall be subsidiary to other bid items.

#### **VI. Limit of Financial Resources**

The County has a limited amount of financial resources committed to this Project; therefore, it shall be understood by Contractor that the County may be required to change and/or delete any items which it may feel is necessary to accomplish all or part of the scope of work within its limit of financial resources. Contractor shall be entitled to no claim for damages or anticipated profits on any portion of work that may be omitted. At any time during the duration of the Project, the County reserves the right to omit any work from the Contract Documents. Unit prices for all items previously approved in the Contract Documents shall be used to delete or add work per change order.

#### **VII. Limits of Work and Payment**

It shall be the obligation of the Contractor to complete all work included in the Contract Documents, so authorized by the County, as described in the Contract Documents and Technical Specifications. Any question arising as to the limits of work shall be left up to the interpretation of the Engineer and/or Inspector.

#### **VIII. State Sales Tax**

On a contract awarded by a governmental entity for the construction of a publicly-owned improvement in a street right-of-way or other easement which has been dedicated to the public and to the Organization which qualifies for exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act, the Contractor can probably be exempted in the following manner:

The Contractor may buy tax-free any materials incorporated into the project by issuing a resale certificate in lieu of paying the sales tax at the time of purchase. The Contractor may then accept an exemption certificate from the City for the materials.

Even with a separated contract, the rental of equipment and the purchase of items which do not ultimately become part of the physical structure will still be subject to state and local sales taxes.

#### **IX. Completion of Work on Time**

The Contractor agrees that time is of the essence and that the definite value of damages which would result from delay would be incapable of ascertainment and uncertain, so that for each day of delay beyond the number of days herein agreed upon for the Substantial Completion of the Work specified in the Contract Documents and contracted for, after due allowance for such extension of time as is provided for under the provisions of the Contract, the County may withhold permanently from the Contractor's total compensation, not as penalty but as liquidated damages, the sum as specified in Special Specification 000-HC01 per calendar day.

Furthermore, it is agreed by the Contractor that the time period between Substantial Completion and Final Completion shall be no longer than 30 working days. This separate time period shall be for completion of the Punch List, as set forth in Technical Specification 5L.12 Final Acceptance. In the event that Contractor fails to attain Final Completion on or before the expiration of the above said time period, the Contractor shall be subject to the remedies set forth in the Contract Documents. More specifically, the Contractor shall be subject to the terms set forth in Technical Specification 8L.7 Default of Contract. In addition to exercising its rights and remedies under the Contract Documents, the County may also exercise any remedy that may be available to it under the law or in equity.

#### **X. Layout and Construction Stakes**

All construction staking shall be performed by the Contractor at the Contractor's expense.

The Contractor shall coordinate with design engineer to identify all necessary elements for station development as well as identify the trees, shrubs, and grass areas designated to remain within the construction limits to prevent damage to these items.



**XI. Safety**

The Contractor must use methods of construction that meet or exceed Occupational Safety and Health Administration Standards and any other local, state or federal regulations for safety that are in effect. The Contractor will have a trench safety plan prepared and sealed by Contractor's registered professional engineer.

**XII. Maintenance Bond Term & Amount - OMITTED**

No Maintenance Bond is required.

**XIII. Safety Restrictions - Work Near High Voltage Lines**

The following procedures shall be followed for work near high voltage lines on the Project.

- (a) A warning sign not less than five (5) inches by seven (7) inches, painted yellow with black letters that are legible at twelve (12) feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows: "Warning-Unlawful to Operate This Equipment Within Six Feet of High Voltage Lines".
- (b) Equipment that may be operated with ten (10) feet of high voltage lines shall have an insulating cage guard around the boom or arm (except backhoes or dippers), and insulator links on the lift hook connections.
- (c) When necessary to work within six (6) feet of high voltage electrical lines, notify the power company. The electric company will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. All such work done by the power company shall be at the expense of the contractor. The contractor shall maintain an accurate log of all such calls to the electric company.
- (d) No person shall work within six (6) feet of high voltage lines without protection measures having been taken as outlined in Paragraph C.

**XIV. Erosion Control**

Contractor shall comply with all laws prohibiting the pollution of any lake, stream, river, or wetland by the dumping of any refuse, rubbish, dredge material, or debris therein.

The Contractor will file the Notice of Intent (NOI) and the Notice of Termination (NOT) as the Project's operator. All required Permits and Notices shall be posted by the Contractor at the Project site.

Contractor shall apply temporary and/or permanent erosion and sedimentation controls, as specified in the plans or directed to disturbed roadside areas, fifteen feet and beyond from road pavement, prior to initiating road base operations. Following asphalt paving of road pavement, apply temporary and/or permanent erosion and sedimentation controls to remaining disturbed areas, as specified in the plans or as directed.

Contractor shall be responsible for the maintenance of all temporary and permanent water quality and erosion control measures proposed under the Storm Water Pollution Prevention Plan (SWPPP) or the Water Pollution Abatement Plan (WPAP) for the duration of the Project construction. Upon completion of construction and before the Construction Inspector issues the Certificate of Completion, Contractor shall be responsible for the removal of all temporary measures and the cleaning and resetting of all permanent measures. All costs associated with this work shall be considered subsidiary to other bid items and no additional compensation shall be allowed.

Contractor shall take special precautions during all periods of heavy rainfall and at all locations where storm water, groundwater and/or mud and debris may enter the sewer systems. All mud, stones, and debris that enter the sewer systems due to Contractor's operations, or Contractor's neglect, shall be cleaned from the system by Contractor. It shall be Contractor's responsibility to see that such storm water, groundwater and debris do not enter the sewer system. All costs for such work shall be merged in the unit prices bid and no additional compensation shall be allowed.

If it is necessary in the prosecution of the Work to interrupt existing surface drainage, sewers, or under drainage, temporary drainage shall be provided until permanent drainage work is completed. The construction of all temporary drainage installations shall be considered as incidental to the construction of the Work. Drainage ways shall be kept clear or other satisfactory provisions made for drainage.

Contractor shall be responsible for and shall take all reasonable and necessary precautions to preserve and protect all existing tile drains, sewers, and other subsurface drains, or parts thereof, which may be continued in service without change. Contractor shall repair, at its own expense, any and all damage to such facilities resulting from negligence or carelessness on the part of its operations.

The Construction Inspector shall be responsible for the monitoring and inspection of the erosion control measures by completion of the Construction Pollution Prevention Plan Inspection and Maintenance Report, as required for coverage under the Texas Pollutant Discharge Elimination System (TPDES) General Construction Permit (TXR150000).

**XV. Discovery of Hazardous Materials**

If, during the course of the Work, the existence of hazardous material, including asbestos containing material, is observed in the work area, the Contractor shall immediately notify the County in writing. The Contractor shall not perform any work pertinent to the hazardous material prior to receipt of special instructions from the County. Asbestos containing material includes transit pipe.

**XVI. Submittals – Certificate of Compliance**

The Contractor shall submit to the Construction Inspector a Certificate of Compliance from the manufacturer and/or supplier of each and every specified material or manufactured equipment item. The said certificate shall state that the

material or the item of equipment to be furnished has been manufactured with materials in accordance with the applicable sections of all required codes, specifications, and standards as required by the specifications.

**XVII. Unavailability of Materials**

If the Contractor is unable to furnish or use any of the materials or equipment specified because of any order by a governmental agency limiting the manufacture or use, or because of the supply situation in the general market for such material or equipment, the Contractor shall offer substitutes therefor. The substitutes shall be suitable for the purpose, considering the factors of quality, serviceability, appearance, and maintenance. No substitute shall be used until the Engineer has approved it.

No consideration will be given to the use of substitutes on account of market conditions unless the Contractor demonstrates that, for the item in question, the Contractor placed its order without delay, that it has shown due diligence in attempting to locate the item as specified, and that the unavailability is due to market conditions in general throughout the particular industry.

If substitutes are used in the Work, the compensation to be paid to the Contractor shall be subject to review and adjustment. As a general principle, if the Engineer shall determine that the substitute will be less satisfactory, the Contractor shall allow a credit to the County; only under unusual circumstances shall there be an increase in compensation to the Contractor on account of substitution. The basis upon which the amount of price and adjustments will be founded shall be the cost of the appropriate items at the time the bids for the Project were opened.

**XVIII. Traffic Control**

Access shall be provided for residents and emergency vehicles at all times. When it becomes necessary to restrict access, the Contractor shall notify all applicable agencies (i.e. Fire Department, E.M.S., Public Works, etc.) a minimum of five (5) working days in advance of the proposed restrictions. At the end of each day, two lanes of traffic shall be opened to the public, unless otherwise stated in the Contract Documents.

The Contractor shall coordinate with other contractors working in the area.

**XIX. Temporary Traffic Handling Devices**

The Contractor shall furnish, erect and maintain all necessary barricades, lights, warning signs and temporary pavement markings as shown on the Plans and/or in accordance with the Texas Manual on Uniform Traffic Control Devices and with the Specifications in the Contract Documents. In addition, the Contractor shall provide flag-persons and take necessary precautionary measures for the protection of persons, property and the Work, when deemed necessary by the County or the Construction Inspector.

The Construction Inspector shall be responsible for the monitoring and inspection of the traffic control measures by completion of the Traffic Control Devices Inspection Report (TCDIR), and the Contractor shall be responsible for compliance with the terms of the TCDIR procedures.

**XX. Roadway Signs**

All permanent and temporary roadway signage designated in the Contract Documents shall be in accordance with the Texas Manual on Uniform Traffic Control Devices.

**XXI. Project Signs**

The Contractor shall erect at the site of construction, and maintain during construction, signs satisfactory to the County identifying the Project and indicating that the government is participating in the development of the Project. Two project signs will be required for the Project. The two said signs shall be 8' X 4' and made out of white 10 mm corrugated plastic with pressure sensitive vinyl lettering to include: Hays County / TxDOT Partnership Program with the Hays County Seal, the Project's name, and a brief description relating to the estimated date of completion, contact phone number, website address and the appropriate Hays County Commissioner's name and precinct number. Furnishing, installing and maintaining these signs shall be considered subsidiary to Item 502, "Barricades, Signs and Traffic Handling". Proofs of sign shall be submitted to the Inspector for approval prior to fabrication.

**XXII. Permits**

The Contractor shall be responsible for obtaining any and all required construction permits. Contractor agrees to comply with all conditions of the permits and to maintain copies of the permits at the site at all times while the Work is in progress. The County shall be responsible for obtaining Section 404 permits from the U.S. Army Corps of Engineers as part of the Project design. When Contractor-initiated changes in the construction method changes the impacts to waters of the U.S., Contractor shall be responsible for obtaining new or revised Section 404 permits.

**XXIII. Landscape Restoration**

If not designated as a specific pay item in bid package, the Contractor shall take the means necessary to protect all trees, shrubbery and sod. Protection, removal and replacement of existing landscaping will be in accordance with the Contract Documents.

**XXIV. Existing Fencing**

All fences encountered during construction within the right-of-way (ROW) shall be removed by the Contractor under "Preparing Right-of-Way." Permanent fencing, designating the ROW, will be provided by others, unless otherwise shown in the Contract Documents. The Contractor will be required to coordinate preparing ROW operations and fence removal and installations with the landowners as needed.

**XXV. Easements**

Any easements, both temporary and permanent, required for the Project will be provided by the County as shown in the Contract Documents. Other easements required or desirable by the Contractor shall be arranged by the Contractor at its sole expense. The easements shall be cleaned after use and restored to their original conditions, or better by the Contractor. In the event additional work is required by the Contractor, it shall be the Contractor's responsibility to obtain written permission from the property owners involved for the use of additional property required. No additional payment will be allowed for this item.

**XXVI. Limits of Contractor's Operation**

The Contractor shall limit construction operations to within the ROW or the easement unless otherwise directed by the County or its authorized representative.

**XXVII. Maintenance of Pedestrian Walkways**

The Contractor will be required to maintain clear walkways for pedestrians during construction in a manner to provide access in the most convenient and safest manner consistent with essential construction operations. Specifically, the following will be enforced.

Pedestrian traffic may be blocked at a location where work is actually in progress. Signs, barricades, and warning devices must be placed at nearest crosswalks approaching the construction site from every direction advising pedestrians of the blockage and advising them to use alternate routes.

Access to doorways and pedestrian entrances must be maintained at all times during hours that access is needed by business. Paving by sections or providing temporary access may be required.

No more than one corner of any intersection may be under construction at any one time. Work must be completed and opened for use by pedestrians before starting work on any other corner of an intersection.

The Contractor will be expected to diligently pursue construction from start to completion at every location to avoid prolonged and unnecessary disruptions to pedestrian traffic.

This work shall be considered incidental and not a separate pay item, unless provided otherwise in the Contract Documents.

**XXVIII. Spoil**

All excavated material unfit for backfill, waste material accumulated on the job, and any material surplus to that needed in the prosecution of the Work shall be removed from the site by the Contractor and properly and legally disposed of at its expense, unless otherwise directed by the Inspector. **THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE COUNTY, ALL OF ITS OFFICERS, AGENTS, AND**

**EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER RESULTING FROM ITS ARRANGEMENTS FOR THE DISPOSAL OF SPOIL.** This shall be incidental and not a separate pay item.

**XXIX. Materials Testing**

Quality Control testing of all materials, construction items or products incorporated in the work shall be performed by the Contractor at the Contractor's expense.

Quality Assurance sampling and testing for acceptance will be performed by the Inspector in accordance with the Quality Control (QC) / Quality Assurance (QA) program outlined in Appendix A. The cost of such tests will be incurred by the County and coordinated by the Construction Inspector through funds made available to the Construction Inspector under his/her agreement with the County for the professional services related to construction engineering and inspection on the Project.

The Inspector shall furnish for review by the GEC, not later than 10 days after receipt of notice to proceed, a Quality Control Plan consisting of plans, procedures, and organization necessary to produce an end product which complies with the contract documents. The Inspector will be allowed the latitude to develop standards of control subject to approval by the County. As a minimum, the plan shall include description of the type and frequency of inspection staffing, materials handling and construction procedures, calibration and maintenance of equipment, production process control, and testing deemed necessary to assure quality as specified by the Contract Documents.

**XXX. Pre-Construction Conference**

Before the Project work order is issued, a pre-construction conference shall be held with representatives of the County and the Contractor. The Contractor shall plan to submit a schedule of operations at the pre-construction conference, unless otherwise notified. See Section XXXVI-Prosecution and Progress for additional construction schedule requirements.

**XXXI. Weight Tickets**

The Contractor will be responsible for providing asphalt and aggregate tickets for quantity verifications on all asphaltic concrete used for the Project.

**XXXII. Confined Space Entry Program**

It shall be the responsibility of the Contractor to implement and maintain a variable "Confined Space Entry Program" which must meet OSHA requirements for all its employees and subcontractors at all times during construction. OSHA defines all active sewer manholes, regardless of depth, as "permit required confined spaces". Contractors shall submit an acceptable "Confined Space Entry Program" for all applicable manholes and maintain an active file for these manholes. The cost of complying with this program shall be subsidiary to the pay items involving work in confined spaces.

### **XXXIII. Tree and Plant Protection**

Scope: Provide complete protection and maintenance of existing trees, shrubs, and grass areas designated to remain within construction limits and/or right-of-way.

Coordination: Coordinate protection of existing trees, shrubs and grass areas with other trades so as to prevent damage to these items.

Payment for Damages: If existing trees, shrubs or grass areas are destroyed, killed or badly damaged as a result of construction observations, Contract sum will be reduced by the amount of assessed damages. Damages will be evaluated by the Construction Inspector, using the following:

Trees: International Shade Tree Conference Standards and following formula – measurement of a cross section of tree trunk will be made at a point 2 feet above existing grade level to determine cross section area in square inches. Assessment for damage will be \$27.00 per square inch.

Shrubs and Grass Areas: An initial fine of \$1,000 shall be imposed for any unauthorized disturbance within the boundaries of the shrub and grass areas to remain within the right-of-way and outside the limits of disturbance. This disturbance includes but is not limited to: parking or intrusion of equipment or vehicles; storage of any materials, and any unauthorized damage and/or removal of vegetation. In addition to the initial fine, a base fine of \$8.00 for every square foot of area of damaged vegetation within any areas designated to remain on the plans shall be imposed. The areas covered under this section include but are not limited to: areas designated to remain or no-work areas. In determining the amount of fine, the Construction Inspector shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and whether the violation was committed willfully.

Materials: Tree Protection lumber dimensions shall be 4X4 and 2X4 sizes.

Protection: The Contractor shall protect existing trees, shrubs, and grass areas within construction limits from the following damage:

- (1) Compaction of root area by equipment, vehicles or material storage;
- (2) Trunk damage by moving equipment material storage, nailing or bolting;
- (3) Strangling by tying ropes or guy wires to trunks or large branches;
- (4) Poisoning by pouring solvents, gas, paint or other chemicals on or around trees and roots;
- (5) Cutting of roots by excavating or ditching;
- (6) Damage of branches by improper pruning;
- (7) Drought from failure to water or by cutting or changing normal drainage pattern past roots;
- (8) Changes of soil pH factor by disposal of lime base materials such as concrete or plaster;
- (9) Do not cut roots 1-1/2" in diameter or over. Excavation and earthwork within drip line of trees shall be done by hand.

Install barricade protection around trees and shrubs, constructed of 4X4 posts and 2X4 stringers top and bottom. Install protection prior to demolition or excavation operations. Leave protection until construction operations are essentially complete.

Maintenance:

- (1) Water trees and shrubs within construction limits as required to maintain their health during course of construction operations.
- (2) Pruning will be performed by County.

#### **XXXIV. Prosecution and Progress**

At the pre-construction meeting, the Contractor shall submit for acceptance a schedule of all planned work activities and sequences that is intended to be followed in order to both substantially and fully complete the Work within the allotted time periods (the "Project Schedule"). The purpose of the County requiring the Project Schedule shall be to:

- (1) Ensure adequate planning during the prosecution and progress of the work in accordance with the allowable number of working/ calendar days and all milestones;
- (2) Assure coordination of the efforts of the Contractor, County, Program Manager/GEC, Construction Inspector, utilities and others that may be involved in the Project;
- (3) Assist the Contractor, County, Program Manager/GEC and Construction Inspector in monitoring the progress of the Work and evaluating proposed changes to the Contract Documents; and
- (4) Assist the County, Program Manager/GEC and Construction Inspector in administering the time requirements set forth in the Contract Documents.

A Type B Schedule will be required on all projects. Following is the schedule requirements:

Type B Schedule:

The Contractor shall create and maintain a Critical Path Method (CPM) Project Schedule showing the manner of prosecution of work that it intends to follow in order to both substantially and fully complete the Work within the allotted time periods. The Project Schedule shall employ computerized CPM for the planning, scheduling and reporting of the work as described in this specification. The CPM Project Schedule shall be prepared using the Precedence Diagram Method (PDM). The Contractor shall create and maintain the schedule using the latest version, at the time of the award of the Project, of Primavera System, Inc. Primavera Project Planner or Suretrak Project Scheduler computer scheduling software, except when a general note requires otherwise. Microsoft Project will not be acceptable. No direct compensation will be allowed for fulfilling these requirements, as such work is considered subsidiary to the various bid items of the Project.

- (1) Personnel. The Contractor shall provide an individual, referred to hereinafter as the Scheduler, to create and maintain the CPM schedule.



He or she shall be proficient in CPM analysis and shall be able to perform required tasks on the specified software. The Scheduler shall be made available for discussion or meetings when requested by the County, Construction Inspector or Program Manager/GEC.

- (2) Schedule. The Project Schedule shall show the sequence and interdependence of activities required for complete performance of the work. The Contractor shall be responsible for assuring all work sequences are logical and show a coordinated plan of the Work.

Each activity on the schedule shall be described by: An activity number utilizing an alphanumeric designation system tied to the traffic control plans, and that is agreeable to the County, Program Manager/GEC, or Construction Inspector; concise description of the Work represented by the activity; and activity durations in whole working days with a maximum of twenty (20) working days. Durations greater than twenty (20) working days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between the Contractor and County, Program Manager/GEC or Construction Inspector. The Contractor shall provide a legend for all abbreviations. The activities shall be coded so that organized plots of the schedule may be produced. Typical activity coding includes: Traffic control phase, location and work type. If allowed and if the Contractor chooses to use Suretrak Project Manager to create the schedule, the Contractor shall not use the independent activity type. This would cause the schedule to be incompatible with Primavera Project Planner.

The activity durations shall be based on the quantity for the individual work activity divided by a production rate. An estimated production rate for each activity shall also be shown.

The Contractor shall plan and incorporate major resources into the schedule. Major resources are defined as crews and equipment that constrain the Contractor from pursuing available work. The resources shall accurately represent the Contractor's planned equipment and manpower to achieve the productivity rates specified above.

Seasonal weather conditions shall be considered and included in the CPM schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (NOAA). These effects will be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.) Project and work calendars should be updated each month to show days actually able to work on the various work activities.

Total float” is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the schedule. Float time in the schedule is a shared commodity between the County and the Contractor.

Only responsible delays in activities that affect milestone dates or the Project’s completion date, as determined by CPM analysis, will be considered for a time extension.

The schedule shall show the sequence and interdependence of activities required for complete performance of the work. The schedule shall be prepared and maintained in accordance with the scheduling requirements stated in this Section and shall include two (2) organized plots with the activities logically grouped using the activity coding. The Contractor shall also provide an electronic copy of the schedule on diskette or CD-ROM.

The schedule shall encompass the time from the start of the Contract Time to the Project’s Final Completion. The longest path through the schedule shall be readily discernable on the plot of the schedule.

- (3) Joint Review, Revision and Acceptance. Within twenty (20) calendar days of receipt of the Contractor's proposed schedule, the County or its authorized agents shall evaluate the schedule for compliance with this specification, and notify the Contractor of the findings. If the County or its authorized personnel request a revision or justification, the Contractor shall provide a satisfactory revision or adequate justification to the satisfaction of the Construction Inspector or County authorized personnel within seven (7) calendar days.

If the Contractor submits a CPM schedule for acceptance which is based on a sequence of work not in the Contract Documents, then the Contractor shall notify the County or its authorized entities in writing, separate from the schedule submittal.

The County's review and acceptance of the Contractor's Project Schedule is for conformance to the requirements of the Contract Documents only. Review and acceptance by the County or other authorized personnel of the Contractor's Project Schedule does not relieve the Contractor of any of its responsibility for the Project Schedule, or of the Contractor's ability to meet interim milestone dates (if specified) and the Final Completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Contractor's Project Schedule. In the event the Contractor fails to define any element of work, activity or logic and the County's review does not detect this omission or error, such omission or error, when discovered by the Contractor or County and its authorized personnel, shall be corrected by the Contractor at the next monthly schedule update and shall not affect the project completion date.

(4) Updates. The Project Schedule shall be updated on a monthly basis and shall be required as a basis for the pay application approval. The Project Schedule update shall be submitted on the first working day of each month. The Contractor shall meet with the Construction Inspector or County authorized personnel each month at a scheduled update meeting to review actual progress made through the data date of the schedule update. The review of progress will include dates activities actually started and/or completed, and the percentage of work completed or remaining duration on each activity started and/or completed. The percentage of work complete shall be calculated by utilizing the quantity and productivity rate information. The Project Schedule update shall include one (1) copy of the following information:

- a) Electronic copy of the updated schedule including revisions and changes on diskette or CD-ROM or other storage media.
- b) One (1) logically organized plot of the schedule update if requested by the County or its authorized personnel.

(5) Project Schedule Revisions. If the Contractor desires to make major changes in the Project Schedule, the Contractor shall notify the County or Construction Inspector in writing. The written notification shall include the reason for the proposed revision, what the revision is comprised of, and how the revision was incorporated into the schedule. In addition to the written notification of the revision, the Contractor shall provide an electronic copy and one logically organized plot of the schedule including the revision if requested by the County or Construction Inspector.

Major changes are hereby defined as those that may affect compliance with the requirements of the Contract Documents or those that change the critical path. All other changes may be accomplished through the monthly updating process.

(6) Time Impact Analysis. The Contractor shall notify the County or Construction Inspector when an impact may justify an extension of Contract Time or adjustment of milestone dates. This notice shall be made in writing as soon as possible, but no later than the end of the next estimate period after the commencement of an impact or the notice for a change is given to the Contractor. Not providing notice to the County or Construction Inspector by the end of the next estimate period will indicate the Contractor's approval of the time charges as shown on that time statement. Future consideration of that statement will not be permitted, and the Contractor forfeits its right to subsequently request a time extension or time suspension unless the circumstances are such that the Contractor could not reasonably have knowledge of the impact by the end of the next estimate period.

When changes are initiated or impacts are experienced, the Contractor shall submit to the County or Construction Inspector a written time impact analysis describing the influence of each change or impact.

A time impact analysis is an evaluation of the effects of changes in the construction sequence, contract, plans, or site conditions on the Contractor's plan for

constructing the Project, as represented by the Project Schedule. The purpose of the time impact analysis is to determine if the overall Project has been delayed, and if necessary, to provide the Contractor and the County a basis for making adjustments to the time allotted for Substantial Completion and Final Completion.

A time impact analysis shall consist of one or all of the steps listed below.

Step 1. Establish the status of the Project before the impact using the most recent Project Schedule update prior to the impact occurrence.

Step 2. Predict the effect of the impact on the most recent Project Schedule update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. The Contractor shall demonstrate how the impact was inserted into the schedule showing the added or modified activities and the added or modified relationships. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.

Step 3. Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing, and mitigation efforts.

Step 4. Compare the status of the Work prior to the impact (Step 1) to the prediction of the effect of the impact (Step 2), and to the status of the work during and after the effects of the impact are over (Step 3). Note that if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

The time impact analysis shall include an electronic copy of the complete schedule prepared in Step 2. If the Project Schedule is revised after the submittal of a time impact analysis but prior to its approval, the Contractor shall promptly indicate in writing to the County or Construction Inspector the need for any modification to its time impact analysis.

Only one (1) copy of each time impact analysis shall be submitted within fourteen (14) calendar days after the completion of an impact. The County or Construction Inspector may require Step 1 and Step 2 of the time impact analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of Contract Time.

Approval or rejection of each time impact analysis by the County, Construction Inspector or Program Manager/GEC shall be made within fourteen (14) calendar days after receipt unless subsequent meetings and negotiations are necessary.

The time impact analysis shall be incorporated into and attached to any relevant change order(s) and/or supplemental agreement(s).

#### **XXXV. Sanitary Provisions**

Provide and maintain adequate, neat, and sanitary toilet accommodations for employees, including County employees and representatives, in compliance with the requirements and regulations of the Texas Department of Health or other authorities having jurisdiction.

#### **XXXVI. Work Near Railroads**

##### **(A) General.**

If the work crosses or is in close proximity to a railroad, do not interfere with the use or operation of the railroad company's trains or other property. Assign responsible supervisory personnel to ensure that tracks and adjacent areas are clear of debris, road materials, and equipment. It is the Contractor's responsibility to contact the railroad to determine the railroad's requirements for work within the railroad right of way and to comply with the requirements. The County will not reimburse the Contractor for any cost associated with these requirements. If the work requires construction within 25 ft. horizontally of the near rail or if the tracks may be subject to obstruction due to construction operations, notify the Engineer and the Railroad Company at least 3 days before performing work. The railroad company will provide flaggers during this work. If railroad flaggers will be needed longer than 2 consecutive days, request them at least 30 days before performing work within the railroad right of way. Flaggers provided by the railroad company will be paid for by the County. Do not store material or equipment in the Railroad's right of way within 15 ft. of the centerline of any track. Do not place any forms or temporary falsework within 8.5 ft. horizontally from the centerline or 22 ft. vertically above the top of rails of any track, unless otherwise shown in the Contract Documents.

##### **(B) Temporary Crossings.**

If a temporary crossing is needed, obtain permission from the railroad company before crossing the tracks. Execute the "Agreement for Contractor's Temporary Crossing" if required by the Railroad Company. The Contractor shall ensure that the tracks are left clear of equipment and debris that would endanger the safe operation of railroad traffic. Provide a crossing guard on each side of the crossing to direct equipment when hauling across the tracks. The Contractor shall stop construction traffic a safe distance away from the crossing upon the approach of railroad traffic. Work for temporary crossings will not be paid for directly but shall be subsidiary to items of the Work subject of the Contract Documents. Work performed by the Railroad Company for the temporary crossing, except flaggers, will be at the Contractor's expense.

#### **XXXVII. Clearance of Right of Way and Utilities**

The acquisition of right-of-way was not required for this project. All utility adjustments will be completed prior to letting for this project.

**SECTION 12**  
**GENERAL NOTES**

**County:** Hays

**Highway:** Centerpoint Rd / Viewpoint Dr

**GENERAL NOTES: Version: May 7, 2021**

<b>Item</b>	<b>Description</b>	<b>**Rate</b>
**204	<b>Sprinkling</b> (Dust) (Item 132) (Item 247)	30 GAL/CY 30 GAL/CY 30 GAL/CY
**210	<b>Rolling (Flat Wheel)</b> (Item 247) (Item 316)	1 HR/200 TON 1 HR/6000 SY
**210	<b>Rolling (Tamping and Heavy Tamping)</b>	1 HR/200 CY
**210	<b>Rolling (Lt Pneumatic Tire)</b> (Item 132) (Item 247) (Item 316 - Seal Coat) (Item 316 - Two Course)	1 HR/500 CY 1 HR/200 TON 1 HR/6000 SY 1 HR/3000 SY
247	<b>Flexible Base (CMP IN PLC)</b>	132 LB/CF
310	<b>Prime Coat</b>	0.20 GAL/SY
314	<b>Emulsified Asphalt Treatment (SS-1 or MS-2)</b>	0.30 GAL/SY
316	<b>Underseals Asphalts (Multi Option)</b>	0.20 GAL/SY
	<b>Surface Treatments</b>	
	<b>Seal Coat</b>	
	<b>Grade 4</b>	
	Asphalt	0.38 GAL/SY
	Aggregate	1 CY/120 SY
	<b>Grade 5</b>	
	Asphalt	0.32 GAL/SY
	Aggregate	1 CY/150 SY
	<b>Two Course Surface Treatment</b>	
	Asphalt 1st Application	0.28 GAL/SY
	Asphalt 2nd Application	0.24 GAL/SY
	Aggregate 1st Application Grade 4	1 CY/110 SY
	Aggregate 2nd Application Grade 4	1 CY/130 SY
340/3078,341/3076, 344/3077	<b>Dense-Graded Hot-Mix Asphalt and Superpave</b>	110 LB/SY/IN
	<b>Tack Coat</b>	0.08 GAL/SY

\*\* For Informational Purposes Only

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**The following standard detail sheet or sheets have been modified:  
Modified Standards**

**GENERAL**

Contractor questions on this project are to be addressed to the following individual(s):

Hays County Purchasing [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)

Bid information, including plans, specifications and bidding documents, is available through the following websites:

City of San Marcos E-Procurement: <https://sanmarcostx.gov/bids.aspx>

BidNet Direct: <https://www.bidnetdirect.com/texas/hayscounty>

Texas Comptroller: <http://www.txsmartbuy.com/>

All contractor questions will be reviewed by the Engineer. Once a response is developed, it will be posted to website above:

References to manufacturer's trade name or catalog numbers are for the purpose of identification only. Similar materials from other manufacturers are permitted if they are of equal quality, comply with the specifications for this project, and are approved.

If work is performed at Contractor's option, when inclement weather is impending, and the work is damaged by subsequent precipitation, the Contractor is responsible for all costs associated with replacing the work, if required.

The roadbed will be free of organic material prior to placing any section of the pavement structure.

Contact the supervisor for the passenger facility at Capital Metro and request the relocation of Capital Metro signs. Contact the supervisor at (512) 385-0190.

Equip all construction equipment used in roadway work with highly visible omnidirectional flashing warning lights.

Provide a smooth, clean sawcut along the existing asphalt or concrete pavement structure, as directed. Consider subsidiary to the pertinent Items.

Construct all manholes/valves to final pavement elevations prior to the placement of final surface. If the manholes/valves are going to be exposed to traffic, place temporary asphalt around the manhole/valve to provide a 50:1 taper. The asphalt taper is subsidiary to the ACP work.

Use a self-contained vacuum broom to sweep the roadway and keep it free of sediment as directed. The contractor will be responsible for any sweeping above and beyond the normal maintenance required to keep fugitive sediment off the roadway as directed by the Engineer.

Damage to existing pipes and SET's due to Contractor operations will be repaired at Contractor's expense.



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All locations used for storing construction equipment, materials, and stockpiles of any type, within the right of way, will be as directed. Use of right of way for these purposes will be restricted to those locations where driver sight distance to businesses and side street intersections is not obstructed and at other locations where an unsightly appearance will not exist. The Contractor will not have exclusive use of right of way but will cooperate in the use of the right of way with the city/county and various public utility companies as required.

#### **ITEM 100 - PREPARING RIGHT OF WAY**

Prep ROW must not begin until accessible trees designated for preservation have been protected, items listed in the EPIC have been addressed, and SW3P controls installed in accessible areas.

Backfill material will be Type B Embankment using ordinary compaction.

Follow Item 752.4 Work Methods and Item 752 general notes when removing or working on or near trees and brush. Tree and brush removal shall be considered subsidiary to Item 100.

Unless shown otherwise in the plans or a designated non-mow area, perform trimming or removal for areas within 30 ft. of edge of pavement under construction. Trim or remove to provide minimum of 5 ft. of horizontal clearance and 7 ft. of vertical clearance for the following: sidewalks, paths, guard fence, rails, signs, object markers, and structures. Trim to provide a minimum of 14 ft. vertical clearance under all trees. This work is subsidiary.

#### **ITEM 110 – EXCAVATION**

The Engineer will define unsuitable material.

#### **ITEM 132 – ALL EMBANKMENT**

At no time will the retaining wall backfill material exceed the adjacent embankment operation by more than one lift. At no time will the embankment adjacent to the retaining wall backfill exceed the wall backfill by any elevation. Embankment placed over the area of MSE backfill must meet the same backfill requirements for the type specified under Item 423.

The Engineer will define unsuitable material. Material which the Contractor might deem to be unsuitable due to moisture content will not be considered unsuitable material.

Prior to begin embankment of existing area, correct or replace unstable material to a depth of 6 in. below existing grade. Embankment areas will be inspected prior to beginning work.

Rock or broken concrete produced by the project is allowed in earth embankments. The size of the rock or broken concrete will not exceed the layer thickness requirements in Section 132.3.4., “Compaction Methods.” The material will not be placed vertically within 5 ft. of the finished subgrade elevation.

Embankment placed vertically within 5 ft. of the finished subgrade elevation or within the edges of the subgrade and treated with lime, cement, or other calcium based additives must have a sulfate content less than 3000 ppm. Allow 5 business days for testing. Treatment of sulfate material 3000 ppm to 7000 ppm requires 7 days of mellowing and continuous water curing, in accordance TxDOT guidelines for

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Treatment of Sulfate-Rich Soils and Bases in Pavement Structures (9/2005). Material over 7000 ppm is not allowed.

#### **ITEM 132 – EMBANKMENT TY C**

The Department must approve all Type C embankment material before use on the project. Do not furnish shale clays. Furnish embankment with sulfate content less than 3000 ppm if treated with calcium-based chemicals or within 5 ft. of the finished subgrade elevation. Existing material from within the project limits that meets the Type C Substitute requirements may substituted for Type C but is not allowed to substitute for C1, C2, or density controlled material. Offsite material may be used to blend with onsite material to achieve the Type C requirements. The Type C substitute may also be existing material in accordance with 132 for rock embankment. The Type C substitute material may only be placed vertically beyond 5 ft. below the finished subgrade elevation or 5 ft. beyond the edge of the subgrade.

Type C			
Percent Retained		LL	PI
3"		Max	Max
0		55	20
Type C Substitute			
Percent Retained		PI	
3"	#4	Max	
Max 10	10-90	25	

#### **ITEM 160 - TOPSOIL**

Off-site topsoil will have a minimum PI of 25.

No Sandy Loam allowed.

Obtain approval of the actual depth of the topsoil sources for both on-site and off-site sources.

Construct topsoil stockpiles of no more than five (5) feet in height.

It is permissible to use topsoil dikes for erosion control berms within the right of way, as directed.

Seed or track slopes within 14 days of placement.

Salvage topsoil from sites of excavation and embankment. Maximum salvage depth is 6 inches.

Windrowing of topsoil obtained from the Right of Way (ROW) is not allowed.

#### **ITEMS 164 – SEEDING FOR EROSION CONTROL**

Obtain vegetation establishment of all seeded areas, including adequate coverage, prior to "Final Acceptance." If all other work is complete, time charges may be suspended, until adequate coverage is established.

Do not use ryegrass for temporary cover.

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Reseed all areas with “little or no” grass growth after 1 month from the last seeding date, as directed. Consider subsidiary to the various bid Items.

Provide temporary seed for erosion control Temporary Cool Season Seeding for Austin District, Table 3, and Temporary Warm Season Seeding, Table 4.

Provide permanent seed in accordance with Permanent Rural Seed mix for Clay Soils Austin District, Table 1. For areas in the plans designated for Riparian Seeding, provide permanent seeding in accordance with the Shade Friendly Grass Mix and Pollinator Essentials Mix shown in Table 1 and Table 1A of Special Provision Item 164-001-RMA. Reseed all disturbed areas in accordance with this unless otherwise specified on the plans.

Ponds and select areas shall be re-vegetated with sod as shown on the plans.

Provide measurements for payment of seeding for erosion control quantities before seeding.

Consider subsidiary to the pertinent Items.

#### **ITEM 168 – VEGETATIVE WATERING**

Water all areas of project to be seeded or sodded.

Maintain the seedbed in a condition favorable for the growth of grass. Watering can be postponed immediately after a rainfall on the site of ½ inch or greater, but will be resumed before the soil dries out. Continue watering until final acceptance.

Vegetative watering rates and quantities are based on ¼ inch of watering per week over a 3-month watering cycle. The actual rates used and paid for will be as directed and will be based on prevailing weather conditions to maintain the seedbed.

Obtain water at a source that is metered (furnish a current certification of the meter being used) or furnish the manufacturer’s specifications showing the tank capacity for each truck used. Notify the Engineer, each day that watering takes place, before watering, so that meter readings or truck counts can be verified.

#### **ITEM 247 - FLEXIBLE BASE**

The layer thickness will be 4 in. to 6 in. unless shown on the plans. Placing in a single layer is allowed when total thickness of base is 8 in. or less. When placed in multiple layers, compact the bottom and middle layers to at least 95% and 98% of the maximum dry density, respectively. When placed in a single layer or the final layer, compact to at least 100%.

Correction of subgrade soft spots is subsidiary.

Complete per plans the subgrade, ditches, slopes, and drainage structures prior to the placement of base.

Do not use a vibratory roller to compact base placed directly on top of a drainage structure.

#### **ITEM 260 thru 276 – SUBGRADE TREATMENTS AND BASE**

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Use ordinary compaction for subgrade treatment.

Three weeks prior to treatment, provide a sample of soil or flexible base to be treated.

**ITEM 260 - LIME TREATMENT (ROAD-MIXED)**

Apply 32 pounds per square yard.

For sulfate content greater than 3000 ppm, mix in an additional 4.0% points above optimum moisture after initial mixing and prior to mellow.

If the sulfate content is greater than 7000 ppm, do not treat. Undercut the unsuitable material to the depth per bid item for lime treatment and replace unsuitable material in accordance with Item 110. Payment will be made in accordance with Item 110.

**ITEM 300s – SURFACE COURSES AND PAVEMENTS**

Asphalt season is May 1 thru September 15. Emulsified Asphalt season is April 1 thru October 15. The latest work start date for asphalt season is August 1.

If an under seal is not provided, furnish a tack coat. Apply tack coat at 0.08 GAL/SY (residual). Apply non-tracking tack coat using manufacturer recommend rates.

**ITEM 310 – PRIME COAT**

Apply blotter material to all driveways and intersections. This work is subsidiary.

When Multi Option is allowed, provide MC 30, EC 30 or AE-P. MC 30 is not allowed in Travis County.

Rolling to ensure penetration is required.

**ITEM 316 – SEAL COAT**

Ensure that all underseals are covered by HMA CP before exposing to traffic for roadways listed in Table 1 of Item 502 or ADT greater than 5,000.

Aggregates (Multi Option) for seal coats not exposed to traffic and underseals shall be Type E, PA, PB, A or B. The Grade shall range between 4 and 5.

Use a medium pneumatic roller in accordance with Item 210.

Surface all transitions, tapers, climbing lanes and intersections to the limits as directed.

Remove and dispose of off the ROW the audible/profile markings, reflectorized markings, and raised markers. Blade pavement edges to remove vegetation. Any areas with excessive asphalt or aggregate will be removed. Continue sweeping excess aggregate off the roadway, riprap, and shoulder up to two weeks after completing the work. This work is subsidiary.

**ITEM 341 & 3076 - HOT-MIX ASPHALT PAVEMENT**

Core holes may be filled with an Asphaltic patching material meeting the requirements of DMS-9203 or with SCM meeting requirements of DMS-9202.

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Install transverse butt joints with 50 ft. H: 1 in. V transition from the new ACP to the existing surface. Install a butt joint with 24 in. H: 1 in. V transition from the new ACP to a driveway, pullout or intersection. Saw cut the existing pavement at the butt joints. This work is subsidiary.

Use a device to create a maximum 3H:1V notched wedge joint on all longitudinal joints of 2 in. or greater. This work is subsidiary.

Prior to milling, core the existing pavement to verify thickness. This work is subsidiary.

Ensure placement sequence to avoid excess distance of longitudinal joint lap back not to exceed one day's production rates.

Submit any proposed adjustments or changes to a JMF before production of the new JMF.

Tack every layer. Do not dilute tack coat. Apply it evenly through a distributor spray bar.

Provide a minimum transition of 10' for intersections, 10' for commercial driveways, and 6' for residential driveways unless otherwise shown on the plans.

Irregularities will require the replacement of a full lane width using an asphalt paver. Replace the entire sublot if the irregularities are greater than 40% of the sublot area.

Lime or an approved anti-stripping agent must be used when crushed gravel is utilized to meet a SAC "A" requirement.

When using RAP or RAS, include the management methods of processing, stockpiling, and testing the material in the QCP submitted for the project. If RAP and RAS are used in the same mix, the QCP must document that both of these materials have dedicated feeder bins for each recycled material. Blending of RAP and RAS in one feeder bin or in a stockpile is not permitted.

Asphalt content and binder properties of RAP and RAS stockpiles must be documented when recycled asphalt content greater than 20% is utilized.

No RAS is allowed in surface courses.

Department approved warm-mix additives is required for all surface mix application when RAP is used. Dosage rates will be approved during JMF approval.

The Hamburg Wheel Test will have a minimum rut depth of 3mm except for SMA with HPG or PG 76.

#### **ITEM 3076 - DENSE-GRADED HOT-MIX ASPHALT**

Use the SGC for design and production testing of all mixtures. Design all Dense-Graded Type D mixtures as a surface mix, maximum 15% RAP and no RAS. Contractor may not use a substitute PG binder for 76-22. When using substitute binders, mold specimens for mix design and production at the temperature required for the substitute binder used to produce the HMA.

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The Hamburg Wheel minimum number of passes for PG 64 or lower is reduced to 7,000. The Engineer may accept Hamburg Wheel test results for production and placement if no more than 1 of the 5 most recent tests is below the specified number of passes and the failing test is no more than 2,000 passes below the specified number of passes.

#### **ITEM 403 – TEMPORARY SPECIAL SHORING**

Temporary Special Shoring shall be provided as shown in the Plans or as required for construction. The contractor is responsible for determining exact locations and shoring types appropriate considering his construction methodology, work sequencing, placement and space needs, etc. Contractor is responsible for safety and stability of shoring at all times.

Temporary Special Shoring shall be provided for all excavations with a cut depth of 5ft or greater.

Temporary Special Shoring in in-situ soft soils shall be laid back at a slope no steeper than 2H:1V. Temporary Special Shoring in in-situ hard rock materials may be cut vertically provided excavation is stable.

Where laid back cut cannot be achieved due to nearby roadway or R.O.W., alternative Temporary Special Shoring shall be used. Contractor is responsible for selecting type of shoring appropriate for each application.

See Item 400 “Excavation and Backfill for Structures” for limitations regarding placement of shoring.

#### **ITEM 420, 425, 441, & 462 - STRUCTURES**

##### **Bridge Vertical Clearance and Traffic Handling.**

Notify TxDOT project staff and the local bridge engineer 10 business days prior to the following: change in vertical clearance, placing beams/girders over traffic, opening or removing traffic from a bridge or portion of a bridge, and completion of bridge work. This requirement includes bridge class culverts. Provide vertical clearance for all structures (including signal mast arms, span wires, and overhead sign bridge structures) within the project limit. Submit information and notices to local bridge engineer at [AUS\\_BRG\\_Notify@txdot.gov](mailto:AUS_BRG_Notify@txdot.gov).

#### **ITEM 423 - RETAINING WALLS**

Mow strip shall be 2 ft. wide unless otherwise shown on the plans. Immediately backfill the face of the retaining wall after the wall height gets above the final grade in front of the wall. Retaining wall coping gap from the face of the wall panel to the inside face of coping shall not be more than 1.5 in.

Provide a test panel for approval of the form-liner surface finish prior to beginning precast operations. This work is subsidiary.

**Type BS backfill will use modified gradation limits as shown below.**

Type	Sieve Size	Percent Retained
BS MOD	3 in.	0
	No. 4	85-100

#### **ITEM 432 - RIPRAP**

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Mow strip riprap will be 4 in. and all other riprap will be 5 in. unless otherwise shown on the plans or in the pay items. Mow strip for cable barrier may be placed monolithically with the barrier foundations if using concrete in accordance with Item 543. Fiber reinforcement is not allowed except in mow strip for cable barrier if foundation and mow strip are placed monolithically.

Saw-cut existing riprap then epoxy 12 in. long No. 3 or No. 4 bars 6 in. deep at a maximum spacing of 18 in. in each direction to tie new riprap to existing riprap. This work is subsidiary.

For cement-stabilized riprap, provide Type A Grade 5 flexible base. Compressive strengths for Item 247 are waived.

SGT approach taper, paid using mow strip item, shall be installed using concrete, flexible base coated with SS-1 at a rate of 0.12 GAL/SY, or HMA Type B/C/D. Placement shall be ordinary compaction and does not require placement using an asphalt paver.

#### **ITEM 462 - CONCRETE BOX CULVERTS AND DRAINS**

Full length of 3'x3' box culvert to be supplied by Hays County. Contractor shall be responsible for pick up and delivery, installation, and pertinent items required for installation. Coordinate with Hays County prior to pick up at the Yarrington Office.

#### **ITEM 466 - HEADWALLS AND WINGWALLS**

Remove all loose formwork and materials from the waterway at the end of each work week or prior to a rain event. Debris that falls into the waterway must be removed at the end of each work day. Upon completion of the structure, stencil the National Bridge Inventory (NBI) number (structure number) using black paint and 4 in. tall numbers at 4 locations designated by TxDOT. This work is subsidiary.

#### **ITEM 496 - REMOVING STRUCTURES**

Submit a demolition plan to the Engineer. Have the plan signed and sealed by a licensed professional engineer when the structure will continue to accommodate traffic after removal has begun and the removal impacts any part of the structure below the deck or riding surface. If applicable, the plan must detail requirements for meeting the U.S. Army Corps of Engineers' Section 404 Permit. The demolition plan must detail handling of roadway and waterway traffic. Waterway traffic must be maintained at all times unless a closure is approved by the Engineer.

No debris is allowed to fall into a body of water. Debris that falls into the water must be removed at the end of each work day. Debris that falls into the floodway must be removed at the end of each work week or prior to a rain event.

#### **ITEM 502 - BARRICADES, SIGNS, AND TRAFFIC HANDLING**

For roadways without defined allowable closure times, nighttime lane closures will be allowed from 7 P to 6 A. Unless stated, daytime or Friday night lane closures will not be allowed and one lane in each direction will remain open at all times for all roadways.

Full closures only allowed Friday night thru Monday morning for bridge beam installation, bridge demolition, or OSB truss removal/installation. Full closures only allowed for roadways with frontage roads or if a designated detour route is provided in the plans.

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No closures will be allowed on the working day after the National Holidays defined in the Standard Specifications, Good Friday, and Easter weekend. Closures the Sunday of the Super Bowl will not be allowed from 1 P to 11 P. All lanes will be open by noon of the day before these special events.

To account for directional traffic volumes, begin and end times of closures may be shifted equally by the Engineer. The closure duration will remain. Added compensation is not allowed.

Submit an emailed request for a lane closure (LCN) to TxDOT. The email will be submitted in the format provided. Receive concurrence prior to implementation. Submit a cancellation of lane closures a minimum of 18 hours prior to implementation. Blanket requests for extended periods are not allowed. Max duration of a request is 2 weeks prior to requiring resubmittal.

Provide 2 hour notice prior to implementation and immediately upon removal of the closure.

For roadways listed in Table 1: Submit the request 96 hours prior to implementation.

For roadways not listed in Table 1: Submit the request a minimum of 48 hours prior to the closure and by the following deadline immediately prior to the closure: 11A on Tuesday or 11A on Friday.

For all roadways: Submit request for traffic detours and full roadway closures 168 hours prior to implementation. Submit request for nighttime work 96 hours to implementation date.

Cancellations of accepted closures (not applicable to full closures or detours) due to weather will not require resubmission in accordance with the above restrictions if the work is completed during the next allowable closure time.

Closures that conflict with adjacent contractor will be prioritized according to critical path work per latest schedule. Conflicting critical path or non-critical work will be approved for first LCN submitted. Denial of a closure due to prioritization or other reasons will not be reason for time suspension, delay, overhead, etc.

Cover, relocate or remove existing signs that conflict with traffic control. Install all permanent signs, delineation, and object markers required for the operation of the roadway before opening to traffic. Use of temporary mounts is allowed or may be required until the permanent mounts are installed or not impacted by construction. Maintain the temporary mounts. This work is subsidiary.

Meet with the Engineer prior to lane closures to ensure that sufficient equipment, materials, devices, and workers will be used. Take immediate action to modify traffic control, if at any time the queue becomes greater than 20 minutes. Have a contingency plan of how modification will occur. Consider inclement weather prior to implementing the lane closures. Do not set up traffic control when the pavement is wet.

Place a 28-inch cone, meeting requirements of BC (10), on top of foundations that have protruding studs. This work is subsidiary.



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Edge condition treatment types must be in accordance with the TxDOT standard. Installation and removal of a safety slope is subsidiary.

To determine a speed limit or an advisory speed limit, submit a request to TxDOT 60 business days prior to manufacture of the sign.

For non-site specific signal projects, 2 months of barricades will be paid per work order location. The Contractor Force Account "Safety Contingency" that has been established for this project is intended to be utilized for work zone enhancements, to improve the effectiveness of the Traffic Control Plan, that could not be foreseen in the project planning and design stage. These enhancements will be mutually agreed upon by the Engineer and the Contractor's Responsible Person based on weekly or more frequent traffic management reviews on the project. The Engineer may choose to use existing bid items if it does not slow the implementation of enhancement.

#### **ITEM 506 - TEMPORARY EROSION, SEDIMENTATION, AND ENV CONTROLS**

Install, maintain, remove erosion, sedimentation and environmental control measures in areas of the right of way utilized by the contractor that are outside the limits of disturbance required for construction. Permanently stabilize the area. This work is subsidiary.

Consider the SW3P for this project to consist of the following items, as directed:

Temporary Sediment Control Fence, Rock Filter Dams, Construction Exits, and Earthwork for Erosion and Sediment Control.

#### **ITEM 508 – CONSTRUCTING DETOURS**

Detour typical section must match the adjacent roadway section, unless shown on the plans

Flexible base will be Type A Grade 5 placed using ordinary compaction. Base compressive strengths are waived for roadways not listed in Item 502, Table 1.

#### **ITEM 512 – PORTABLE TRAFFIC BARRIER**

Designated source barrier stockpile locations: SH 45 just west of US 183 South, or SH 130 @ Greg Manor Rd. Upon completion of the project, designated source PTB deemed unsalvageable by the Engineer will become the property of the contractor. If no hardware is available for designated source, the contractor will furnish all necessary hardware to install the PTB and reimbursed in accordance with Item 9 Force Account. Bundle and return all PTB connection hardware to the nearest Area Office.

In lieu of a crash cushion, place 25:1 Class C concrete transition where PTB terminates adjacent to existing concrete barrier. Installation and removal will be paid using Item 512.

#### **ITEM 530 – INTERSECTIONS, DRIVEWAYS, AND TURNOUTS**

Notify property owners a minimum of 48 hr. in advance of beginning work on their driveway. Provide a list of each notification and contact prior to each closure. Only close driveways for reconstruction if duration and alternate access are approved. Install and maintain material across a work zone as temporary access. Temporary access must not have grade breaks that exceed 8%. This work is subsidiary.

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Grade breaks must not exceed 8%. Sidewalk crossing slope will be 1.5% and 5 ft. wide with width reduction in approved locations.

For ACP or SURF TREAT, the pavement structure will match the adjacent roadway unless detailed on the plans. HMA, including surface, may use a maximum allowable amount of 40% RAP and 5% RAS for private driveways, public driveways for 2-lane roadways or smaller, and turnouts. Blending of 2 or more sources is allowed. Furnish base meeting the requirement for any type or grade in accordance with Item 247. Compressive strengths for flexible base are waived. Base must be placed using ordinary compaction.

For CONC, the pavement structure will be 6 in. thick and have 3 in. base bedding unless detailed on the plans. Furnish base meeting ACP or SURF TREAT requirements. Class A concrete is required and may use Coarse Aggregate Grades 1-8. Expansion joints will be placed every 20 ft.

Expansion joints will be constructed as detailed in the latest TxDOT Concrete Curb and Gutter Standard. Reinforcement will be in accordance with concrete riprap for Item 432.3.1., unless specified on the plans.

#### **ITEM 540, 542, & 544 - METAL BEAM GUARD FENCE AND GUARDRAIL END TREATMENTS**

Furnish round timber posts for guard fence. Steel posts for low fill culverts are subsidiary. Stake the locations for approval prior to installation. Adjust the limits of the fence to meet field conditions. Install delineators before opening the road to traffic.

Retain all materials. Contractor may reuse all existing materials that are structurally sound and dent free. All reused material shall be from this project and in compliance with current standards. Structurally sound rust spots with the largest dimension of 4 in. may be cleaned and repaired in accordance with 540.3.5. Contractor may punch or field drill holes in the metal rail element to accommodate post spacing. Additional holes for splice or connections are not allowed. The holes shall be spaced in accordance with the latest standard and shall not be closer than the minimum spacing shown on the current standard.

Remove, replace, and install mow strip block out material. Construct new block outs and backfill unused block outs with class B concrete. This work is subsidiary.

Repair of mow strip damage, not caused by contractor negligence, and installation of new mow strip will be paid with appropriate bid items. Backfill and shoulder up of area around fence and mow strip will be paid using embankment item.

#### **ITEM 644 – SMALL ROADSIDE SIGN ASSEMBLIES**

Triangular slip base that use set screws to secure the post will require 1 of the set screws to penetrate the post by drilling a hole in the post at the location of the screw. All set screws shall be treated with anti-seize compound.

#### **ITEM 658 – DELINEATOR AND OBJECT MARKER ASSEMBLIES**

Installation and maintenance of portable CTB reflectors will be subsidiary to the barrier.

**County:** Hays

**Highway:** Centerpoint Rd / Viewpoint Dr

### **ITEM 662 – WORK ZONE PAVEMENT MARKINGS**

Notify the Engineer at least 24 hours in advance of work for this item.

Maintain removable and short-term markings daily. Remove within 48 hours after permanent striping has been completed.

Item 668 is not allowed for use as Item 662.

### **ITEM 666 - RETROREFLECTORIZED PAVEMENT MARKINGS**

Notify the Engineer at least 24 hr. before beginning work.

Place longitudinal markings nightly for IH 35 main lanes or roadways with AADT greater than 100,000. Use of temporary flexible reflective roadway marker tabs is subsidiary and at the Contractor's option. Replace missing or damaged tabs nightly. If using tabs, place longitudinal markings weekly by 5 AM Friday for all weekday work and by 5 AM Monday for all weekend work. Failure to maintain tabs or place longitudinal markings by deadline will require nightly placement of longitudinal markings.

Place longitudinal markings no later than 7 calendar days after placement of the surface for roadways with AADT greater than 20,000.

When the raised portion of a profile marking is placed as a separate operation from the pavement marking, the raised portion must be placed first then covered with TY I.

When using black shadow to cover existing stripe apply a non-retroreflective angular abrasive bead drop. The marking color shall be adjusted to resemble the pavement color. If Item 677 is not used prior to placement of black shadow, scrape the top of the marking with a blade or large piece of equipment unless surface is a seal coat. The scraping of the marking is subsidiary.

### **ITEM 3076 – DENSE-GRADED HOT-MIX ASPHALT**

Use the SGC for design and production testing of all mixtures. Design all Type D mixtures as a surface mix, maximum 15% RAP and no RAS. Contractor may not use a substitute PG binder for 76-22. When using substitute binders, mold specimens for mix design and production at the temperature required for the substitute binder used to produce the HMA.

The Hamburg Wheel minimum number of passes for PG 64 or lower is reduced to 7,000. The Engineer may accept Hamburg Wheel test results for production and placement if no more than 1 of the 5 most recent tests is below the specified number of passes and the failing test is no more than 2,000 passes below the specified number of passes.

### **ITEM 6001 – PORTABLE CHANGEABLE MESSAGE SIGN**

Provide 1 PCMS. Provide a replacement within 12 hours. PCMS will be available for traffic control, event notices, roadway conditions, service announcements, etc.

Place PCMS 10 calendar days prior to begin work stating "Road Work Begin Soon, Contact 832-7000 For Info".

**County:** Hays

**Highway:** Centerpoint Rd / Viewpoint Dr

Place PCMS at time of LCN request. Place the PCMS at the expected end of queue caused by the closure. When the closure is active, revise the message to reflect the actual condition during the closure, such as "RIGHT LN CLOSED XXX FT".

**ITEM 6185 – TRUCK MOUNTED ATTENUATOR AND TRAILER ATTENUATOR**

The TMA/TA used for installation/removal of traffic control for a work area will be subsidiary to the TMA/TA used to perform the work.

The contractor will be responsible for determining if one or more operations will be ongoing at the same time to determine the total number of TMA/TA required for the work. TMA/TAs paid by the day is full compensation for all worksite locations during an entire day.

TMA/TAs used to protect damaged attenuators will be paid by the day using the force account item for the repair.

In addition to the TMA/TA required per the TCP plans and standards, provide 2 additional TMA/TA for detouring traffic on SH 123.

**SECTION 13**  
**ENGINEER'S SEAL PAGE**


**Engineers Seal Page**

Project: Centerpoint Rd  
Improvements  
Highway: Centerpoint Rd  
County: Hays

“The enclosed specifications, special specifications, special provisions, general notes and specification data in this document have been issued by me or under my responsible supervision as being applicable to this project. Alteration of a sealed document without proper notification of the responsible engineer is an offense under the Texas Engineering Practice Act.”

The seal appearing on this document was  
authorized by Dennis Seal, P.E. on  
May 18, 2023.



  
\_\_\_\_\_  
DENNIS K. SEAL, P.E.

5/18/2023

\_\_\_\_\_  
DATE

**SECTION 14**  
**TECHNICAL SPECIFICATIONS**

**HAYS COUNTY /**  
**TEXAS DEPARTMENT OF TRANSPORTATION**

**GOVERNING SPECIFICATIONS**

(STANDARD SPECIFICATIONS, SPECIAL PROVISIONS, AND SPECIAL SPECIFICATIONS)

WHERE DISCREPANCIES OCCUR BETWEEN THE TECHNICAL SPECIFICATIONS, THE FOLLOWING DESCENDING ORDER OF PRIORITY SHALL GOVERN: (1) SPECIAL CONDITIONS, (2) SPECIAL PROVISIONS TO SPECIAL SPECIFICATIONS, (3) SPECIAL SPECIFICATIONS, (4) SPECIAL PROVISIONS, AND (5) STANDARD SPECIFICATIONS.

ALL SPECIFICATIONS AND SPECIAL PROVISIONS APPLICABLE TO THIS PROJECT ARE IDENTIFIED AS FOLLOWS:

STANDARD SPECIFICATIONS: ADOPTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION NOVEMBER 1, 2014. STANDARD SPECIFICATIONS ARE INCORPORATED INTO THE CONTRACT BY REFERENCE.

ITEMS 1L – 9L LOCAL GOVERNMENT GENERAL REQUIRMENTS AND COVENANTS

ITEM 100	PREPARING RIGHT OF WAY (103)
ITEM 110	EXCAVATION (132)
ITEM 132	EMBANKMENT (100)(160)(204)(210)(216)(260)(400)
ITEM 160	TOPSOIL (168)
ITEM 164	SEEDING FOR EROSION CONTROL (162)(166)(168)
ITEM 168	VEGETATIVE WATERING
ITEM 247	FLEXIBLE BASE (105)(204)(210)(216)(520)
ITEM 260	LIME TREATMENT (ROAD-MIXED) (105)(132)(204)(210)(216)(247)(300)(310)(520)(3096)
ITEM 310	PRIME COAT (300)(316)(3096)
ITEM 316	SEAL COAT (210)(300)(302)(3096)
ITEM 403	TEMPORARY SPECIAL SHORING (410)(411)(423)
ITEM 423	RETAINING WALLS (110)(132)(216)(400)(416)(420)(421)(424)(440)(445)(458)(556)
ITEM 432	RIPRAP (247)(420)(421)(431)(440)
ITEM 462	CONCRETE BOX CULVERTS AND DRAINS (400)(402)(403)(420)(421)(422)(424)(440)(464)(476)
ITEM 466	HEADWALLS AND WINGWALLS (400)(420)(421)(432)(440)(464)
ITEM 496	REMOVING STRUCTURES
ITEM 502	BARRICADES, SIGNS, AND TRAFFIC HANDLING
ITEM 506	TEMPORARY EROSION, SEDIMENTATION, AND ENVIRONMENTAL CONTROLS (161)(432)(556)
ITEM 508	CONSTRUCTING DETOURS
ITEM 510	ONE-WAY TRAFFIC CONTROL
ITEM 512	PORTABLE TRAFFIC BARRIER (420)(421)(424)(440)(442)
ITEM 530	INTERSECTIONS, DRIVEWAYS, AND TURNOUTS (247)(260)(263)(275)(276)(292)(316)(330)(334)(340)(341)(360)(421)(440)(3076)
ITEM 540	METAL BEAM GUARD FENCE (421)(441)(445)(529)
ITEM 544	GUARDRAIL END TREATMENTS
ITEM 644	SMALL ROADSIDE SIGN ASSEMBLIES (421)(440)(441)(442)(445)(636)(643)(656)
ITEM 658	DELINEATOR AND OBJECT MARKER ASSEMBLIES (445)
ITEM 662	WORK ZONE PAVEMENT MARKINGS (666)(668)(672)(677)
ITEM 666	REFLECTORIZED PAVEMENT MARKINGS (316)(502)(662)(677)(678)(6438)



SPECIAL SPECIFICATIONS:

ITEM 3076	DENSE-GRADED HOT-MIX ASPHALT (300)(301)(316)(320)(340)(341)(342)(347)(348)(520)(585)(3079)(3081)(3082)(3096)
ITEM 6001	PORTABLE CHANGEABLE MESSAGE SIGN
ITEM 6185	TRUCK MOUNTED ATTENUATOR AND TRAILER ATTENUATOR

**SPECIAL PROVISIONS:**

## WAGE RATES (See Section 6)

SPECIAL PROVISION TO ITEM 247	(247---003)
SPECIAL PROVISION TO ITEM 316	(316---002)
SPECIAL PROVISION TO ITEM 462	(462---002)
SPECIAL PROVISION TO ITEM 502	(502---008)
SPECIAL PROVISION TO ITEM 506	(506---002)
SPECIAL PROVISION TO ITEM 540	(540---001)
SPECIAL PROVISION TO ITEM 666	(666---007)

GENERAL: THE ABOVE-LISTED SPECIFICATION ITEMS ARE THOSE UNDER WHICH PAYMENT IS TO BE MADE. THESE, TOGETHER WITH SUCH OTHER PERTINENT ITEMS, IF ANY, AS MAY BE REFERRED TO IN THE ABOVE-LISTED SPECIFICATION ITEMS, AND INCLUDING THE SPECIAL PROVISIONS AND SPECIAL SPECIFICATIONS LISTED ABOVE, CONSTITUTE THE COMPLETE SPECIFICATIONS FOR THIS PROJECT.

# **Introduction**

## **Local Government General Requirements**

For all projects with State or Federal funds, and/or all projects on the State Highway System regardless of funding source, a Local Government must either adopt the latest TxDOT Standard Specifications, Special Specifications, and required Special Provisions or request TxDOT written approval of alternate, equivalent specifications. TxDOT's *"2014 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges"* are the latest TxDOT Standard Specifications. These "General Requirements" along with additional requirements specified by the particular local government, are intended as a template for Item 1-9 in TxDOT's Standard Specifications on projects let by a local government that is on the State Highway System or includes reimbursement to the local government using FHWA or TxDOT funds.

This document is intended to be used as a template that allows the local government to modify Item 1-9 to meet their particular needs while assuring that all local, state, and federal statutory requirements are addressed. As this document modifies a TxDOT publication, there may be a question about terminology. In general, the "Owner" or the "Engineer" references the local government or their representatives (Consulting Engineers, etc.) Reference to "Department" or "Engineer" in the construction and maintenance specifications refers to the local government except when it is referencing a TxDOT specification, manual, material specification, Material Producers List or test method.

# Foreword

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## OUTLINE OF SPECIFICATIONS

Each specification is outlined by articles and sections. The basic articles required for a specification are:

1. DESCRIPTION
2. MATERIALS
3. EQUIPMENT
4. CONSTRUCTION OR WORK METHODS
5. MEASUREMENT
6. PAYMENT

Some articles are not used in every item. Measurement and Payment articles are combined when the work described is subsidiary to bid items of the Contract.

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## HIERARCHY OF ORGANIZATIONAL ELEMENTS

Here “XXX” represents the item number. The hierarchy of organizational elements available below the item level is as follows:

XXX.1., Article  
XXX.1.1., Section  
XXX.1.1.1., Section  
XXX.1.1.1.1., Section  
XXX.1.1.1.1.1., Section  
XXX.1.1.1.1.1.1., Section

The term section is used for all breaks below the article.



# Items 1L–9L

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Local Government General Requirements and  
Covenants

# Item 1L

## Abbreviations and Definitions



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### 1. APPLICABILITY

Wherever the following terms are used in these specifications or other Contract documents, the intent and meaning will be interpreted as shown below.

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### 2. ABBREVIATIONS

AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACPA	American Concrete Pipe Association
AI	Asphalt Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALSC	American Lumber Standard Committee, Inc.
AMRL	AASHTO Materials Reference Laboratory
ANLA	American Nursery and Landscape Association
ANSI	American National Standards Institute
APA	The Engineered Wood Association
API	American Petroleum Institute
APWA	American Public Works Association
AREMA	American Railway Engineering and Maintenance-of-Way Association
ASBI	American Segmental Bridge Institute
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
AWC	American Wood Council
AWG	American Wire Gage
AWPA	American Wood Protection Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BMP	Best Management Practices
CFR	Code of Federal Regulations
CMP	Corrugated Metal Pipe
COE	U.S. Army Corps of Engineers
CRSI	Concrete Reinforcing Steel Institute
DBE	Disadvantaged Business Enterprise
DMS	Departmental Material Specification
EIA	Electronic Industries Alliance
EPA	United States Environmental Protection Agency
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards (General Services Administration)
GSA	United States General Services Administration
HUB	Historically Underutilized Business
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineering Society of North America

IMSA	International Municipal Signal Association
ISO	International Organization for Standardization
ITS	Intelligent Transportation System
ITE	Institute of Transportation Engineers
LG	Local Government
LRFD	Load and Resistance Factor Design
MASH	Manual for Assessing Safety Hardware
MPL	Material Producer List (TxDOT document)
NCHRP	National Cooperative Highway Research Program
NCR	Nonconformance Report (TxDOT form)
NEC	National Electrical Code (Published by NFPA)
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards and Technology
NRM	Nonhazardous Recyclable Material
NRMCA	National Ready Mixed Concrete Association
NSBA	National Steel Bridge Alliance
NTPEP	National Transportation Product Evaluation Program
OSHA	Occupational Safety & Health Administration, U.S. Department of Labor
PCA	Portland Cement Association
PCI	Precast/Prestressed Concrete Institute
PE	Professional Engineer
PPI	Plastics Pipe Institute
PS&E	Plans, Specifications, and Estimates
PSL	Project-Specific Location
PTI	Post-Tension Institute
QA	Quality Assurance
QC	Quality Control
RCP	Reinforced Concrete Pipe
RPLS	Registered Public Land Surveyor
RRC	Railroad Commission of Texas
SBE	Small Business Enterprise
SFPA	Southern Forest Products Association
SI	International System of Units
SPIB	Southern Pine Inspection Bureau
SSPC	The Society for Protective Coatings
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TDLR	Texas Department of Licensing and Regulation
TGC	Texas Government Code
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
UL	Underwriters Laboratory, Inc.
USC	United States Code
WRI	Wire Reinforcement Institute
WWPA	Western Wood Products Association

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### 3. DEFINITIONS

- 3.1. **Abrasive Blasting.** Spraying blasts of pressurized air combined with abrasive media.
- 3.2. **Actual Cost.** Contractor's actual cost to provide labor, material, equipment, and project overhead necessary for the work.
- 3.3. **Addendum.** Change in bid documents developed between advertising and bid submittal deadline.

- 3.4. **Additive Alternate.** A bid item contained in the bid documents that is not a regular item or a replacement alternate bid item. The additive alternate items include work that may be added to the base bid work.
- 3.5. **Deductive Alternate.** A bid item contained in the bid documents that is not a regular item or a replacement alternate bid item. The deductive alternate items include work that may be deducted from the base bid work.
- 3.6. **Advertisement.** The public announcement required by law inviting bids for work to be performed or materials to be furnished.
- 3.7. **Affiliates.** Two or more firms are affiliated if they share common officers, directors, or stockholders; a family member of an officer, director, or stockholder of one firm serves in a similar capacity in another of the firms; an individual who has an interest in, or controls a part of, one firm either directly or indirectly also has an interest in, or controls a part of, another of the firms; the firms are so closely connected or associated that one of the firms, either directly or indirectly, controls or has the power to control another firm; one firm controls or has the power to control another of the firms; or the firms are closely allied through an established course of dealings, including, but not limited to, the lending of financial assistance.
- 3.8. **Air Blasting.** Spraying blasts of pressurized air free of oil and moisture.
- 3.9. **Air Temperature.** The temperature measured in degrees Fahrenheit (°F) in the shade, not in the direct rays of the sun, and away from artificial heat.
- 3.10. **Anticipated Profit.** Profit for work not performed.
- 3.11. **Apparent Low Bidder.** The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Owner.
- 3.12. **Architect of Record.** A person registered as an architect or licensed as a landscape architect, in accordance with State law, exercising overall responsibility for the design or a significant portion of the design and performs certain Contract administration responsibilities as described in the Contract; or a firm employed by the Owner to provide professional architectural services.
- 3.13. **Arterial Highway.** A highway used primarily for through traffic and usually on a continuous route.
- 3.14. **Notice of Award.** The Owner's acceptance of a Contractor's bid for a proposed Contract that authorizes the Owner to enter into a Contract.
- 3.15. **Base Bid.** The total bid amount without additive alternates.
- 3.16. **Bid.** The offer from the Bidder for performing the work described in the bid documents, submitted on the prescribed bid form, considering addenda issued and giving unit bid prices for performing the work described in the bid documents.
- 3.17. **Bid Bond.** The security executed by the Contractor and the Surety furnished to the Owner to guarantee payment of liquidated damages if the Contractor fails to enter into an awarded Contract.
- 3.18. **Bid Documents.** The complete set of documents necessary for a Bidder to submit a bid. The documents may include plans, specifications, special specifications, special provisions, addenda, and the prescribed form a Bidder is to submit as the Bid. Other terms used may include general conditions, proposal, instructions to bidders, and construction specifications.
- 3.19. **Bid Error.** A mathematical mistake made by a Bidder in the unit price entered into the bid documents.
- 3.20. **Bid Form.** The portion of the bid documents that a prospective Bidder must submit to the Owner for their bid to be considered.

- 3.21. **Bidder.** An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed Contract.
- 3.22. **Blast Cleaning.** Using one of the blasting methods, including, but not limited to, water blasting, low-pressure water blasting, high-pressure water blasting, abrasive blasting, water-abrasive blasting, shot blasting, slurry blasting, water injected abrasive blasting, and brush blasting.
- 3.23. **Bridge.** A structure, including supports, erected over a depression or an obstruction (e.g., water, a highway, or a railway) having a roadway or track for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 ft. between faces of abutments, spring lines of arches, or extreme ends of the openings for multiple box culverts.
- 3.24. **Brush Blasting.** Sweeping lightly with an abrasive blast to remove loose material.
- 3.25. **Building Contract.** A Contract entered under State law for the construction or maintenance of an Owner building or appurtenance facilities. Building Contracts are considered to be construction Contracts.
- 3.26. **Certificate of Insurance.** A form approved by the Owner covering insurance requirements stated in the Contract.
- 3.27. **Change Order.** Written order to the Contractor detailing changes to the specified work, item quantities or any other modification to the Contract.
- 3.28. **Concrete Construction Joint.** A joint formed by placing plastic concrete in direct contact with concrete that has attained its initial set.
- 3.29. **Concrete Repair Manual.** TxDOT manual specifying methods and procedures for concrete repair as an extension of the standard specifications.
- 3.30. **ConcreteWorks®.** TxDOT-owned software for concrete heat analysis. Software is available on the TxDOT's website.
- 3.31. **Construction Contract.** A Contract entered under State law for the construction, reconstruction, or maintenance of a segment of the Owner's transportation system.
- 3.32. **Consultant.** The licensed professional engineer or engineering firm, or the architect or architectural firm, registered in the State of Texas and under Contract to the Owner to perform professional services. The consultant may be the Engineer or architect of record or may provide services through and be subcontracted to the Engineer or architect of record.
- 3.33. **Contract.** The agreement between the Owner and the Contractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- 3.34. **Contract Documents.** Elements of the Contract, including, but not limited to, the plans, specifications incorporated by reference, special provisions, special specifications, Contract bonds, change orders, addendums, and supplemental agreements.
- 3.35. **Contract Time.** The number of days specified for completion of the work, including authorized additional working days.
- 3.36. **Contractor.** The individual, partnership, limited liability company, corporation, or joint venture and all principals and representatives with which the Contract is made by the Owner.
- 3.37. **Controlled Access Highway.** Any highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys, or other public or private ways.



- 3.38. **Control of Access.** The condition in which the right to access of owners or occupants of abutting land or other persons in connection with a highway is fully or partially controlled by public authority.
- 3.39. **Control Point.** An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.
- 3.40. **Cross-Sections.** Graphic representations of the original ground and the proposed facility, at right angles to the centerline or base line.
- 3.41. **Culvert.** Any buried structure providing an opening under a roadway for drainage or other purposes. Culverts may also be classified as bridges. (See Section 1.3.23., "Bridge.")
- 3.42. **Cycle.** The activity necessary for performing the specified work within the right of way project limits once.
- 3.43. **Daily Road-User Cost.** Damages based on the estimated daily cost of inconvenience to the traveling public resulting from the work.
- 3.44. **Date of Written Authorization.** Date of the written Notice to Proceed authorizing the Contractor to begin work.
- 3.45. **Debar (Debarment).** Action taken by the Owner, State, or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a highway improvement Contract as defined in local, state, or federal law.
- 3.46. **Detour.** A temporary traffic route around a closed portion of a road.
- 3.47. **Department.** When used in the context of the party with whom the Contractor has a Construction Contract, Department refers to Owner. When used in other contexts such as technical specifications, refers to the Texas Department of Transportation.
- 3.48. **Departmental Material Specifications.** Reference specifications for various materials published by TxDOT's Construction Division with a DMS-XXXXX numbering system.
- 3.49. **Direct Traffic Culvert.** Concrete box culvert whose top slab is used as the final riding surface or is to have an overlay or other riding surface treatment.
- 3.50. **Disadvantaged Business Enterprise.** A small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.
- 3.51. **Divided Highway.** A highway with separate roadways intended to move traffic in opposite directions.
- 3.52. **Easement.** A real property right acquired by one party to use land belonging to another party for a specified purpose.
- 3.53. **Engineer.** The Professional Engineer licensed in Texas who represents the interests of the Owner.
- 3.54. **Entity.** Political subdivision for which the project is designed and constructed. Either a Municipality (City) or a County or other entity organized under the authority of State of Texas statutes. May also be referred to as an Owner.
- 3.55. **Expressway.** A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.

- 3.56. **Family Member.** A family member of an individual is the individual's parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse.
- 3.57. **Force Account.** Payment for directed work based on the actual cost of labor, equipment, and materials furnished with markups for project overhead and profit.
- 3.58. **Freeway.** An expressway with full control of access.
- 3.59. **Frontage Road.** A local street or road auxiliary to and located along an arterial highway for service to abutting property and adjacent areas and for control of access (sometimes known as a service road, access road, or insulator road).
- 3.60. **Hazardous Materials or Waste.** Hazardous materials or waste include, but are not limited to, explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable state and federal regulations.
- 3.61. **High-Pressure Water Blasting.** Water blasting with pressures between 5,000 and 10,000 psi.
- 3.62. **Highway, Street, or Road.** General terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way. Recommended usage in urban areas is highway or street; in rural areas, highway or road.
- 3.63. **Historically Underutilized Business.** A corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit certified by the Texas Comptroller of Public Accounts, and 51% owned by one or more persons who are economically disadvantaged because of their identification as members of certain groups, including African Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, or women, and have a proportionate interest and demonstrate active participation in the control, operation, and management of the business' affairs. Individuals meeting the HUB definition are required to be residents of the State of Texas. Businesses that do not have their primary headquarters in the State of Texas are not eligible for HUB certification.
- 3.64. **Incentive/Disincentive Provisions.** An adjustment to the Contract price of a predetermined amount for each day the work is completed ahead of or behind the specified milestone, phase, or Contract completion dates. The amount of the incentive/disincentive is determined based on estimated costs for engineering, traffic control, delays to the motorists, and other items involved in the Contract.
- 3.65. **Independent Assurance Tests.** Tests used to evaluate the sampling and testing techniques and equipment used in the acceptance program. The tests are performed by the Owner or the Owner's representative and are not used for acceptance purposes.
- 3.66. **Inspector.** The person assigned by the Owner to inspect any or all parts of the work and the materials used for compliance with the Contract.
- 3.67. **Intelligent Transportation System.** An integrated system that uses video and other electronic detection devices to monitor traffic flows.
- 3.68. **Intersection.** The general area where 2 or more highways, streets, or roads join or cross, including the roadway and roadside facilities for traffic movements within it.
- 3.69. **Island.** An area within a roadway from which vehicular traffic is intended to be excluded, together with any area at the approach occupied by protective deflecting or warning devices.
- 3.70. **Joint Venture.** Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid form.

- 3.71. **Lane Rental.** A method to assess the Contractor daily or hourly rental fees for each lane, shoulder, or combination of lanes and shoulders taken out of service.
- 3.72. **Letting.** The receipt, opening, tabulation, and determination of the apparent low Bidder.
- 3.73. **Letting Official.** The Owner representative empowered by the Owner to officially receive bids and close the receipt of bids at a letting.
- 3.74. **Licensed Professional Engineer.** A person who has been duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas; also referred to as a Professional Engineer.
- 3.75. **Limits of Construction.** An area with established boundaries, identified within the highway right of way and easements, where the Contractor is permitted to perform the work.
- 3.76. **Local Street or Road.** A street or road primarily for access to residence, business, or other abutting property.
- 3.77. **Low-Pressure Water Blasting.** Water blasting with pressures between 3,000 and 5,000 psi.
- 3.78. **Major Item.** An item of work included in the Contract that has a total cost equal to or greater than 5% of the original Contract or \$100,000 whichever is less. A major item at the time of bid will remain a major item. An item not originally a major item does not become one through the course of the Contract.
- 3.79. **Material Producer List.** TxDOT-maintained list of approved products. Referenced as "Department's MPL".
- 3.80. **Materially Unbalanced Bid.** A bid that generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Owner.
- 3.81. **Mathematically Unbalanced Bid.** A bid containing bid prices that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.
- 3.82. **Median.** The portion of a divided highway separating the traffic lanes in opposite directions.
- 3.83. **Milestone Date.** The date that a specific portion of the work is to be completed, before the completion date for all work under the Contract.
- 3.84. **Monolithic Concrete Placement.** The placement of plastic concrete in such manner and sequence to prevent a construction joint.
- 3.85. **National Holidays.** January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, and December 24 or December 25.
- 3.86. **Nonhazardous Recyclable Material.** A material recovered or diverted from the nonhazardous waste stream for the purposes of reuse or recycling in the manufacture of products that may otherwise be produced using raw or virgin materials.
- 3.87. **Nonresident Bidder.** A Bidder whose principal place of business is not in Texas. This includes a Bidder whose ultimate parent company or majority owner does not have its principal place of business in Texas.
- 3.88. **Nonresponsive Bid.** A bid that does not meet the criteria for acceptance contained in the bid documents.
- 3.89. **Non-Site-Specific Contracts.** Contracts in which a geographic region is specified for the work and for which work orders, with or without plans, further detail the limits and work to be performed.
- 3.90. **Notice to Proceed.** Written notification to the Contractor authorizing work to begin.

- 3.91. **Notification.** Either written or oral instruction to the Contractor concerning the work. Voice mail is oral notification.
- 3.92. **Owner,** Political subdivision for whom the project is designed and constructed. Either a Municipality (City), a County or other entity organized under the authority of State of Texas statutes. May also be referred to as an **Entity.**
- 3.93. **Pavement.** That part of the roadway having a constructed surface for the use of vehicular traffic.
- 3.94. **Pavement Structure.** Combination of surface course and base course placed on a subgrade to support the traffic load and distribute it to the roadbed.
- 3.94.1. **Surface Course.** Pavement structure layers designed to accommodate the traffic load. The top layer resists skidding, traffic abrasion, and the disintegrating effects of climate and is sometimes called the wearing course.
- 3.94.2. **Base Course.** One or more layers of specified material thickness placed on a subgrade to support a surface course.
- 3.94.3. **Subgrade.** The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.
- 3.94.4. **Subgrade Treatment.** Modifying or stabilizing material in the subgrade.
- 3.95. **Payment Bond.** The security executed by the Contractor and the Surety, furnished to the Owner to guarantee payment of all legal debts of the Contractor pertaining to the Contract.
- 3.96. **Performance Bond.** The security executed by the Contractor and the Surety, furnished to the Owner to guarantee the completion of the work in accordance with the terms of the Contract.
- 3.97. **Plans.** The approved drawings, including true reproductions of the drawings that show the location, character, dimensions, and details of the work and are a part of the Contract.
- 3.98. **Power of Attorney for Surety Bonds.** An instrument under corporate seal appointing an attorney-in-fact to act on behalf of a Surety in signing bonds.
- 3.99. **Qualification.** The process for determining a Contractor's eligibility to be awarded a construction contract
- 3.100. **Prequalification.** The process for determining a Contractor's eligibility to bid work.
- 3.101. **Prequalification Statement.** The forms on which required information is furnished concerning the Contractor's ability to perform and finance the work.
- 3.102. **Prequalified Contractor.** A contractor that is approved to bid on TxDOT contracts by satisfying their Prequalification Process.
- 3.103. **Post Qualification.** The owner will determine if contractors are qualified to bid on the project after bids are open. The bid documents will identify the minimum requirements that contractor must meet to be qualified for the project. Unqualified contractors' bids will be considered non-responsive and not accepted.
- 3.104. **Project-Specific Location.** A material source, plant, waste site, parking area, storage area, field office, staging area, haul road, or other similar location either outside the project limits or within the project limits but not specifically addressed in the Contract.
- 3.105. **Proposal Guaranty.** The security furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.

- 3.106. **Quality Assurance.** Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.
- 3.107. **Quality Control.** Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.
- 3.108. **Ramp.** A section of highway for the primary purpose of making connections with other highways.
- 3.109. **Referee Tests.** Tests requested to resolve differences between Contractor and Owner test results. The referee laboratory is the Owners .
- 3.110. **Regular Item.** A bid item contained in the bid documents and not designated as an additive alternate or replacement alternate bid item.
- 3.111. **Rental Rate Blue Book for Construction Equipment.** Publication containing equipment rental rates.
- 3.112. **Replacement Alternate.** A bid item identified on the bid documents that a Bidder may substitute for a specific regular item of work.
- 3.113. **Responsive Bid.** A bid that meets all requirements of the advertisement and the bid documents for acceptance.
- 3.114. **Right of Way.** A general term denoting land or property devoted to transportation purposes.
- 3.115. **Roadbed.** The graded portion of a highway prepared as foundation for the pavement structure and shoulders. On divided highways, the depressed median type and the raised median type highways are considered to have 2 roadbeds. Highways with a flush median are considered to have 1 roadbed. Frontage roads are considered separate roadbeds.
- 3.116. **Road Master.** A railroad maintenance official in charge of a division of railway.
- 3.117. **Roadside.** The areas between the outside edges of the shoulders and the right of way boundaries. Unpaved median areas between inside shoulders of divided highways and areas within interchanges are included.
- 3.118. **Roadway.** The portion of the highway (including shoulders) used by the traveling public.
- 3.119. **Sandblasting, Dry.** Spraying blasts of pressurized air combined with sand.
- 3.120. **Sandblasting, Wet.** Spraying blasts of pressurized water combined with sand.
- 3.121. **Shoulder.** That portion of the roadway contiguous with the traffic lanes for accommodation of stopped vehicles for emergency use or for lateral support of base and surface courses.
- 3.122. **Shot Blasting.** Spraying blasts of pressurized air combined with metal shot.
- 3.123. **Sidewalk.** Portion of the right of way constructed exclusively for pedestrian use.
- 3.124. **Slurry Blasting.** Spraying blasts of pressurized air combined with a mixture of water and abrasive media.
- 3.125. **Special Provisions.** Additions or revisions to these standard specifications or special specifications.
- 3.126. **Special Specifications.** Supplemental specifications applicable to the Contract not covered by these standard specifications.
- 3.127. **Specifications.** Directives or requirements issued or made pertaining to the method and manner of performing the work or to quantities and qualities of materials to be furnished under the Contract. References to DMSs, ASTM or AASHTO specifications, or TxDOT bulletins and manuals, imply the latest standard or

tentative standard in effect on the date of the bid. The Owner will consider incorporation of subsequent changes to these documents in accordance with Item 4L, "Scope of Work."

- 3.128. **Small Business Enterprise.** A firm (including affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for 4 consecutive years.
- 3.129. **State.** The State of Texas.
- 3.130. **State Holiday.** A holiday authorized by the State Legislature excluding optional state holidays and not listed in Section 1.3.85., "National Holidays." A list of state holidays can be found on the TxDOT's website.
- 3.131. **Station.** A unit of measurement consisting of 100 horizontal feet.
- 3.132. **Subcontract.** The agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.
- 3.133. **Subcontractor.** An individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, truck owner-operator, wholly-owned subsidiary, or specialty-type businesses such as security companies and rental companies.
- 3.134. **Subsidiary.** Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.
- 3.135. **Substructure.** The part of the structure below the bridge seats, but not including bearings, drilled shafts, or piling. Parapets, back walls, wing walls of the abutments, and drainage structures are considered parts of the substructure.
- 3.136. **Superintendent.** The representative of the Contractor who is available at all times and able to receive instructions from the Owner or authorized Owner representatives and to act for the Contractor.
- 3.137. **Superstructure.** The part of the structure above the bridge seats or above the springing lines of arches and including the bearings. Flatwork construction may be considered superstructure.
- 3.138. **Supplemental Agreement.** Written agreement entered into between the Contractor and the Owner and approved by the Surety, covering alterations and changes in the Contract. A supplemental agreement is used by the Owner whenever the modifications include assignment of the Contract from one party to another or other cases as desired by the Owner.
- 3.139. **Surety.** The corporate body or bodies authorized to do business in Texas bound with and for the Contractor for the faithful performance of the work covered by the Contract and for the payment for all labor and material supplied in the prosecution of the work.
- 3.140. **Surplus Materials.** Any debris or material related to the Contract but not incorporated into the work.
- 3.141. **Suspension.** Action taken by the Owner, State, or federal government pursuant to regulation that prohibits a person or company from entering into a Contract, or from participating as a subcontractor, or supplier of materials or equipment used in a contract
- 3.142. **Tex –XXX-X.** TxDOT material test methods found on TxDOT's Construction Division Web Site.
- 3.143. **Traffic Lane.** The strip of roadway intended to accommodate the forward movement of a single line of vehicles.
- 3.144. **Traveled Way.** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

- 3.145. **Truck Owner-Operator.** An individual who owns and operates 1 truck for hire.
- 3.146. **UT-Bridge.** TxDOT-owned software for steel girder erection. Software is available on TxDOT's website.
- 3.147. **UT-Lift.** TxDOT-owned software for steel girder erection. Software is available on TxDOT's website.
- 3.148. **Utility.** Privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, heat, gas, oil, water, waste, or storm water that are not connected with the highway drainage, signal systems, or other products that directly or indirectly serve the public; the utility company.
- 3.149. **Verification Tests.** Tests used to verify accuracy of QC and QA and mixture design testing.
- 3.150. **Water-Abrasive Blasting.** Spraying blasts of pressurized water combined with abrasive media.
- 3.151. **Water Blasting.** Spraying blasts of pressurized water of at least 3,000 psi.
- 3.152. **Water-Injected Abrasive Blasting.** Abrasive blasting with water injected into the abrasive/air stream at the nozzle.
- 3.153. **Wholly-Owned Subsidiary.** A legal entity owned entirely by the Contractor or subcontractor.
- 3.154. **Work.** The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract.
- 3.155. **Written Notice.** Written notice is considered to have been duly given if delivered in person to the individual or member to whom it is intended or if sent by regular, registered, or certified mail and delivered to the last known business address; sent by facsimile to the last known phone number; or sent by e-mail to the last known address. The date of the letter will serve as the beginning day of notice. Unclaimed mail or failure to provide current mailing address will not be considered a failure to provide written notice.

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# Item 2L

## Instructions to Bidders

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### 1. INTRODUCTION

Instructions to the Contractor in these specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be "the Contractor." The Owner's responsibilities are generally written in passive voice, indicative mood. Phrases such as "as approved," "unless otherwise approved," "upon approval," "as directed," "as verified," "as ordered," and "as determined" refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

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### 2. ELIGIBILITY OF BIDDERS

- Bidders on this project must be prequalified through TxDOT. Refer to TxDOT's web site for prequalification requirements. Assure prequalification documents are submitted to TxDOT at least 14 days before bid opening.
- Comply with all technical prequalification requirements in the bid documents.
- Not on the TxDOT list of currently debarred/sanctioned contractors
- Provide suitable evidence of prior experience for similar work and be able to provide written documentation of successfully complete similar contracts
- Contractor must confirm prequalification for all subcontractors and materials suppliers of greater than \$10,000.
- **SYSTEM FOR AWARD MANAGEMENT:** Respondent and its Principals may not be debarred or suspended nor otherwise on the Excluded Parties List System (EPLS) in the System for Award Management (SAM). Include verification that the company as well as the company's principals are not listed (are not debarred) through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). Enclose a printout of the Entity Registration page that shows your firm is in active status and is not expired.

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### 3. ISSUING BID DOCUMENTS

Bid Documents may be obtained at:

[www.bidnetdirect.com/hayscounty](http://www.bidnetdirect.com/hayscounty)  
<https://www.sanmarcostx.gov/Bids.aspx>  
<http://www.txsmartbuy.com/sp>

The Department will not issue a proposal form if one or more of the following apply:

- the Bidder is suspended or debarred by the Commission, Department, or any federal agency,
- the Bidder has not fulfilled the requirements for prequalification,
- the Bidder does not have the available bidding capacity,
- the Bidder is prohibited from rebidding a specific proposal form due to a bid error on the original proposal form,
- the Bidder failed to enter into a Contract on the original award,
- the Bidder was defaulted or terminated on the original Contract, unless the Department terminated in the best interest of the State or the public,
- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Department to participate in the preparation of the plans or specifications on which the bid or Contract is based, or
- the Bidder is ineligible to bid on any proposed Contract in accordance with Article 7.16., "Responsibility for Damage Claims."



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#### **4. INTERPRETING ESTIMATED QUANTITIES**

The quantities listed in the bid documents are approximate and will be used for the comparison of bids. Payments will be made for actual quantities of work performed in accordance with the Contract.

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#### **5. EXAMINING DOCUMENTS AND WORK LOCATIONS**

Examine the bid documents and specified work locations before submitting a bid for the work. Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for the use of the Owner in the preparation of plans. This information is provided for the Bidder's information only and the Owner makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded.

Oral explanations, instructions, or consideration for Contractor-proposed changes in the bid documents given during the bidding process are not binding. Only requirements included in the bid documents and Owner-issued addenda are binding. Request explanations of documents at least ten(10) days prior to the bid opening.

Immediately notify the Owner of any error, omission, or ambiguity discovered in any part of the bid documents. The Owner will issue addenda when appropriate.

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#### **6. PREPARING THE BID**

Prepare the bid form furnished by the Owner. Informational bid forms printed from the Owner's website will not be accepted. Bids MUST be legible and of a quality that can be reproduced.

Specify a unit price in dollars and cents for each regular item, additive alternate item, deductive alternate item or replacement alternate item for which an estimated quantity is given.

When "Working Days" is an item, submit the number of working days to be used to complete the Contract or phases of the Contract.

The Owner will not accept an incomplete bid. A bid that has one or more of the deficiencies listed below is considered incomplete:

- the bid form was not signed,
- all certifications were not acknowledged,
- a regular item, additive alternate item or deductive alternate item is left blank,
- a regular item and the corresponding replacement alternate item are left blank, or
- the bid form submitted had the incorrect number of items.

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#### **7. NONRESPONSIVE BID**

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- The bid was not in the hands of the Letting Official or submitted electronically at the time and location specified in the advertisement.
- The bid form was signed by a person who was not authorized to bind the Bidder or Bidders.
- The bid guaranty did not comply with the requirements contained in this Item.
- The bid was in a form other than the official bid form issued by the Owner.
- The Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the bid documents.

- The Bidder bid more than the maximum or less than the minimum number of allowable working days when working days was an item.
- The Bidder did not meet the requirements of the technical qualification.
- The bidder is not prequalified by TxDOT
- The bidder does not meet the Owner's qualification requirements.
- The bidder did not include the Vendor Reference Form, minimum of three (3) references.
- The Bidder did not include a Bid Bond of 5% of the total bid amount.

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## 8. SUBMITTAL OF BIDS

8.1. **Electronic Bids.** When electronic bidding is available, the Bidder is responsible for taking the appropriate measures to submit a bid. These measures include, but are not limited to, acquiring hardware, software, and Internet connectivity needed for submitting a bid via the Owner's bidding system. If an electronic bid is submitted by the due date and time, then a hard copy **MUST** also be received in the Purchasing Office within 24 hours of the bid due date.

8.1.1. **Bid Form.** Use the bid form in the project manual to submit all bids. When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda listed in the Owner's bidding system.

The electronic bid form may not contain the special provisions, special specifications, general notes, and other Contract documents. These documents are included by reference.

8.1.2. **Bid Guaranty.** Provide a bid guaranty in the amount indicated on the bid form. Use an electronic bid bond or printed bid bond by a surety company. Guaranty checks will not be accepted.

Use the most current version of the electronic bond accepted by the Owner. For a joint venture, the bond must be in the name of all joint venture participants. Enter the bond authorization code into the Owner's bidding system.

It is the Bidder's responsibility to ensure the electronic bid bond is issued in the name or names of the Bidder or Bidders.

8.1.3. **Submittal of Bid.** Submit the bid using the Owner's bidding system.

Mailed or Dropped off Bids:

- One (1) original Bid with required forms manually signed by the Vendor with original signatures
- One (1) digital copy of the full Bid with all required forms on a thumb drive

Electronic Bid:

- Upload Bid with required forms manually signed by the Vendor. (through BidNet Direct)
- One (1) original Bid with required forms manually signed by the Vendor, delivered to the Hays County Purchasing Office. Either the original or Electronic Bid (through BidNet Direct) **MUST** be received by the due date and time to be considered responsive.

8.1.4. **Revising the Bid Form.** Make desired changes as allowed by the Owner's bidding system up until the time and date set for the opening of bids. Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the Bid, guaranteeing authenticity. The last bid submitted will be used for tabulation purposes.

8.1.5. **Withdrawing a Bid.** Submit an electronic or written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. An electronic request must be made using the Owner's bidding system.

A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Owner

will accept a request from any person authorized to bind a party to the joint venture. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

- 8.2. **Printed Bid.** Respondent must provide its total bid amount by completing the mandatory Schedule of Rate and Prices form included in Section 4: Forms. Refer to section 13 Technical Specifications for descriptions of the reference numbers contained in the Schedule of Rates and Prices. Hays County is exempt from federal excise and state sales tax; therefore, tax must not be included in this bid.

- 8.2.1. **Bid Form.** Mark all entries in ink. As an alternative to hand writing the unit prices in the bid form, submit a typed bid form. A typed bid form is also accepted with the proper formatting.

When regular bid items have corresponding replacement alternate items, select the bid item or group of items to be used for the bid tabulation. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. In the case of a joint venture, the person signing the bid form must be authorized to bind all joint venture participants.

If a bid form contains both regular items for domestic steel or iron materials and replacement alternate items for foreign steel or iron materials, the Bidder must either:

- submit unit bid prices for domestic items only, or
- submit unit bid prices for both the domestic and foreign items.

- 8.2.2. **Bid Guaranty.** Provide a bid guaranty in the amount of 5% of the total bid amount. An electronic bid bond or printed bond by a authorized surety company, as a guarantee that the bidder will enter into a contract and execute performance and payment bonds, as stipulated above, within ten (10) days after notice of award of contract to the bidder. Ensure the electronic bid bond meets the requirements of Section 2.8.1.2., "Bid Guaranty," and submit the electronic bid bond with the printed bid in the same sealed envelope, no checks will be accepted.

- 8.2.3. **Bid Bond.** Use the bid bond form provided by the Owner. Submit the bid bond with the powers of attorney attached and in the amount specified. The bond must be dated on or before the date of the bid opening, bear the impressed seal of the Surety, and be signed by the Bidder or Bidders and an authorized individual of the Surety. As an alternative for joint venture Bidders, each of the Bidders may submit a separate bid bond completed as outlined in this section. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with State law.

- 8.2.4. **Submittal of Bid.** Place the completed bid form, the bid guaranty, Schedule of Rates and Prices, and Vendor Reference Form in a sealed envelope marked to indicate the contents.

When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement or in the bid documents. It is the Bidder's responsibility to ensure that the sealed bid arrives at the location described on or before the time and date set for the bid opening. To be accepted, the bid must be in the hands of the Letting Official by that time of opening regardless of the method chosen for delivery.

- 8.2.5. **Altering Bids.** Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the bid, guaranteeing authenticity.

- 8.2.6. **Sales Tax.** Hays County is by statute, exempt from the State Sales Tax and Federal Excise Tax.

- 8.2.7. **Per Unit Basis.** Prices must be good from the date of bid opening through the completion of the project. Bids that do not state a fixed price will not be considered.

- 8.2.8. **Withdrawing a Bid.** Submit a written request to withdraw a bid before the time and date set for the opening. The Owner will not accept oral requests. A written request must be signed and submitted to the Letting Official with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders. In the case of joint venture, the Owner will accept a request from any person authorized to bind a party to the joint venture. The Owner may require written delegation of authority to withdraw a bid when the individual sent to withdraw the bid is not authorized to bind the Bidder or Bidders.

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9. **OPENING AND READING OF BIDS**

At the time, date, and location specified in the official advertisement, the Owner will publicly open and read bids.

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10. **TABULATING BIDS**

- 10.1. **Official Total Bid Amount.** The Owner will sum the products of the quantities and the unit prices bid in the bid form to determine the official total bid amount, except as provided in Section 2.11., "Consideration of Unit Prices." The official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.

- 10.2. **Consideration of Bid Format.** When a Bidder submits both an electronic bid and a printed bid that is responsive, the unit bid prices in the printed bid will be used to determine the total bid amount. If the printed bid is incomplete or nonresponsive, the electronic bid will be used in the tabulation of the total bid amount.

If a bidder submits 2 or more printed bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

- 10.3. **Rounding of Unit Prices.** The Owner will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent (\$0.001) in determining the amount of the bid as well as computing the amount due for payment of each item under the Contract. For rounding purposes, entries of five-hundredths of a cent (\$0.0005) or more will be rounded up to the next highest tenth of a cent, while entries less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent.

- 10.4. **Interpretation of Unit Prices.** The Owner will make a documented determination of the unit bid price if a unit bid price is illegible or conflicting in the case of replacement alternate items. The Owner's determination will be final.

- 10.5. **Consideration of Unit Prices.**

- 10.5.1. **A + B Bidding.** The official total bid amount will be determined by the summation of the Contract amount and the time element. The Owner will use the following formula to make the calculation:

$$A + B1 + B2 + BX + \dots + BT$$

The Contract amount, equal to A in the formula, is determined by the summation of the products of the approximate quantities shown in the bid and the unit bid prices bid. The time element, equal to B1, B2, BX (when phases are included as bid components), and BT (substantial completion of the project when included as a bid component), of the bid is determined by multiplying the number of working days bid to substantially complete the project, or phases, by the daily road-user cost (RUC) provided on the bid documents. When partial days are bid they will be rounded up to the nearest whole day.

The formula above determines the low Bidder and establishes the Contract time.

- 10.5.2. **"Buy America."** Comply with Buy America in accordance with Section 6.1.1.. For a Bidder who proposes to use foreign steel or iron materials to be considered the apparent low Bidder, their total bid must be at least 25% lower than the next lowest bid if that bid proposes to use domestic steel or iron materials.

This requirement does not apply to minimal use of steel or iron materials provided that the total cost of all foreign source items used in the project, as delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent (1/10 of 1%) of the Contract amount, whichever is greater

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## 11. CONSIDERATION OF BID ERRORS.

The Owner will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:

- Submit written notification to the Owner within 5 business days after the date the bid is opened.
- Identify the items of work involved and include bidding documentation. The Owner may request clarification of submitted documentation.

The Owner will evaluate the claim of an error by the apparent low Bidder by considering the following:

- The bid error relates to a material item of work.
- The bid error amount is a significant portion of the total bid.
- The bid error occurred despite the exercise of ordinary care.
- The delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Owner will result in the rejection of the bid of the apparent low bidder and the Owner may consider the second responsive bid. The erring Contractor will not be allowed to bid the project if it is relet. Rejection of bids due to the Contractor's bid error may result in the application of sanctions by the Owner.

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## 12. TIE BIDS

If the official total bid amount for 2 or more Bidders is equal and those bids are the lowest submitted, each tie Bidder will be given an opportunity to withdraw their bid. If 2 or more tie Bidders do not withdraw their bids, the low Bidder will be determined by a coin toss. If all tie Bidders request to withdraw their bids, no withdrawals will be allowed and the low Bidder will be determined by a coin toss. The Letting Official will preside over the proceedings for the coin toss.

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## 13. DOCUMENTS AND DESIGN

**Ownership of Documents.** All drawings, specifications and copies thereof furnished by the Engineer of Record shall not be reused on other work, and, with the exception of the signed contract sets, are to be returned to the Engineer of Record on request, at the completion of the work. All models, drawings, specifications and copies thereof are the property of the County.

**Adequacy of Design.** It is understood that the County believes it has employed competent engineers and designers. It is therefore agreed that the County and Engineer shall be responsible for the adequacy of the design, sufficiency of the Contract Documents, the safety of the structure and the practicability of the operations of the completed project provided that the Contractor has complied with the requirements of the said Contract Documents, all approved modifications thereof, and additions and alterations thereto approved in writing by the County. The burden of proof of such compliance shall be upon the Contractor to show that it has complied with the said requirements of the Contract Documents, approved modifications thereof, and all approved additions and alterations thereto.

The paper copies of the Contract Documents are considered to be the official contract documents. Any request by the Contractor and use thereof of electronic or digital information, including engineering design and survey files, shall be at the sole risk and legal responsibility of the Contractor. Neither the County nor the Engineer of Record makes any warranty or representation as to the compatibility of the files provided with other software programs, nor shall they be held responsible for subsequent uses of the data by the Contractor or anyone who may obtain the data from the Contractor. THE CONTRACTOR SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND HOLD THE COUNTY ITS AGENTS,

EMPLOYEES, OR REPRESENTATIVES AND THE ENGINEER OF RECORD HARMLESS FROM ANY AND ALL CLAIMS, SUITS, LIABILITY, DEMANDS OR COSTS ARISING OUT OF OR RESULTING FROM SUCH USE. Because data stored on electronic media can deteriorate undetected or be modified undetected, neither the County nor the Engineer of Record can be held liable for the completeness or correctness of the electronic data once in possession of the Contractor.

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## Item 3L

### Award and Execution of Contract



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#### 1. AWARD OF CONTRACT

The Owner will award, reject, or defer the Contract within 60 days after the opening of the bid. The Owner reserves the right to reject any or all bids and to waive technicalities in the best interest of the Owner. The Owner reserves the right to award a contract for named project to a bidder on the basis of total low bid/or the best value for the County. Bidders must bid on all items in order to be considered responsive. The Owner reserves the right to accept in part or in whole any bids submitted and waive any technicalities for the best interest of the Owner.

1.1. **Award.** The Owner will award the Contract to the low Bidder as determined by Article 2.11., "Tabulating Bids." The Owner may award a Contract to the second lowest Bidder when the following requirements have been met:

- The low Bidder withdraws its bid.
- The low Bidder fails to enter into a contract with the Owner after Award
- The second low Bidder's unit bid prices are reasonable.

1.2. **Rejection.** The Owner will reject the Contract if:

- Collusion may have existed among the Bidders. Collusion participants will not be allowed to bid future bids for the same Contract.
- The low bid is mathematically and materially unbalanced. The Bidder will not be allowed to bid future bids for the same Contract.
- The lowest bid is higher than the Owner's estimate and re-advertising for bids may result in a lower bid.
- Rejection of the Contract is in the best interest of the Owner.

1.3. **Deferral.** The Owner may defer the award or rejection of the Contract when deferral is in the best interest of the Owner.

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#### 2. RESCINDING OF AWARD

The Owner reserves the right to cancel the award of any Contract before Contract execution with no compensation due when the cancellation is in the best interest of the Owner. The Owner will return the bid guaranty to the Contractor.

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#### 3. DISADVANTAGED BUSINESS ENTERPRISE (DBE)/HISTORICALLY UNDERUTILIZED BUSINESS/SMALL BUSINESS ENTERPRISE (SBE)

Submit all DBE/HUB/SBE information in the time frame specified when required by the bid documents.

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#### 4. EXECUTION OF CONTRACT

Provide the following within 10 days after written notification of award of the Contract:

4.1. **Contract.** Executed by Contractor and Surety.

4.2.

**Bonds.** Executed performance bond and payment bond in the full amount of the Contract price with powers of attorney. Provide bonds in accordance with Table 1. Furnish the payment and performance bonds as a guaranty for the protection of the claimants and the Owner for labor and materials and the faithful performance of the work.

**Table 1**  
**Bonding Requirements**

Contract Amount	Required Bonds
Less than \$25,000	None
\$25,000 to \$100,000	Payment
More than \$100,000	Performance and Payment

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the price bid by the Contractor for the Work subject of the Contract Documents, and no extra payment for such bonds will be made by the County.

Chapter 262.032 and Chapter 2253.021 of the Texas Government Code governs the requirements for performance bonds and payment bonds for government entities making public work contracts. A performance bond is required if the contract is in excess of \$50,000 and is to be made for the full amount of the contract. The bonds are to be executed within ten (10) days after receipt of written notification of award of contract prior to beginning work on the project and must be executed by a corporate surety or sureties in accordance with the Texas Insurance Code. In the event the bond exceeds \$100,000.00, the surety must also (1) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or (2) have obtained reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as are insurer in this state and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

In determining whether the surety or reinsurer holds a valid certificate of authority the County may rely on the list of companies holding certificates of authority as published in the Federal Register covering the date on which the bond is to be executed. If the public works contract is less than \$50,000 the performance bond will not be required as long as the contract provides that payment is not due until the work is completed and accepted by the county. The purpose of a performance bond is for the protection of the government entity and is conditioned on the faithful performance of the work being done in accordance with the plans, specifications and Contract Documents. The payment bond is for the protection of persons supplying labor and materials to the contractor to ensure payment.

4.3.

**Insurance.** Submit a Certificate of Insurance showing coverages in accordance with Contract requirements.

Insurances must cover the contracted work for the duration of the Contract and must remain in effect until final acceptance. Failure to obtain and maintain insurance for the contracted work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until the Owner receives an acceptable Certificate of Insurance.

Provide the Owner with a Certificate of Insurance verifying the types and amounts of coverage shown in Table 2. The Certificate of Insurance must be in a form approved by the Owner. Any Certificate of Insurance provided must be available for public inspection.



**Table 2**  
**Insurance Requirements**

<b>Type of Insurance</b>	<b>Amount of Coverage</b>
Commercial General Liability Insurance	Not Less Than: \$600,000 each occurrence
Business Automobile Policy	Not Less Than: \$600,000 combined single limit
Workers' Compensation	Not Less Than: Statutory
All Risk Builder's Risk Insurance (For building-facilities Contracts only)	100% of Contract Price

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers' compensation insurance. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements of Table 2 either through their own coverage or through the Contractor's coverage.

The Workers' Compensation policy must include a waiver of subrogation endorsement in favor of the Owner.

For building-facilities Contracts, provide All Risk Builder's Risk Insurance to protect the Owner against loss by storm, fire or extended coverage perils on work and materials intended for use on the project including the adjacent structure. Name the Owner under the Lost Payable Clause.

For Contracts with railroad requirements, see project-specific details for additional insurance requirements.

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety's underwriting limitation drops below the Contract amount or the Surety's right to do business is terminated by the Owner. The substitute Surety must be authorized by the laws of the State and acceptable to the Owner. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

The work performed under this section will not be measured or paid for directly but will be subsidiary to pertinent items.

4.4. **Business Ownership Information.** Submit the names and social security numbers of all individuals owning 25% or more of the firm, or firms in the case of a joining venture, on the Department's form.

4.5. **List of Quoting Suppliers and Subcontractors.** For a construction Contract, submit a list of all suppliers and subcontractors that quoted on the Contract. Include names, addresses, telephone numbers, and types of work required.

The Inspector shall promptly notify the Contractor, in writing, if the County, after due investigation, has objection to any Subcontractor on such list and does not accept such Subcontractor.

The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) proposed for portions of the Work designated in the Contract Documents or in the Instructions to Bidders or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has been rejected by the County. The Contractor will not be required to contract with any Subcontractor or person or organization against whom the Contractor has a reasonable objection.

If the County refuses to accept any Subcontractor or person or organization on a list submitted by the Contractor in response to the requirements of the Contract Documents or the Instructions to Bidders, the Contractor shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued;

however, no increase in the Contract Price shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting for acceptance any list or lists of names as required by the Contract Documents or the Instructions to Bidders.

If the County requires a change of any proposed Subcontractor or person or organization previously accepted by them, the Contract Price shall be increased or decreased by the difference in cost occasioned by such change and an appropriate change order shall be issued.

The Contractor shall not make any substitution for any Subcontractor or person or organization that has been accepted by the County, unless the substitution is acceptable to the County.

- 4.6. **Railroad Documents.** Provide all required documents for satisfaction of railroad requirements for projects that have work which involves railroad right of way.

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**5. FAILURE TO ENTER CONTRACT**

If the Contractor fails to comply with all of the requirements in Article 3.4., "Execution of Contract," the bid guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Contractor forfeiting the bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in design of the work.

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**6. APPROVAL AND EXECUTION OF CONTRACT**

The Contract will be approved and signed under authority of the Owner.

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**7. RETURN OF BID GUARANTY**

Bid bonds will not be returned.

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**8. BEGINNING OF WORK**

Do not begin work until authorized in writing by the Owner.

When callout work is required, provide a method of contact available from 8 A.M. until 5 P.M. every work day and 24 hr. a day, 7 days a week for projects with emergency mobilization, unless otherwise shown on the plans. The time of notice will be the transmission time of the notice sent, provided orally, or provided in person by the Owner's representative.

Verify all quantities of materials shown on the plans before ordering.

For projects with alternate bid items, the work order will identify the base bid work and additive or deductive alternate work to be performed. The Owner makes no guarantee that the additive or deductive alternate work will be required.

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**9. ASSIGNMENT OF CONTRACT**

Do not assign, sell, transfer, or otherwise dispose of the Contract or any portion rights, title, or interest (including claims) without the approval of the Owner or designated representative. The Owner must deem any proposed assignment justified and legally acceptable before the assignment can take place.

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**10. EXCLUDED PARTIES**

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner or by any state or federal agency.

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## 11. INDEMNIFICATION

The contractor shall defend, indemnify and hold harmless the county, the inspector, the gec and the engineer of record and their respective officers, agents and employees, from and against all damages, claims, losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, arising out of or resulting from the performance of the work, provided that any such damage, claim, loss, demand, suit, judgment, cost or expense:

- Is attributable to bodily injury, sickness, disease or death of any person including contractor's employees and any subcontractor's employees and any sub-subcontractor's employees, or to injury to or destruction of tangible property including contractor's property (other than the work itself) and the property of any subcontractor of sub- subcontractor including the loss of use resulting therefrom; and,
- Is caused in whole or in part by any intentional or negligent act or omission of the contractor, any subcontractor, any sub-subcontractor or anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable.

The obligation of the contractor under this paragraph shall not extend to the liability of the inspector, the engineer, the gec, the engineer of record their agents or employees arising out of the preparation of maps, plans, reports, surveys, change orders, designs or specifications, or the approval of maps, plans, reports, surveys, change orders, designs or specifications or the issuance of or the failure to give directions or instructions by the inspector, its agents or employees, provided such is the sole cause of the injury or damage.

In any and all claims against the county, the inspector the gec or the engineer of record or any of their agents or employees by any employee of the contractor, any subcontractor, any sub- subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under the contract documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor or sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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## 12. INSPECTION AND AUDIT

Contractor's records shall be subject to audit and such records shall include, but not be limited to accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the County in connection with the contractor's work for the County. All of the foregoing, hereinafter referred to as "records," shall be open to inspection and subject to audit and/or reproduction by County or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

- Contractor compliance with the Contract Documents,
- compliance with County's business ethics policies,
- compliance by other contractors or subcontractors with contracts with County or Contractor, and
- compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of its payees.

Other specific records subject to audit include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may, in County's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract Documents. Such records subject to audit shall also include those records

necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Project. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Contractor agrees to provide County's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

The County or its designee shall be entitled to audit all of the Contractor's records for a period of three (3) years after final payment or a longer period if required by law.

Contractor shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders), to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Requirements to include flow-down audit provisions in contracts with payees will apply to Subcontractors, Sub-Subcontractors, material suppliers, etc. when working under any type of contract including lump sum agreement, unit price agreements, time and material agreements, cost plus agreements, or other agreements. Contractor will cooperate fully and will cause all payees to cooperate fully in furnishing or in making available to County from time to time whenever requested in an expeditious manner any and all such information, materials and data required by this article.

County's agent or its authorized representative shall have access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of the Work, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

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## Item 4L

### Scope of Work

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#### 1. CONTRACT INTENT

The intent of the Contract is to describe the completed work to be performed. Furnish materials, supplies, tools, equipment, labor, and other incidentals necessary for the proper prosecution and completion of the work in accordance with Contract documents.

The proposed project will reconstruct the existing road at the FM 2770 at Flint Hills Driveway intersection. The project consists of, but is not limited to, construction of left turn lane and paved shoulders, earthwork, drainage structures, pavement markings, and erosion control facilities.

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#### 2. PRECONSTRUCTION CONFERENCE

Before starting work, schedule and attend a preconstruction conference with the Owner. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working day charges.

Work with the Owner to resolve all issues during the course of the Contract. Refer to Article 4.7., "Dispute or Claims Procedure," for all unresolved issues.

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#### 3. PARTNERING

The intent of this Article is to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Owner and the Contractor.

Informal partnering does not make use of a facilitator, while formal partnering uses the services of a facilitator (internal or external).

- 3.1. **Procedures for Partnering Meetings and Format.** Informal partnering is required, unless formal partnering is mutually agreed to instead of the informal partnering.
- 3.2. **Facilitators.** The facilitator is to act as a neutral party seeking to initiate cooperative working relationships. This individual must have the technical knowledge and ability to lead and guide discussions. Choose either an internal or external facilitator. The facilitator must be acceptable to the Engineer.
  - 3.2.1. **Internal Facilitators.** An Owner or Contractor internal (staff) facilitator may be selected as the facilitator at no additional cost to either party.
  - 3.2.2. **External Facilitators.** A private firm or individual that is independent of the Contractor and the Owner may be selected as the facilitator. Submit the facilitator's name and estimated fees for approval before contracting with the facilitator.
- 3.3. **Meetings and Arrangements.** Coordinate with the Engineer for meeting dates and times, locations including third party facilities, and other needs and appurtenances, including, but not limited to, audio or visual equipment. Make all meeting arrangements for formal partnering. Use Owner facilities or facilities in the vicinity of the project if available. Submit the estimated meeting costs for approval before finalizing arrangements.

Coordinate facilitator discussions before the partnering meeting to allow the facilitator time to prepare an appropriate agenda. Prepare a list of attendees with job titles and include critical Contractor, subcontractor, and supplier staff in the list. Provide the facilitator the list of attendees and invite the attendees listed.

The Owner will invite and provide a list of attendees that includes, but is not limited to, Owner, TxDOT, other local governments, law enforcement, railroad, and utility representatives.

Participate in additional partnering meetings as mutually agreed.

- 3.4. **Payment.** Expenses for labor, Contractor equipment, or overhead will not be allowed. Markups as prescribed in Article 9.7., "Payment for Extra Work and Force Account Method," will not be allowed.

Informal partnering will be conducted with each party responsible for their own costs.

For formal partnering using internal facilitators, the Contractor will be responsible for arrangements and for expenses incurred by its internal facilitator, including, but not limited to, meals, travel, and lodging. Owner facilitators, if available, may be used at no additional cost.

For formal partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Owner will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Owner but used at the Contractor's option, the Contractor will be responsible for all costs of the external facilitator.

For meeting facilities and appurtenances, submit an invoice to the Engineer for reimbursement. The Owner will reimburse the Contractor for half of the eligible expenses as approved.

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## 4. CHANGES IN THE WORK

The Engineer reserves the right to make changes in the work including addition, reduction, or elimination of quantities and alterations needed to complete the Contract. Perform the work as altered. These changes will not invalidate the Contract nor release the Surety. The Contractor is responsible for notifying the sureties of any changes to the Contract.

If the changes in quantities or the alterations do not significantly change the character of the work under the Contract, the altered work will be paid for at the Contract unit price. If the changes in quantities or the alterations significantly change the character of the work, the Contract will be amended by a change order. If no unit prices exist, this will be considered extra work and the Contract will be amended by a change order. Provide cost justification as requested, in an acceptable format. Payment will not be made for anticipated profits on work that is eliminated.

Agree on the scope of work and the basis of payment for the change order before beginning the work. If there is no agreement, the Engineer may order the work to proceed under Article 9.7., "Payment for Extra Work and Force Account Method," or by making an interim adjustment to the Contract. In the case of an adjustment, the Engineer will consider modifying the compensation after the work is performed.

A significant change in the character of the work occurs when:

- the character of the work for any item as altered differs materially in kind or nature from that in the Contract or
- a major item of work varies by more or less than 25% from the original Contract quantity.

When the quantity of work to be done under any major item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.

When the quantity of work to be done under any major item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price. When mutually agreed, the unit price may be adjusted by multiplying the Contract unit price by the factor in Table 1. If an adjusted unit price cannot be agreed upon, the Engineer may determine the unit price by multiplying the Contract unit price by the factor in Table 1.

Table 1  
Quantity-Based Price Adjustment Factors

% of Original Quantity	Factor
≥ 50 and < 75	1.05
≥ 25 and < 50	1.15
< 25	1.25

If the changes require additional working days to complete the Contract, Contract working days will be adjusted in accordance with Item 8, "Prosecution and Progress."

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## 5. DIFFERING SITE CONDITIONS

During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The 2 types of differing site conditions are defined as:

- those that differ materially from those indicated in the Contract and
- unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.

Notify the Engineer in writing when differing site conditions are encountered. The Engineer will notify the Contractor when the Owner discovers differing site conditions. Unless directed otherwise, do not work on the affected items and leave the site undisturbed. The Engineer will investigate the conditions and determine whether differing site conditions exist. If the differing site conditions cause an increase or decrease in the cost or number of working days specified for the performance of the Contract, the Engineer will make adjustments, excluding the loss of anticipated profits, in accordance with the Contract. Additional compensation will be made only if the required written notice has been provided.

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## 6. REQUESTS FOR ADDITIONAL COMPENSATION

Notify the Engineer in writing of any intent to request additional compensation once there is knowledge of the basis for the request. An assessment of damages is not required to be part of this notice but is desirable. The intent of the written notice requirement is to provide the Owner an opportunity to evaluate the request and to keep an accurate account of the actual costs that may arise. Minimize impacts and costs.

If written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before performing the work. Notice of the request and the documentation of the costs will not be construed as proof or substantiation of the validity of the request. Submit the request in enough detail to enable the Owner to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and compensation.

The Owner will not consider fees and interest on requests for additional compensation. Fees include, but are not limited to: preparation, attorney, printing, shipping, and various other fees.

Damages occur when impacts that are the responsibility of the Owner result in additional costs to the Contractor that could not have been reasonably anticipated at the time of letting. Costs of performing additional work are not considered damages. For Contractor damages, the intent is to reimburse the Contractor for actual expenses arising out of a compensable impact. No profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual cost. Justification for a higher percentage must be in accordance with the methodology provided by the Owner, submitted separately for project overhead labor and direct labor, and determined and submitted by a Certified Public Accountant (CPA). Submit CPA-prepared labor burden rates directly to the Owner.

If the Contractor requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and will be limited as follows:

- 6.1. **Standby Equipment Costs.** Payment will be made in accordance with Section 9.7.1.4.3., "Standby Equipment Costs."
- 6.2. **Project Overhead.** Project overhead is defined as the administrative and supervisory expenses incurred at the work locations. When delay to project completion occurs, reimbursement for project overhead for the Contractor will be made using the following options:
- reimbursed at 6% (computed as daily cost by dividing 6% of the original Contract amount by the number of original Contract work days), or
  - actual documented costs for the impacted period.
- Project overhead for delays impacting subcontractors will be determined from actual documented costs submitted by the Contractor.
- Time extensions and suspensions alone will not be justification for reimbursement for project overhead.
- 6.3. **Home Office Overhead.** The Owner will not compensate the Contractor for home office overhead.

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## 7. **DISPUTE OR CLAIMS PROCEDURE**

The dispute resolution policy promotes a cooperative attitude between the Engineer and Contractor. Emphasis is placed on resolving issues while they are still current, at the project office, and in an informal manner. Open sharing of information is encouraged by all parties involved so the information provided completely and accurately reflects the issues and facts. If information is not shared, decisions may be limited to relying on the documentation that is available for review.

The Inspector initially shall determine all claims, disputes and other matters in question between the Contractor and the County relating to execution or progress of the Work or interpretation of the Contract Documents. The Inspector's decision shall be rendered in writing to the GEC for review within a reasonable time, which shall not be construed to be less than ten (10) days.

In the event the issue cannot be resolved in the timeframe established by the County or renders any decision which, in the opinion of either party hereto, is not in accordance with the meaning and intent of the Contract Documents, either party may file with the Inspector its written objection to the decision within thirty (30) days of such decision by the Inspector, and by such action may reserve the right to submit the question so raised to litigation as hereinafter provided.

The Contractor shall continue performance of the Work during all disputes or disagreements with the County. The production or delivery of goods, the furnishing of services and the construction of projects or facilities shall not be delayed, prejudiced or postponed pending resolution of any disputes or disagreements, except as the County may otherwise agree in writing.

File a claim after completion of the Contract or when required for orderly performance of the Contract. For a claim resulting from enforcement of a warranty period, file the claim no later than one year after expiration of the warranty period. For all other claims, file the claim no later than the date the County issues notice to the Contractor that they are in default, the date the County terminates the Contract, or one year after the date of final acceptance of the Contract. It is the Contractor's responsibility to submit requests in a timely manner.



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## Item 5L

### Control of the Work

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#### 1. AUTHORITY OF ENGINEER

The Engineer has the authority to observe, test, inspect, approve, and accept the work on behalf of the Owner. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions.

The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

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#### 2. PLANS AND WORKING DRAWINGS

When required, provide working drawings to supplement the plans with all necessary details not included on the Contract plans. Prepare and furnish working drawings in a timely manner and obtain approval, if required, before the beginning of the associated work. For all working drawing submittal requirements, the Engineer may allow electronic and other alternative submission procedures. Have a licensed professional engineer sign, seal, and date the working drawings as indicated in Table 1.

Prepare working drawings using United States standard measures in the English language. The routing of submittals for review and approval will be established at the preconstruction conference. The Contractor is responsible for the accuracy, coordination, and conformity of the various components and details of the working drawings. Owner approval of the Contractor's working drawings will not relieve the Contractor of any responsibility under the Contract. The work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

It shall be the Contractor's responsibility to fully and completely review all shop drawings to ascertain their effect on its ability to perform the required work in accordance with the Contract Documents and within the time for completion thereof. Any shop drawings which are required for temporary supports must be signed and sealed by an Engineer registered in the State of Texas.

Such review by the Engineer of Record shall be for the sole purpose of determining the sufficiency of said shop drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the Contractor of its duties and obligations, as an independent contractor, set forth in the Contract Documents. It is hereby expressly understood and agreed that the Engineer of Record does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during the Contractor's performance hereunder.

Table 1  
Signature and Approval Requirements for Working Drawings

Working Drawings For		Requires Licensed Professional Engineer's Signature, Seal, and Date	Requires Owner Approval
1. Alternate or optional designs submitted by Contractor		Yes	Yes
2. Supplementary shop and fabrication drawings for structural Items		No unless required on the plans	See applicable Item
3. Contractor-proposed temporary facilities that affect the public safety, not included on the plans		Yes	Yes
4. Form and falsework details	Bridges, retaining walls, and other major structures	Yes unless otherwise shown on the plans	No <sup>1</sup>
	Minor structures	No unless otherwise shown on the plans	No
5. Erection drawings		Yes	No <sup>1,2</sup>
6. Contractor-proposed major modifications to traffic control plan		Yes	Yes

1. The Engineer may require that the Contractor have a licensed professional engineer certify that the temporary works are constructed according to the sealed drawings.
2. Approval is required for items spanning over live traffic or where safety of the traveling public is affected, in the opinion of the Engineer.

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### 3. CONFORMITY WITH PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

Furnish materials and perform work in reasonably close conformity with the lines, grades, cross-sections, dimensions, details, gradations, physical and chemical characteristics of materials, and other requirements shown in the Contract (including additional plans for non-site-specific work). Reasonably close conformity limits will be as defined in the respective items of the Contract or, if not defined, as determined by the Engineer. Obtain approval before deviating from the plans and approved working drawings. Do not perform work beyond the lines and grades shown on the plans or any extra work without the Engineer's approval. Work performed beyond the lines and grades shown on the plans or any extra work performed without approval is considered unauthorized and excluded from pay consideration. The Owner will not pay for material rejected due to improper fabrication, excess quantity, or any other reasons within the Contractor's control.

- 3.1. **Acceptance of Defective or Unauthorized Work.** When work fails to meet Contract requirements, but is adequate to serve the design purpose, the Engineer will decide the extent to which the work will be accepted and remain in place. The Engineer will document the basis of acceptance by a letter and may adjust the Contract price.
- 3.2. **Correction of Defective or Unauthorized Work.** When work fails to meet Contract requirements and is inadequate to serve the design purpose it will be considered defective. Correct, or remove and replace, the work at the Contractor's expense, as directed.

The Engineer has the authority to correct or to remove and replace defective or unauthorized work. The cost may be deducted from any money due or to become due to the Contractor.

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### 4. COORDINATION OF PLANS, SPECIFICATIONS, AND SPECIAL PROVISIONS

The specifications, accompanying plans (including additional plans for non-site-specific work), special provisions, change orders, and supplemental agreements are intended to work together and be interpreted as a whole.

Numerical dimensions govern over scaled dimensions. In the event of any conflict between the terms set forth in the Contract, Standard Specifications, Special Provisions and Special Conditions, the following shall serve as a guide in determining which of said documents shall control over the other (listed in descending order of most controlling to least controlling): Special Conditions, Special Provisions, Standard Specifications/General Requirements and Covenants and the Contract. Job-specific plan sheets govern over standard plan sheets.

However, in the case of conflict between plans (including general notes) and specifications regarding responsibilities for hazardous materials and traffic control in Items 1L through 9L and Item 502, "Barricades, Signs, and Traffic Handling," special provisions govern over standard specifications and special specifications, which govern over the plans.

Notify the Engineer promptly of any omissions, errors, or discrepancies discovered so that necessary corrections and interpretations can be made. Failure to promptly notify the Engineer will constitute a waiver of all claims for misunderstandings or ambiguities that result from the errors, omissions, or discrepancies discovered.

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## **5. COOPERATION OF CONTRACTOR**

Cooperate with the Engineer. Respond promptly to instructions from the Engineer. Provide all information necessary to administer the Contract.

Designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced with the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized Owner representatives and to act for the Contractor. The Engineer may suspend work without suspending working day charges if a Superintendent is not available or does not meet the above criteria.

At the written request of the Engineer, immediately remove from the project any employee or representative of the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform work in a proper and skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable. Do not reinstate these individuals without the written consent of the Engineer.

Furnish suitable machinery, equipment, and construction forces for the proper prosecution of the work. Provide adequate lighting to address quality requirements and inspection of nighttime work.

The Engineer may suspend the work without suspending working day charges until the Contractor complies with this requirement. All work associated with fulfilling this requirement is subsidiary to the various items of the Contract and no direct compensation will be made.

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## **6. COOPERATING WITH UTILITIES**

Use established safety practices when working near utilities. Consult with the appropriate utilities before beginning work. Notify the Engineer immediately of utility conflicts. The Engineer will decide whether to adjust utilities or adjust the work to eliminate or lessen the conflict. Unless otherwise shown on the plans, the Engineer will make necessary arrangements with the utility owner when utility adjustments are required.

Use work procedures that protect utilities or appurtenances that remain in place during construction. Cooperate with utilities to remove and rearrange utilities to avoid service interruption or duplicate work by the utilities. Allow utilities access to the right of way.

Immediately notify the appropriate utility of service interruptions resulting from damage due to construction activities. Cooperate with utilities until service is restored. Maintain access to active fire hydrants at all times unless approved by the Engineer.

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## 7. COOPERATION BETWEEN CONTRACTORS

Cooperate and coordinate with other Contractors working within the limits or adjacent to the limits.

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## 8. COOPERATION WITH RAILROADS

Plan and prosecute portions of the work involving a railway to avoid interference with or hindrance to the railroad company.

If the work is on railroad right of way, do not interfere with the operation of the railroad company's trains or other property.

8.1. **Project-Specific Information.** Refer to project-specific plan sheets in the Contract for specific information concerning the work to be completed by both the Contractor and the railroad within railroad right of way; railroad right of way locations impacted by construction; percentage of Contract work at each location; train movements at each location; and requirements for railroad insurance, flagging, and Right of Entry (ROE) Agreements.

8.2. **Right of Entry Agreement (if required).** The process for obtaining a fully executed ROE Agreement will be as follows:

- The Owner will send the unexecuted ROE Agreement to the Contractor with the unexecuted construction Contract.
- Partially execute the ROE Agreement and return it to the Department with the required insurance attached.
- The Owner will coordinate with the railroad company regarding the further execution of the ROE Agreement and associated fees. The Owner will pay any ROE Agreement fees directly to the railroad company.
- Once the Owner has received the fully-executed ROE Agreement from the railroad company, the Owner will forward the fully-executed ROE Agreement to the Contractor.

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## 9. CONSTRUCTION SURVEYING

Use Method A unless otherwise specified in the Contract. Upon request, the Engineer will allow the Contractor to copy available earthwork cross-sections, computer printouts or data files, and other information necessary to establish and control work. Maintain the integrity of control points. Preserve all control points, stakes, marks, and right of way markers. Assume cost and responsibility of replacing disturbed control points, stakes, marks, and right of way markers damaged by the Contractor's or its subcontractor operations. If the Owner repairs disturbed control points, stakes, marks, or right of way markers, the cost of repair may be deducted from money due or to become due to the Contractor. Replace right of way markers under the direction of a RPLS. This work will be subsidiary to pertinent items.

The Engineer reserves the right to make measurements and surveys to determine the accuracy of the work and determine pay quantities. The Engineer's measurements and surveys do not relieve the Contractor's responsibility for accuracy of work. Allow the Engineer adequate time to verify the surveying.

9.1. **Method A.** The Engineer will set control points for establishing lines, slopes, grades, and centerlines and for providing both vertical and horizontal control. At a minimum, provide a controlling pair of monument points at both the beginning and end of construction project for projects less than 2 miles in length. For projects greater than 2 miles in length, monuments will be set in pairs of 2 at a minimum of 2 miles based on the overall length of the project. Use these control points as reference to perform the work.

Furnish materials, equipment, and qualified workforce necessary for the construction survey work. Place construction points, stakes, and marks at intervals sufficient to control work to established tolerances. Place

construction stakes at intervals of no more than 100 ft., or as directed. Place stakes and marks so as not to interfere with normal maintenance operations.

9.2. **Method B.** The Engineer will set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines. Furnish additional work, stakes, materials, and templates necessary for marking and maintaining points and lines.

9.3. **Method C.** Set adequate control points, stakes, and marks to establish lines, slopes, grades, and centerlines.

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## 10. INSPECTION

Inspectors are authorized representatives of the Engineer. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection, or lack of inspection, will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract.

Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense. Remove or uncover portions of finished work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Article 4.4., "Changes in the Work." If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed.

When a government entity, utility, railroad company, or other entity accepts or pays a portion of the Contract, that organization's representatives may inspect the work but cannot direct the Contractor. The right of inspection does not make that entity a party to the Contract and does not interfere with the rights of the parties to the Contract.

10.1 **County-Inspector Relationship.** The Inspector will be the County's contracted consultant during construction. The duties, responsibilities and limitations of authority of the Inspector as the County's representative during construction are as set forth in the Contract Documents and/or the Agreement for Construction Engineering and Inspection Services and shall not be extended or limited without written consent of the County or the Inspector. The Inspector will advise and consult with the County and the GEC, and all of the County's instructions to the Contractor shall be issued through the Inspector.

The Contractor is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing its work under the Contract Documents, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the County and the Inspector being interested only in the result obtained and conformity of such completed improvements with the Contract Documents.

Likewise, the Contractor shall be solely responsible for the safety of itself, its employees and other persons, as well as for the protection and safety of the improvements being erected and its property or any other person's property, as a result of its operations under the Contract Documents. Engineering construction drawings and specifications, as well as any additional information concerning the Work to be performed passing from or through the Inspector, shall not be interpreted as requiring or allowing the Contractor to deviate from the Contract documents, the plans and specifications; the intent of such drawings, specifications and any other such information being to define with specificity the agreement of the parties as to the Work the Contractor is to perform.

- 10.2      **Professional Inspection by the Construction Inspector.** The Inspector shall be on the jobsite when work is being performed to provide construction engineering inspections of the Work performed by the Contractor. In addition to performing material testing on behalf of the County, the Inspector shall review the progress of the executed Work and to determine if such Work meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the Inspector shall not be responsible, directly or indirectly, for the Contractor's construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. Notwithstanding any other provision of the Contract Documents, the Engineer and the Inspector shall not be responsible or liable for any acts, errors, omissions or negligence of the Contractor, any Subcontractor or any of the Contractor's or Subcontractor's agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the Work.

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11.      **FINAL CLEANUP**

Upon completion of the work, remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition. This work will not be paid for directly but will be considered subsidiary to items of the Contract.

Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction. Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

In the event the Contractor fails or refuses to clean and remove surplus materials and debris as provided above, the County or the Inspector may do so, or cause same to be done, at the Contractor's expense, and the reasonable cost thereof shall be deducted from any amounts that are owing to the Contractor.

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12.      **FINAL ACCEPTANCE**

- 12.1.      Final acceptance is made when all work is complete and the Engineer, in writing, accepts all work for the work locations in the Contract. Final acceptance relieves the Contractor from further Contract responsibilities.

- 12.1.1.      **Work Completed.** Work completed must include work for vegetative establishment and maintenance, test, and performance periods and work to meet the requirements of Article 5.11., "Final Cleanup."

- 12.1.2.      **Punch List.** The Contractor shall notify the Inspector in writing when, in the Contractor's opinion, the Work has been "Substantially Completed" and when so notifying the Inspector, the Contractor shall furnish to the Inspector, in writing, a detailed list of unfinished work, also known as the Punch List. The Inspector, in cooperation with TxDOT, will review the Punch List and will add any items that the Contractor failed to include on said list. The fact that a structure or facility has been "Substantially Completed" shall not excuse the Contractor from performing all of the Work undertaken, whether such work is of a minor or major nature. Furthermore, the Contractor shall remain obligated to fully complete the Work and perform its obligations under the Contract Documents after the Work has been Substantially Completed.

- 12.1.3.      **Final Completion and Acceptance.** The Contractor shall have a specified time period for completion of the Punch List items, as set forth in Section XI of the Special Conditions, "Completion of Work on Time." Within ten (10) days after the Contractor has given the Inspector written notice that the Punch List has been completed, the Inspector shall inspect the Work and within said time, if the Work is found to be completed in accordance with the Contract Documents, the Inspector, with the concurrence of TxDOT, shall issue to the Contractor its Certificate of Completion. In the event the Punch List has not been completed, the Inspector shall advise the Contractor, in writing, of the Inspector's basis for deeming the Punch List incomplete. Following the Contractor's receipt of the Inspector's notice that the Punch List is incomplete, the Contractor shall complete the remaining items prior to the expiration of the above referenced specified time period for completion of the Punch List items. Upon satisfactory completion of the Punch List and the issuance of the

Certificate of Completion, it shall be the Contractor's responsibility to submit the contract close-out documents, which shall include the record drawings, Form FHWA-47 and Affidavit of All Bills Paid, and thereupon it shall be the duty of the County to issue a Certificate of Acceptance (Final Acceptance) to the Contractor.

- 12.1.4. **Final Measurement.** Final measurements and pay quantity adjustments may be made after final acceptance.
- 12.1.5. **Removal of Traffic Control Devices.** Remove construction traffic control devices and advance warning signs upon final acceptance or as directed.

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# Item 6L

## Control of Materials

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### 1. SOURCE CONTROL

Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the work. Secure the Engineer's approval of the proposed source of materials to be used before their delivery. Materials can be approved at a supply source or staging area but may be reinspected in accordance with Article 6.4., "Sampling, Testing, and Inspection."

- 1.1. **Buy America.** Comply with the latest provisions of Buy America as listed at 23 CFR 635.410. Use steel or iron materials manufactured in the United States except when:
- the cost of materials, including delivery, does not exceed 0.1% of the total Contract cost or \$2,500, whichever is greater;
  - the Contract contains a replacement alternate item for a foreign source steel or iron product and the Contract is awarded based on the replacement alternate item; or
  - the materials are temporarily installed.

Provide a notarized original of the TxDOT FORM D-9-USA-1 (or equivalent) with the proper attachments for verification of compliance.

Manufacturing is any process that modifies the chemical content, physical shape or size, or final finish of a product. Manufacturing begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

- 1.2. **Convict Produced Materials.** Materials produced by convict labor may only be incorporated in the work if such materials have been:
- produced by convicts who are on parole, supervised release, or probation from prison; or
  - produced in a qualified prison facility.

A "qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in federal-aid highway construction projects.

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### 2. MATERIAL QUALITY

Correct or remove materials that fail to meet Contract requirements or that do not produce satisfactory results. Reimburse the Owner for cost incurred if additional sampling and testing is required by a change of source.

Materials not meeting Contract requirements will be rejected, unless the Engineer approves corrective actions. Upon rejection, immediately remove and replace rejected materials.

If the Contractor does not comply with this article, the Owner may have defective material removed and replaced. The cost of testing, removal, and replacement will be deducted from the estimate.

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### 3. MANUFACTURER WARRANTIES

Transfer to the Owner warranties and guarantees required by the Contract or received as part of normal trade practice.



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#### 4. **SAMPLING, TESTING, AND INSPECTION**

Incorporate into the work only material that has been inspected, tested, and accepted by the Engineer. Remove, at the Contractor's expense, materials from the work locations that are used without prior testing and approval or written permission.

Unless otherwise mutually agreed, the material requirements and standard test methods in effect at the time the proposed Contract is advertised govern. Unless otherwise noted, the Engineer will perform testing at Owner's expense. In addition to facilities and equipment required by the Contract, furnish facilities and calibrated equipment required for tests to control the manufacture of construction items. If requested, provide a complete written statement of the origin, composition, and manufacture of materials.

All materials used are subject to inspection or testing at any time during preparation or use. Material which has been tested and approved at a supply source or staging area may be reinspected or tested before or during incorporation into the work, and rejected if it does not meet Contract requirements. Copies of test results are to be made available upon request. Do not use material that, after approval, becomes unfit for use.

Unless otherwise noted in the Contract, all testing must be performed within the United States and witnessed by the Engineer. If materials or processes require testing outside the contiguous 48 United States, reimburse the Owner for inspection expenses.

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#### 5. **PLANT INSPECTION AND TESTING**

The Engineer may, but is not obligated to, inspect materials at the acquisition or manufacturing source. Material samples will be obtained and tested for compliance with quality requirements.

If inspection is at the plant, meet the following conditions unless otherwise specified:

- Cooperate fully and assist the Engineer during the inspection.
- Ensure the Engineer has full access to all parts of the plant used to manufacture or produce materials.
- In accordance with pertinent items and the Contract, provide a facility at the plant for use by the Engineer as an office or laboratory.
- Provide and maintain adequate safety measures and restroom facilities.
- Furnish and calibrate scales, measuring devices, and other necessary equipment.

The Engineer may provide inspection for periods other than daylight hours if:

- continuous production of materials for Owner use is necessary due to the production volume being handled at the plant, and
- the lighting is adequate to allow satisfactory inspection.

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#### 6. **STORAGE OF MATERIALS**

Store and handle materials to preserve their quality and fitness for the work. Store materials so that they can be easily inspected and retested. Place materials under cover, on wooden platforms, or on other hard, clean surfaces as necessary or when directed.

Obtain approval to store materials on the right of way. Storage space off the right of way is at the Contractor's expense.

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## 7. OWNER-FURNISHED MATERIAL

The Owner will supply materials as shown in the Contract documents. The cost of handling and placing materials supplied by the Owner will not be paid for directly but is subsidiary to the item in which they are used. Assume responsibility for materials upon receipt.

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## 8. USE OF MATERIALS FOUND ON THE RIGHT OF WAY

Material found in the excavation areas and meeting the Owner's specifications may be used in the work. This material will be paid for at the Contract bid price for excavation and under the item for which the material is used.

Do not excavate or remove any material from within the right of way that is not within the limits of the excavation without written permission. If excavation is allowed within a right of way project-specific location (PSL), replace the removed material with suitable material at no cost to the Owner as directed.

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## 9. RECYCLED MATERIALS

The Owner will not allow hazardous wastes, as defined in 30 TAC 335, proposed for recycling to be used on the project. Use nonhazardous recyclable materials (NRMs) only if the specification for the item does not disallow or restrict use. Determine if NRMs are regulated under 30 TAC 312, 330, 332, 334, or 335, and comply with all general prohibitions and requirements. Use NRMs in accordance with DMS-11000, "Evaluating and Using Nonhazardous Recyclable Materials Guidelines," and furnish all documentation required by that specification.

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## 10. HAZARDOUS MATERIALS

Use materials that are free of hazardous materials as defined in Item 1L, "Abbreviations and Definitions."

Notify the Engineer immediately when a visual observation or odor indicates that materials in required material sources or on sites owned or controlled by the owner may contain hazardous materials. Except when the contract includes bid items for the contractor to remove hazardous materials, the Engineer is responsible for testing and removing or disposing of hazardous materials not introduced by the Contractor on sites owned or controlled by the Owner as indicated below.

The plans will indicate locations where paint on steel is suspected to contain hazardous materials and where regulated asbestos containing materials have been found. The Engineer may suspend work wholly or in part during the testing, removal, or disposition of hazardous materials on sites owned or controlled by the Owner, except in the case of when the contract includes removing and disposing of hazardous materials.

When a visual observation or odor indicates that materials delivered to the work locations by the Contractor may contain hazardous materials, have an approved commercial laboratory test the materials for contamination. Remove, remediate, and dispose of any of these materials found to be contaminated. Testing, removal, and disposition of hazardous materials introduced onto the work locations by the Contractor will be at the Contractor's expense. Working day charges will not be suspended and extensions of working days will not be granted for activities related to handling hazardous material delivered by the Contractor.

10.1. **Painted Steel Requirements.** Paint containing hazardous materials will be removed as shown on the plans.

10.1.1. **Paint Removed by Third Party.** The Owner may provide a third party to remove paint containing hazardous materials where paint must be removed to perform work or to allow dismantling of the steel.

10.1.2. **Paint Removed by the Contractor.** This work may only be performed by a firm or company with one of the following certifications:

- SSPC-QP2 certification for lead painting operations, or
- Certified Lead Firm by the Texas Department of State Health Services.

Maintain certification for the duration of the work. Provide copies of audits or certification if requested.

Comply with worker and public safety regulations, including, but not limited to, OSHA 29 CFR Parts 1910.1025, 1926.62, and 1926.63. Monitor permissible exposure limits in accordance with OSHA requirements.

Remove paint containing hazardous materials from designated areas shown on the plans or as directed. Comply with access limitations shown on the plans.

Provide power hand tools, equipped with high-efficiency particulate air filter vacuums to mechanically remove paint.

Contain, collect, store, transport, and dispose of all waste generated by cleaning operation in accordance with local, state, and federal requirements including 40 CFR 302. Properly characterize and dispose of all wastes. Manage any hazardous wastes in accordance with regulatory requirements and dispose in a facility authorized to accept such wastes. Provide copies of disposal manifests.

The work performed, materials furnished, equipment, labor, tools, and incidentals will be paid for in accordance with Item 446, "Field Cleaning and Painting Steel."

- 10.2. **Removal and Disposal of Painted Steel.** Painted steel will be disposed of at a steel recycling or smelting facility unless otherwise shown on the plans. If the paint contains hazardous materials, maintain and make available to the Engineer invoices and other records obtained from the facility showing the received weight of the steel and the facility name.

For steel that is dismantled by unbolting, no paint stripping will be required. Use care to not damage existing paint. When dismantling is performed using flame or saw-cutting methods to remove steel elements coated with paint containing hazardous materials, the plans will show stripping locations.

The work provided, materials furnished, equipment, labor, tools, and incidentals will be paid for in accordance with Item 496, "Removing Structures," and Item 497, "Sale of Salvagable Material."

- 10.3. **Asbestos Requirements.** The plans will indicate locations or elements where asbestos containing materials (ACM) have been found. At locations where previously unknown ACM has been found, the Owner will arrange for abatement by a third party. For work at these locations, notify the Engineer of proposed dates of demolition or removal of structural elements with ACM at least 60 days before work is to begin to allow the Owner enough time to abate the asbestos.

- 10.4. **Work Performed by a Third Party.** When the work for removal of paint or asbestos abatement is to be provided by a third party, coordinate and cooperate with the third party and the Owner. Continue other work detailed on the plans not directly involved in the paint removal or asbestos abatement work. Provide notice to the Owner regarding the progress of the work to allow the Owner enough time to schedule the third party work.

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## 11. SURPLUS MATERIALS

Take ownership of surplus materials unless otherwise shown on the plans or as directed by the Engineer. Remove and dispose of materials in accordance with federal, state, and local regulations. If requested, provide an appropriate level of documentation to verify proper disposal. When materials are disposed of on private property, provide written authorization from the property owner for the use of the property for this purpose upon request.

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## Item 7L

### Legal Relations and Responsibilities

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#### 1. SAFETY

- 1.1. **Point of Contact.** Designate a Contractor Safety Point of Contact (CSPOC). The Owner will assign an Owner employee for their point of contact designated as Owner's Safety Point of Contact OSPOC. The CSPOC will ensure that the Contractor's and Subcontractor's employees' use the appropriate personal protection equipment (hard hats, safety vests, protective toe footwear, etc.).

The CSPOC will ensure that crew leaders and foremen (including subcontractors) have attended the required training.

- 1.2. **Safety Preconstruction Meeting.** In cooperation with the Engineer, schedule and attend a safety preconstruction meeting (may be a part of the preconstruction conference in Article 4.2., "Preconstruction Conference." Attendees for this safety preconstruction meeting will be:

- the Contractor,
- subcontractors,
- Owner,
- local law enforcement, and
- other personnel that play an active role on the project.

- 1.3. **Public Safety and Convenience.** Ensure the safety and convenience of the public and property as provided in the Contract and as directed by the Engineer. Keep existing roadways open to traffic or construct and maintain detours and temporary structures for safe public travel. Manage construction to minimize disruption to traffic. Maintain the roadway in a good and passable condition, including proper drainage and provide for ingress and egress to adjacent property.

Store all equipment not in use in a manner and at locations that will not interfere with the safe passage of traffic.

Provide qualified flaggers in accordance with Item 502.2.2., "Flaggers," for the safety and convenience of the traveling public and workers, as directed.

If the Engineer determines that any of the requirements of this article have not been met, the Engineer may take any necessary corrective action. This will not change the legal responsibilities set forth in the Contract. The cost to the Owner for this work will be deducted from any money due or to become due to the Contractor.

- 1.4. **Use of Blue Warning Lights.** Texas Transportation Code 547.105 authorizes the use of warning lights to promote safety and provides an effective means of gaining the travelling public's attention as they drive in areas where construction crews are present. In order to influence the public to move over when high risk construction activities are taking place, minimize the utilization of blue warning lights. These lights must be used only while performing work on or near the travel lanes or shoulder where the travelling public encounters construction crews that are not protected by a standard work zone set up such as a lane closure, shoulder closure, or one-way traffic control. Refrain from leaving the warning lights engaged while travelling from one work location to another or while parked on the right of way away from the pavement or a work zone.

- 1.5. **Barricades, Warning and Detour Signs, and Traffic Handling.** Provide, install, move, replace, maintain, clean, and remove all traffic control devices in accordance with the traffic control devices specifications and as shown on the plans and as directed. If details are not shown on the plans, provide devices and work in

accordance with the TMUTCD and as directed by the Engineer. When authorized or directed by the Engineer, provide additional signs or traffic control devices not required by the plans.

If an unexpected situation arises that causes the Contractor to believe that the traffic control should be changed, make all reasonable efforts to promptly contact the Engineer. Take prudent actions until the Engineer can be contacted.

The Engineer may authorize or direct in writing the removal or relocation of project limit advance warning signs. When project limit advance warning signs are removed before final acceptance, traffic control in accordance with the TMUTCD may be used for minor operations as approved. Removal or relocation of project limit advance warning signs does not imply final acceptance.

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## **2. LAWS TO BE OBSERVED**

Comply with all federal, state, and local laws, ordinances, and regulations that affect the performance of the work. Indemnify and save harmless the Owner and its representatives against any claim arising from violation by the Contractor of any law, ordinance, or regulation.

This Contract is between the Owner and the Contractor only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

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## **3. PERMITS, LICENSES, AND TAXES**

Procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of work, except for permits provided by the Owner and as specified in Article 7.6., "Preservation of Cultural and Natural Resources and the Environment."

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## **4. PATENTED DEVICES, MATERIAL, AND PROCESSES**

Indemnify and save harmless the Owner from any claims for infringement from the Contractor's use of any patented design, device, material, process, trademark, or copyright selected by the Contractor and used in connection with the work. Indemnify and save harmless the Owner against any costs, expenses, or damages that it may be obliged to pay, by reason of this infringement, at any time during the prosecution or after the completion of the work.

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## **5. PERSONAL LIABILITY OF PUBLIC OFFICIALS**

Owner employees are agents and representatives of the Owner and will incur no liability, personal or otherwise, in carrying out the provisions of the Contract or in exercising any power or authority granted under the Contract.

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## **6. PRESERVATION OF CULTURAL AND NATURAL RESOURCES AND THE ENVIRONMENT**

If the Contractor initiates changes to the Contract and the Owner approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agencies.

6.1. **Cultural Resources.** Cease all work immediately if a site, building, or location of historical, archeological, educational, or scientific interest is discovered within the right of way. The site, building, or location will be investigated and evaluated by the Owner.

6.2. **Texas Pollutant Discharge Elimination System (TPDES) Permits and Storm Water Pollution Prevention Plans (SWP3).** The Owner will file the Notice of Intent (NOI) and the Notice of Termination (NOT) for work shown on the plans in the right of way. Adhere to all requirements of the SWP3.

- 6.3. **Work in Waters of the United States.** For work in the right of way, the Owner will obtain any required Section 404 permits from the U.S. Army Corps of Engineers before work begins. Adhere to all agreements, mitigation plans, and standard best management practices required by the permit. When Contractor-initiated changes in the construction method changes the impacts to waters of the U.S., obtain new or revised Section 404 permits.
- 6.4. **Work in Navigable Waters of the United States.** For work in the right of way, the Owner will obtain any required Section 9 permits from the U.S. Coast Guard before work begins. Adhere to the stipulations of the permits and associated best management practices. When Contractor-initiated changes in the construction method changes the impacts to navigable waters of the U.S., obtain new or revised Section 9 permits.
- 6.5. **Work Over the Recharge or Contributing Zone of Protected Aquifers.** Make every reasonable effort to minimize the degradation of water quality resulting from impacts relating to work over the recharge or contributing zones of protected aquifers, as defined and delineated by the TCEQ. Use best management practices and perform work in accordance with Contract requirements.
- 6.6. **Project-Specific Locations.** For all project-specific locations (PSLs) on or off the right of way (material sources, waste sites, parking areas, storage areas, field offices, staging areas, haul roads, etc.), signing the Contract certifies compliance with all applicable laws, rules, and regulations pertaining to the preservation of cultural resources, natural resources, and the environment as issued by the following or other agencies:
- Occupational Safety and Health Administration,
  - Texas Commission on Environmental Quality,
  - Texas Department of Transportation,
  - Texas Historical Commission,
  - Texas Parks and Wildlife Department,
  - Texas Railroad Commission,
  - U.S. Army Corps of Engineers,
  - U.S. Department of Energy,
  - U.S. Department of Transportation,
  - U.S. Environmental Protection Agency,
  - U.S. Federal Emergency Management Agency, and
  - U.S. Fish and Wildlife Service.

All subcontractors must also comply with applicable environmental laws, rules, regulations, and requirements in the Contract. Maintain documentation of certification activities including environmental consultant reports, Contractor documentation on certification decisions and contacts, and correspondence with the resource agencies. Provide documentation upon request.

Obtain written approval from the Engineer for all PSLs in the right of way not specifically addressed on the plans. Prepare an SWP3 for all Contractor facilities, such as asphalt or concrete plants located within public right of way. Comply with all TCEQ permit requirements for portable facilities, such as concrete batch plants, rock crushers, asphalt plants, etc. Address all environmental issues, such as Section 404 permits, wetland delineation, endangered species consultation requirements, or archeological and historic site impacts. Obtain all permits and clearances in advance.

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## 7. AGRICULTURAL IRRIGATION

Regulate the sequence of work and make provisions as necessary to provide for agricultural irrigation or drainage during the work. Meet with the Irrigation District or land owner to determine the proper time and sequence when irrigation demands will permit shutting-off water flows to perform work.

Unless otherwise provided on the plans, the work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

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**8. SANITARY PROVISIONS**

Provide and maintain adequate, neat, and sanitary toilet accommodations for employees, including Owner employees, in compliance with the requirements and regulations of the Texas Department of Health or other authorities with jurisdiction.

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**9. ABATEMENT AND MITIGATION OF EXCESSIVE OR UNNECESSARY NOISE**

Minimize noise throughout all phases of the Contract. Exercise particular and special efforts to avoid the creation of unnecessary noise impact on adjacent noise sensitive receptors in the placement of non-mobile equipment such as air compressors, generators, pumps, etc. Place mobile and stationary equipment to cause the least disruption of normal adjacent activities.

All equipment associated with the work must be equipped with components to suppress excessive noise and these components must be maintained in their original operating condition considering normal depreciation. Noise-attenuation devices installed by the manufacturer such as mufflers, engine covers, insulation, etc. must not be removed nor rendered ineffectual nor be permitted to remain off the equipment while the equipment is in use.

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**10. USING EXPLOSIVES**

Do not endanger life or property. The contractor is required to submit a written Blasting Plan if required by the plans or requested by the Engineer. The Owner retains the right to reject the blasting plan. Store all explosives securely and clearly mark all storage places with "DANGER – EXPLOSIVES." Store, handle, and use explosives and highly flammable material in compliance with federal, state, and local laws, ordinances, and regulations. Assume liability for property damage, injury, or death resulting from the use of explosives.

Give at least a 48-hr. advance notice to the appropriate Road Master before doing any blasting work involving the use of electric blasting caps within 200 ft. of any railroad track.

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**11. RESPONSIBILITY FOR HAZARDOUS MATERIALS**

Indemnify and save harmless the Owner and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property arising from the generation or disposition of hazardous materials introduced by the Contractor on any work done by the Contractor on Owner-owned or controlled sites. Indemnify and save harmless the Owner and its representatives from any liability or responsibility arising out of the Contractor's generation or disposition of any hazardous materials obtained, processed, stored, shipped, etc., on sites not owned or controlled by the Owner. Reimburse the Owner for all payments, fees, or restitution the Owner is required to make as a result of the Contractor's actions.

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**12. ASBESTOS CONTAINING MATERIAL**

In Texas, the Department of State Health Services (DSHS), Asbestos Programs Branch, is responsible for administering the requirements of the National Emissions Standards for Hazardous Air Pollutants, 40 CFR, Subpart M (NESHAP) and the Texas Asbestos Health Protection Rules (TAHPR). Based on EPA guidance and regulatory background information, bridges are considered to be a regulated "facility" under NESHAP. Therefore, federal standards for demolition and renovation apply.

Provide notice to the Owner of demolition or renovation to the structures listed on the plans at least 30 calendar days before initiating demolition or renovation of each structure or load bearing member. Provide the scheduled start and completion date of structure demolition, renovation, or removal.

When demolition, renovation, or removal of load-bearing members is planned for several phases, provide the start and completion dates identified by separate phases.

DSHS requires that notifications be postmarked at least 10 working days before initiating demolition or renovation. If the date of actual demolition, renovation, or removal is changed, the Owner will be required to notify DSHS at least 10 days in advance of the work. This notification is also required when a previously scheduled (notification sent to DSHS) demolition, renovation, or removal is delayed. Therefore, if the date of actual demolition, renovation, or removal is changed, provide the Engineer, in writing, the revised dates in enough time to allow for the Owner's notification to DSHS to be postmarked at least 10 days in advance of the actual work.

Failure to provide the above information may require the temporary suspension of work under Article 8.4., "Temporary Suspension of Work or Working Day Charges," due to reasons under the control of the Contractor. The Owner retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.

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**13. RESTORING SURFACES OPENED BY PERMISSION**

Do not authorize anyone to make an opening in the highway for utilities, drainage, or any other reason without written permission by the Engineer. Repair all openings as directed by the Engineer. Payment for repair of surfaces opened by permission will be made in accordance with pertinent items or Article 4.4., "Changes in the Work." Costs associated with openings made with Contractor authorization but without Owner approval will not be paid.

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**14. PROTECTING ADJACENT PROPERTY**

Protect adjacent property from damage. If any damage results from an act or omission on the part of or on behalf of the Contractor, take corrective action to restore the damaged property to a condition similar or equal to that existing before the damage was done.

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**15. RESPONSIBILITY FOR DAMAGE CLAIMS**

Indemnify and save harmless the Owner and its agents and employees from all suits, actions, or claims and from all liability and damages for any injury or damage to any person or property due to the Contractor's negligence in the performance of the work and from any claims arising or amounts recovered under any laws, including workers' compensation and the Texas Tort Claims Act. Indemnify and save harmless the Owner and assume responsibility for all damages and injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on the Contractor's part in the manner or method of executing the work; from failure to properly execute the work; or from defective work or material.

Pipelines and other underground installations that may or may not be shown on the plans may be located within the right of way. Indemnify and save harmless the Owner from any suits or claims resulting from damage by the Contractor's operations to any pipeline or underground installation. Make available the scheduled sequence of work to the respective utility owners so that they may coordinate and schedule adjustments of their utilities that conflict with the proposed work.

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**16. HAULING AND LOADS ON ROADWAYS AND STRUCTURES**

Comply with federal and state laws concerning legal gross and axle weights. Except for the designated Interstate system, vehicles with a valid yearly overweight tolerance permit may haul materials to the work locations at the permitted load. Provide copies of the yearly overweight tolerance permits to the Engineer upon request. Construction equipment is not exempt from oversize or overweight permitting requirements on roadways open to the traveling public.

Protect existing bridges and other structures that will remain in use by the traveling public during and after the completion of the Contract. Construction traffic on roadways, bridges, and culverts within the limits of the work, including any structures under construction that will remain in service during and after completion of the Contract is subject to legal size and weight limitations.



Additional temporary fill may be required by the Engineer for hauling purposes for the protection of certain structures. This additional fill will not be paid directly but will be subsidiary.

Replace or restore to original condition any structure damaged by the Contractor's operations.

The Engineer may allow equipment with oversize or non-divisible overweight loads to operate without a permit within the work locations on pavement structures not open to the traveling public. Submit Contractor-proposed changes to traffic control plans for approval, in accordance with Item 502, "Barricades, Signs, and Traffic Handling." The following sections further address overweight allowances. The Owner will make available to the Contractor any available plans and material reports for existing structures.

- 16.1. **Overweight Construction Traffic Crossing Structures.** The Engineer may allow crossing of a structure not open to the public within the work locations, when divisible or non-divisible loads exceed legal weight limitations, including limits for load-posted bridges. Obtain written permission to make these crossings. Submit for approval a structural analysis by a licensed professional engineer indicating that the excessive loads should be allowed. Provide a manufacturer's certificate of equipment weight that includes the weight distribution on the various axles and any additional parts such as counterweights, the configuration of the axles, or other information necessary for the analysis. Submit the structural analysis and supporting documentation sufficiently in advance of the move to allow for review. Permission may be granted if the Engineer finds that no damage or overstresses in excess of those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

Schedule loads so that only one vehicle is on any span or continuous unit at any time. Use barricades, fences, or other positive methods to prevent other vehicular access to structures at any time the overweight load is on any span or continuous unit.

- 16.2. **Construction Equipment Operating on Structures.** Cranes and other construction equipment used to perform construction operations that exceed legal weight limits may be allowed on structures. Before any operation that may require placement of equipment on a structure, submit for approval a detailed structural analysis prepared by a licensed professional engineer.

Submit the structural analysis and supporting documentation sufficiently in advance of the use to allow for review and approval. Include all axle loads and configurations, spacing of tracks or wheels, tire loads, outrigger placements, center of gravity, equipment weight, and predicted loads on tires and outriggers for all planned movements, swings, or boom reaches. The analysis must demonstrate that no overstresses will occur in excess of those normally allowed for occasional overweight loads.

- 16.3. **Loads on Structures.** Do not store or stockpile material on bridge structures without written permission. If required, submit a structural analysis and supporting documentation by a licensed professional engineer for review. Permission may be granted if the Engineer finds that no damage or overstresses in excess of those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

- 16.4. **Hauling Divisible Overweight Loads on Pavement Within the Work Locations.** The Engineer may allow divisible overweight loads on pavement structures within the work locations not open to the traveling public. Obtain written approval before hauling the overweight loads. Include calculations to demonstrate that there will be no damage or overstress to the pavement structure.

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## 17. CONTRACTOR'S RESPONSIBILITY FOR WORK

Until final acceptance of the Contract, take every precaution against injury or damage to any part of the work by the action of the elements or by any other cause, whether arising from the execution or from the nonexecution of the work. Protect all materials to be used in the work at all times, including periods of suspension.

When any roadway or portion of the roadway is in suitable condition for travel, it may be opened to traffic as directed. Opening of the roadway to traffic does not constitute final acceptance.

Repair damage to all work until final acceptance. Repair damage to existing facilities in accordance with the Contract or as directed. Repair damage to existing facilities or work caused by Contractor operations at the Contractor's expense. Repair work for damage that was not due to the Contractor's operations will not be paid for except as provided below.

- 17.1. **Reimbursable Repair.** Except for damage to appurtenances listed in Section 7.17.2.1., "Unreimbursed Repair," the Contractor will be reimbursed for repair of damage caused by:
- motor vehicle, watercraft, aircraft, or railroad-train incident;
  - vandalism; or
  - Acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena of nature.

17.2. **Appurtenances.**

- 17.2.1. **Unreimbursed Repair.** Except for destruction (not reusable) due to hurricanes, reimbursement will not be made for repair of damage to the following temporary appurtenances, regardless of cause:
- signs,
  - barricades,
  - changeable message signs, and
  - other work zone traffic control devices.

Crash cushion attenuators and guardrail end treatments are the exception to the above listing and are to be reimbursed in accordance with Section 7.17.2.2., "Reimbursed Repair."

For the devices listed in this section, reimbursement may be made for damage due to hurricanes. Where the Contractor retains replaced appurtenances after completion of the project, the Owner will limit the reimbursement to the cost that is above the salvage value at the end of the project.

- 17.2.2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7.17.1., "Reimbursable Repair," to appurtenances (including temporary and permanent crash cushion attenuators and guardrail end treatments).

- 17.3. **Roadways and Structures.** Until final acceptance, the Contractor is responsible for all work constructed under the Contract. The Owner will not reimburse the Contractor for repair work to new construction, unless the failure or damage is due to one of the causes listed in Section 7.17.1., "Reimbursable Repair."

The Owner will be responsible for the cost for repair of damage to existing roadways and structures not caused by the Contractor's operations.

- 17.4. **Detours.** The Contractor will be responsible for the cost of maintenance of detours constructed under the Contract, unless the failure or damage is due to one of the causes listed in Section 7.17.1., "Reimbursable Repair." The Engineer may consider failures beyond the Contractor's control when determining reimbursement for repairs to detours constructed. The Owner will be responsible for the cost of maintenance of existing streets and roadways used for detours or handling traffic.

- 17.5. **Relief from Maintenance.** The Engineer may relieve the Contractor from responsibility of maintenance as outlined in this section. This relief does not release the Contractor from responsibility for defective materials or work or constitute final acceptance.

- 17.5.1. **Isolated Work Locations.** For isolated work locations, when all work is completed, including work for Article 5.11., "Final Cleanup," the Engineer may relieve the Contractor from responsibility for maintenance.

- 17.5.2. **Work Except for Vegetative Establishment and Test Periods.** When all work for all or isolated work locations has been completed, including work for Article 5.11., "Final Cleanup," with the exception of vegetative establishment and maintenance periods and test and performance periods, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work.
- 17.5.3. **Work Suspension.** When all work is suspended for an extended period of time, the Engineer may relieve the Contractor from responsibility for maintenance of completed portions of work during the period of suspension.
- 17.5.4. **When Directed by the Engineer.** The Engineer may relieve the Contractor from the responsibility for maintenance when directed.
- 17.6. **Basis of Payment.** When reimbursement for repair work is allowed and performed, payment will be made in accordance with pertinent items or Article 4.4., "Changes in the Work."

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## 18. ELECTRICAL REQUIREMENTS

### 18.1. Definitions.

#### 18.1.1. **Electrical Work.** Electrical work is work performed for:

- Item 610, "Roadway Illumination Assemblies,"
- Item 614, "High Mast Illumination Assemblies,"
- Item 616, "Performance Testing of Lighting Systems,"
- Item 617, "Temporary Roadway Illumination,"
- Item 618, "Conduit,"
- Item 620, "Electrical Conductors,"
- Item 621, "Tray Cable,"
- Item 622, "Duct Cable,"
- Item 628, "Electrical Services,"
- Item 680, "Highway Traffic Signals,"
- Item 681, "Temporary Traffic Signals,"
- Item 684, "Traffic Signal Cables,"
- Item 685, "Roadside Flashing Beacon Assemblies,"
- other items that involve either the distribution of electrical power greater than 50 volts or the installation of conduit and duct banks,
- the installation of conduit and wiring associated with Item 624, "Ground Boxes," and Item 656, "Foundations for Traffic Control Devices," and
- the installation of the conduit system for communication and fiber optic cable.

Electrical work does not include the installation of communications or fiber optic cable, or the connections for low voltage and inherently power limited circuits such as electronic or communications equipment. Assembly and placement of poles, structures, cabinets, enclosures, manholes, or other hardware will not be considered electrical work as long as no wiring, wiring connections, or conduit work is done at the time of assembly and placement.

#### 18.1.2. **Specialized Electrical Work.** Specialized electrical work is work that includes the electrical service and feeders, sub-feeders, branch circuits, controls, raceways, and enclosures for the following:

- pump stations,
- moveable bridges,
- ferry slips,
- motor control centers,
- facilities required under Item 504, "Field Office and Laboratory,"

- rest area or other public buildings,
- weigh-in-motion stations,
- electrical services larger than 200 amps,
- electrical services with main or branch circuit breaker sizes not shown in the Contract, and
- any 3-phase electrical power.

18.1.3. **Certified Person.** A certified person is a person who has passed the test from the TxDOT course TRF450, "TxDOT Roadway Illumination and Electrical Installations," or other courses as approved by the Owner. Submit a current and valid certification upon request.

18.1.4. **Licensed Electrician.** A licensed electrician is a person with a current and valid unrestricted master electrical license, or unrestricted journeyman electrical license that is supervised or directed by an unrestricted master electrician. An unrestricted master electrician need not be on the work locations at all times electrical work is being done, but the unrestricted master electrician must approve work performed by the unrestricted journeyman. Licensed electrician requirements by city ordinances do not apply to on state system work.

The unrestricted journeyman and unrestricted master electrical licenses must be issued by the Texas Department of Licensing and Regulation or by a city in Texas with a population of 50,000 or greater that issues licenses based on passing a written test and demonstrating experience.

The Engineer may accept other states' electrical licenses. Submit documentation of the requirements for obtaining that license. Acceptance of the license will be based on sufficient evidence that the license was issued based on:

- passing a test based on the NEC similar to that used by Texas licensing officials, and
- sufficient electrical experience commensurate with general standards for an unrestricted master and unrestricted journeyman electrician in the State of Texas.

18.2. **Work Requirements.** The qualifications required to perform electrical work and specialized electrical work are listed in Table 2.

**Table 2**  
**Work Requirements**

Type of Work	Qualifications to Perform Work
Electrical work with plans	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Electrical work without plans	Licensed electrician or workers directly supervised by a licensed electrician
Specialized electrical work	Licensed electrician or workers directly supervised by a licensed electrician
Replace lamps, starting aids, and changing fixtures	Licensed electrician, certified person, or workers directly supervised by a licensed electrician or certified person
Conduit in precast section with approved working drawings	Inspection by licensed electrician or certified person
Conduit in cast-in-place section	Inspection by licensed electrician or certified person
All other electrical work (troubleshooting, repairs, component replacement, etc.)	Licensed electrician or workers directly supervised by a licensed electrician

A licensed electrician must be physically present during all electrical work when Table 2 states that workers are to be directly supervised by a licensed electrician or certified person.

A non-certified person may install conduit in cast-in-place concrete sections if the work is verified by a certified person before concrete placement.

When the plans specify IMSA certification, the requirements of Table 2 will still apply to the installation of the conduit, ground boxes, electrical services, pole grounding, and electrical conductors installed under Item 620, "Electrical Conductors."

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## Item 8L

### Prosecution and Progress

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#### 1. PROSECUTION OF WORK

Working day charges will begin 90 calendar days after the date of the written authorization to begin work, or on the first day that all utility relocations are complete, if this occurs during the 90 day period.

Prosecute the work continuously to completion within the working days specified except for as follows: The County may suspend work under this contract due to utility relocations and/or adjustments for a maximum of 90 calendar days. The suspension may be used at one time or broken into no more than 4 suspensions totaling a maximum of 90 calendar days. The Engineer and the Contractor may mutually agree, in writing, to increase or decrease this maximum number of days. The Contractor shall not be entitled to additional compensation due to delays within these 90 calendar days.

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#### 2. SUBCONTRACTING

Do not sublet any portion of a construction Contract without the Engineer's written approval. A subcontract does not relieve any responsibility under the Contract and bonds. Ensure that all subcontracted work complies with all governing labor provisions. All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between subcontractors and Sub-contractors) which shall contain provisions that:

- preserve and protect the rights of the County, the Inspector, and the Engineer of Record under the contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- require that such work be performed in accordance with the requirements of the Contract Documents;
- require submission to the Contractor of the applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with the Contract Documents;
- require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the County;
- obligate each subcontractor specifically to consent to the provisions of this article.

A copy of all such signed subcontract agreements shall be filed by the Contractor with the Inspector before the Subcontractor shall be allowed to commence work.

The Contractor certifies by signing the Contract that the Contractor will not enter into any subcontract with a subcontractor that is debarred or suspended by the Owner, or any state or federal agency.

For federally funded Contracts, ensure the required federal documents are physically attached to each subcontract agreement including all tiered subcontract agreements.

For all DBE/HUB/SBE subcontracts including all tiered DBE/HUB/SBE subcontracts, submit a copy of the executed subcontract agreement.

Submit a copy of the executed non-DBE subcontracts including all tiered non-DBE subcontracts when requested.

- 2.1. **Construction Contracts.** Perform work with own organization on at least 30% of the total original Contract cost (25% if the Contractor is an SBE on a wholly State or local funded Contract) excluding any items determined to be specialty items. Specialty items are those that require highly specialized knowledge, abilities, or equipment not usually available in the contracting firm expected to bid on the proposed Contract as a whole.

Specialty items will be shown on the plans or as directed by the Engineer. Bid cost of specialty items performed by subcontractors will be deducted from the total original Contract cost before computing the required amount of work to be performed by the Contractor's own organization.

The term "perform work with own organization" includes only:

- workers employed and paid directly by the Contractor or wholly owned subsidiary;
- equipment owned by the Contractor or wholly owned subsidiary;
- rented or leased equipment operated by the Contractor's employees or wholly owned subsidiary's employees;
- materials incorporated into the work if the majority of the value of the work involved in incorporating the material is performed by the Contractor's own organization, including a wholly owned subsidiary's organization; and
- labor provided by staff leasing firms licensed under Chapter 91 of the Texas Labor Code for nonsupervisory personnel if the Contractor or wholly owned subsidiary maintains direct control over the activities of the leased employees and includes them in the weekly payrolls.

When staff leasing firms provide materials or equipment, they are considered subcontractors. In these instances, submit staff leasing firms for approval as a subcontractor.

Copies of cancelled checks and certified statements may be required to verify compliance with the requirements of this section.

- 2.2. **Payments to Subcontractors.** Report payments for DBE/HUB/SBE subcontracts including tiered DBE/HUB/SBE subcontracts in the manner as prescribed by the Owner.

- 2.3. **Payment Records.** Make payment records, including copies of cancelled checks, available for inspection by the Owner. Submit payment records upon request. Retain payment records for a period of 3 yr. following completion of the Contract work or as specified by the Owner.

Failure to submit this information to the Engineer by the 20th day of each month will result in the Owner taking actions, including, but not limited to, withholding estimates and suspending the work. This work will not be measured or paid for directly but will be subsidiary to pertinent items.

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### 3. COMPUTATION OF CONTRACT TIME FOR COMPLETION

Upon request, the Engineer will provide the conceptual time determination schedule to the Contractor for informational purposes only. The schedules assume generic resources, production rates, sequences of construction and average weather conditions based on historic data. The Owner will not adjust the number of working days and milestones, if any, due to differences in opinion regarding any assumptions made in the preparation of the schedule or for errors, omissions, or discrepancies found in the Owner's conceptual time schedule.

The number of working days is established by the Contract. Working day charges will begin 30 calendar days after the date of the written authorization to begin work. Working day charges will continue in accordance with the Contract. The Engineer may consider increasing the number of working days under extraordinary circumstances.

- 3.1. **Working Day Charges.** Working days will be charged in accordance with Section 8.3.1.4., "Standard Workweek," unless otherwise shown in the Contract documents. Working days will be computed and charged in accordance with one of the following:
- 3.1.1. **Five-Day Workweek.** Working days will be charged Monday through Friday, excluding national holidays, regardless of weather conditions or material availability. The Contractor has the option of working on Saturdays. Provide sufficient advance notice when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or national holiday, and weather and other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
- 3.1.2. **Six-Day Workweek.** Working days will be charged Monday through Saturday, excluding national holidays, regardless of weather conditions or material availability. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Sunday or a national holiday, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
- 3.1.3. **Seven-Day Workweek.** Working days will be charged Monday through Sunday, excluding national holidays, regardless of weather conditions or material availability. Work on national holidays will not be permitted without written permission. If work is performed on any of these holidays requiring an Inspector to be present, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
- 3.1.4. **Standard Workweek.** Working days will be charged Monday through Friday, excluding national or state holidays, if weather or other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. between 7 A.M. and 6 P.M., unless otherwise shown in the Contract. The Contractor has the option of working on Saturdays or state holidays. Provide sufficient advance notice to the Engineer when scheduling work on Saturdays. Work on Sundays and national holidays will not be permitted without written permission. If work requiring an Inspector to be present is performed on a Saturday, Sunday, or holiday, and weather or other conditions permit the performance of work for 7 hr. between 7 A.M. and 6 P.M., a working day will be charged.
- Should the Contractor be delayed in the completion of the Work by any act or neglect of the County, the Inspector or the Engineer of Record, or of any employee of either, or by other contractors employed by the County, or by changes ordered in the Work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the Contractor's control, or by any cause which the Inspector shall decide justifies the delay, then an extension of time shall be allowed for completing the Work, sufficient to compensate for the delay, the amount of the extension to be determined by the Inspector; provided, however, before the Inspector may decide whether or not to allow such an extension of time, the Contractor must tender a prompt written request for an extension of time wherein the Contractor shall give the Inspector a written description of the cause of such delay.
- No claims shall be made by the Contractor for damages resulting from hindrances or delays from any cause (except where the Work is stopped by order of and for the convenience of the County) during the progress of any portion of the Work embraced in the Contract Documents. In case said work shall be stopped by the act of the County, then such expense, as in the sole judgment of the Inspector is caused by such stoppage of said work, shall be paid by the County to the Contractor.
- 3.1.5. **Calendar Day.** Working days will be charged Sunday through Saturday, including all holidays, regardless of weather conditions, material availability, or other conditions not under the control of the Contractor.



- 3.1.6. **Other.** Working days will be charged as shown in the Contract documents.
- 3.2. **Restricted Work Hours.** Restrictions on Contractor work hours and the related definition for working day charges are as prescribed in this article unless otherwise shown in the Contract documents.
- 3.3. **Nighttime Work.** Nighttime work is allowed only when shown in the Contract documents or as directed. Nighttime work is defined as work performed from 30 min. after sunset to 30 min. before sunrise.
- 3.3.1. **Five-, Six-, and Seven-Day Workweeks.** Nighttime work that extends past midnight will be assigned to the following day for the purposes of approval for allowing work on Sundays or national holidays.
- 3.3.2. **Standard Workweek.**
- 3.3.2.1. **Nighttime Work Only.** When nighttime work is allowed or required and daytime work is not allowed, working day charges will be made when weather and other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. for the nighttime period, as defined in Section 8.3.3., "Nighttime Work," unless otherwise shown in the Contract documents.
- 3.3.2.2. **Nighttime Work and Daytime Work Requiring Inspector.** When nighttime work is performed or required and daytime work is allowed, working day charges will be made when weather and other conditions permit the performance of the principal unit of work underway, as determined by the Engineer, for a continuous period of at least 7 hr. for the nighttime period, as defined in Section 8.3.3., "Nighttime Work," or for a continuous period of at least 7 hr. for the alternative daytime period unless otherwise shown in the Contract documents. Only one day will be charged for each 24-hr. time period. When the Engineer agrees to restrict work hours to the nighttime period only, working day charges will be in accordance with Section 8.3.3.2.1., "Nighttime Work Only."
- 3.4. **Time Statements.** The Engineer will furnish the Contractor a monthly time statement. Review the monthly time statement for correctness. Report protests in writing, no later than 30 calendar days after receipt of the time statement, providing a detailed explanation for each day protested. Not filing a protest within 30 calendar days will indicate acceptance of the working day charges and future consideration of that statement will not be permitted.

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#### 4. **TEMPORARY SUSPENSION OF WORK OR WORKING DAY CHARGES**

The Engineer may suspend the work, wholly or in part, and will provide notice and reasons for the suspension in writing. Suspend and resume work only as directed in writing.

When part of the work is suspended, the Engineer may suspend working day charges only when conditions not under the control of the Contractor prohibit the performance of critical activities. When all of the work is suspended for reasons not under the control of the Contractor, the Engineer will suspend working day charges.

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#### 5. **PROJECT SCHEDULES**

Prepare, maintain, and submit project schedules. Project schedules are used to convey the Contractor's intended work plan to the Owner. Prepare project schedules with a level of effort sufficient for the work being performed. Project schedules will not be used as a basis to establish the amount of work performed or for the preparation of the progress payments.

- 5.1. **Project Scheduler.** Designate an individual who will develop and maintain the progress schedule. The Project Scheduler will be prepared to discuss, in detail, the proposed sequence of work and methods of operation, and how that information will be communicated through the Progress Schedule at the Preconstruction Meeting. This individual will also attend the project meetings and make site visits to prepare, develop, and maintain the progress schedules.

5.2. **Construction Details.** Before starting work, prepare and submit a progress schedule based on the sequence of work and traffic control plan shown in the Contract documents. At a minimum, prepare the progress schedule as a Bar Chart or Critical Path Method (CPM), as shown on the plans. Include all planned work activities and sequences and show Contract completion within the number of working days specified. Incorporate major material procurements, known utility relocations, and other activities that may affect the completion of the Contract in the progress schedule. Show a beginning date, ending date, and duration in whole working days for each activity. Do not use activities exceeding 20 working days, except for agreed upon activities. Show an estimated production rate per working day for each work activity.

5.3. **Schedule Format.** Format all project schedules according to the following:

- Begin the project schedule on the date of the start of Contract time or start of activities affecting work on the project;
- Show the sequence and interdependence of activities required for complete performance of the work. If using a CPM schedule, show a predecessor and a successor for each activity; and
- Ensure all work sequences are logical and show a coordinated plan of the work.

CPM schedules must also include:

- Clearly and accurately identify the critical path as the longest continuous path;
- Provide a legend for all abbreviations, run date, data date, project start date, and project completion date in the title block of each schedule submittal; and
- Through the use of calendars, incorporate seasonal weather conditions into the schedule for work (e.g., earthwork, concrete paving, structures, asphalt, drainage, etc.) that may be influenced by temperature or precipitation. Also, incorporate non-work periods such as holidays, weekends, or other non-work days as identified in the Contract.

5.4. **Activity Format.** For each activity on the project schedule provide:

- A concise description of the work represented by the activity;
- An activity duration in whole working days;
- Code activities so that organized plots of the schedule may be produced.

CPM schedules must also include the quantity of work and estimated production rate for major items of work. Provide enough information for review of the work being performed.

5.5. **Schedule Types.**

5.5.1. **Bar Chart.** Seven calendar days before the preconstruction meeting, prepare and submit a hard copy of the schedule using the bar chart method.

5.5.1.1. **Progress Schedule Reviews.** Update the project schedule and submit a hard copy when changes to the schedule occur or when requested.

5.5.2. **Critical Path Method.** Prepare and submit the schedule using the CPM.

5.5.2.1. **Preliminary Schedule.** Seven calendar days before the preconstruction meeting, submit both the plotted and electronic copies of the project schedule showing work to be performed within the first 90 calendar days of the project.

5.5.2.2. **Baseline Schedule.** The baseline schedule will be considered the Contractor's plan to successfully construct the project within the time frame and construction sequencing indicated in the Contract. Submit both plotted and electronic copies of the baseline schedule. Submit 2 plots of the schedule: one organized with the activities logically grouped using the activity coding; and the other plot showing only the critical path determined by the longest path, not based on critical float.

Develop and submit the baseline schedule for review within the first 45 calendar days of the project unless the time for submission is extended.

- 5.5.2.2.1. **Review.** Within 15 calendar days of receipt of the schedule, the Engineer will evaluate, and inform the Contractor if the schedule has been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so within 10 calendar days. The Engineer's review and acceptance of the project schedule is for conformance to the requirements of the Contract documents only and does not relieve the Contractor of any responsibility for meeting the interim milestone dates (if specified) or the Contract completion date. Review and acceptance does not expressly or by implication warrant, acknowledge, or admit the reasonableness of the logic or durations of the project schedule. If the Contractor fails to define any element of work, activity, or logic and the Engineer's review does not detect this omission or error, the Contractor is responsible for correcting the error or omission.

Submit an acceptable baseline schedule before the 90th calendar day of the project unless the time for submission is extended.

- 5.5.2.3. **Progress Schedule.** Maintain the project schedule for use by both the Contractor and the Engineer. Submit both the plotted and electronic copy as it will become an as-built record of the daily progress achieved on the project. If continuous progress of an activity is interrupted for any reason except non-work periods (such as holidays, weekend, or interference from temperature or precipitation), then the activity will show the actual finish date as that date of the start of the interruption and the activity will be broken into a subsequent activity (or activities, based on the number of interruptions) similarly numbered with successive alpha character as necessary. The original duration of the subsequent activity will be that of the remaining duration of the original activity. Relationships of the subsequent activity will match those of the original activity so that the integrity of the project schedule logic is maintained. Once established, the original durations and actual dates of all activities must remain unchanged. Revisions to the schedule may be made as necessary.

The project schedule must be revised when changes in construction phasing and sequencing occur or other changes that cause deviation from the original project schedule occur. Any revisions to the schedule must be listed in the monthly update narrative with the purpose of the revision and description of the impact on the project schedule's critical path and project completion date. Create the schedule revision using the latest update before the start of the revision.

Monthly updating of the project schedule will include updating of:

- The actual start dates for activities started;
- The actual finish dates for activities completed;
- The percentage of work completed and remaining duration for each activity started but not yet completed; and
- The calendars to show days actual work was performed on the various work activities.

The cut-off day for recording monthly progress will be the last day of each month. Submit the updated project schedule no later than the 20th calendar day of the following month. The Engineer will evaluate the updated schedule within 5 calendar days of receipt and inform the Contractor if it has or has not been accepted. If the schedule is not accepted, the Engineer will provide comments to the Contractor for incorporation. Provide a revised schedule based on the Engineer's comments, or reasons for not doing so within 5 calendar days.

Provide a brief narrative in a bulleted statement format for major items that have impacted the schedule. Notify the Engineer if resource-leveling is being used.

- 5.5.2.3.1. **Project Schedule Summary Report (PSSR).** When shown on the plans, provide the PSSR instead of the narrative required in Section 8.5.5.2.3., "Progress Schedule." The PSSR includes a listing of major items that have impacted the schedule as well as a summary of progress in days ahead or behind schedule. Include an explanation of the project progress for the period represented on the form provided by the Owner.

- 5.5.3. **Notice of Potential Time Impact.** Submit a "Notice of Potential Time Impact" when a Contract time extension or adjustment of milestone dates may be justified or when directed.

Failure to provide this notice in the time frames outlined above will compromise the Owner's ability to mitigate the impacts and the Contractor forfeits the right to request a time extension or adjustment of milestone dates unless the circumstances are such that the Contractor could not reasonably have had knowledge of the impact at the time.

- 5.5.4. **Time Impact Analysis.** When directed, provide a time impact analysis. A time impact analysis is an evaluation of the effects of impacts on the project. A time impact analysis consists of the following steps:

- **Step 1.** Establish the status of the project immediately before the impact.
- **Step 2.** Predict the effect of the impact on the schedule update used in Step 1.
- **Step 3.** Track the effects of the impact on the schedule during its occurrence.
- **Step 4.** Establish the status of the project after the impact's effect has ended and provide details identifying any mitigating actions or circumstances used to keep the project ongoing during the impact period.

Determine the time impact by comparing the status of the work before the impact (Step 1) to the prediction of the effect of the impact (Step 2), if requested, and to actual effects of the impact once it is complete (Step 4). Unless otherwise approved, Steps 1, 3, and 4, must be completed before consideration of a Contract time extension or adjustment of a milestone date will be provided. Time extensions will only be considered when delays that affect milestone dates or the Contract completion date are beyond the Contractor's control. Submit Step 4 no later than 15 calendar days after the impact's effects have ended or when all the information on the effect has been realized.

Submit one electronic backup copy of the complete time impact analysis and a copy of the full project schedule incorporating the time impact analysis. If the project schedule is revised after the submittal of a time impact analysis, but before its approval, indicate in writing the need for any modification to the time impact analysis.

The Engineer will review the time impact analysis upon completion of step 4. If this review detects revisions or changes to the schedule that had not been performed and identified in a narrative, the Engineer may reject the time impact analysis. If the Engineer is in agreement with the time impact analysis, a change order may be issued to grant additional working days, or to adjust interim milestones. Once a change order has been executed, incorporate the time impact analysis into the project schedule. The time impact analysis may also be used to support the settlement of disputes and claims. Compensation related to the time impact analysis may be provided at the completion of the analysis or the completion of the project to determine the true role the impact played on the final completion.

The work performed under this article will not be measured or paid for directly but will be subsidiary to pertinent items.

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## 6. **FAILURE TO COMPLETE WORK ON TIME**

The time established for the completion of the work is an essential element of the Contract. If the Contractor fails to complete the work within the number of working days specified, working days will continue to be charged. Failure to complete the Contract, a separate work order, or callout work within the number of working days specified, including any approved additional working days, will result in liquidated damages for each working day charged over the number of working days specified in the Contract. The dollar amount specified in the Contract will be deducted from any money due or to become due the Contractor for each working day the Contract remains incomplete. This amount will be assessed not as a penalty but as liquidated damages.

**Liquidated Damages.** If work is not substantially complete within the contract time, the Contractor shall pay to the Owner as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages

occasioned by the delay) the amount of \$750 (seven hundred fifty dollars) for each calendar day of delay, until the work is completed. The Contractor and Contractor's sureties shall be liable to the Owner for the amount thereof.

**Excusable Delays.** The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:

- Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
- Any acts of the County;
- Causes not reasonably foreseeable by the parties to this Contract at the time of execution which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, terrorism, war, acts of another Contractor in the performance of some other contract with the County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions;

Provided, however, that the Contractor promptly notifies the City/County within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the City/County shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

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## 7. DEFAULT OF THE CONTRACT

7.1. **Declaration of Default.** The Engineer may declare the Contractor to be in default of the Contract if the Contractor:

- fails to begin the work within the number of days specified,
- fails to prosecute the work to assure completion within the number of days specified,
- is uncooperative, disruptive or threatening,
- fails to perform the work in accordance with the Contract requirements,
- neglects or refuses to remove and replace rejected materials or unacceptable work,
- discontinues the prosecution of the work without the Engineer's approval,
- makes an unauthorized assignment,
- fails to resume work that has been discontinued within a reasonable number of days after notice to do so,
- fails to conduct the work in an acceptable manner, or
- commits fraud or other unfixable conduct as determined by the Owner.

If any of these conditions occur, the Engineer will give notice in writing to the Contractor and the Surety of the intent to declare the Contractor in default. If the Contractor does not proceed as directed within 10 days after the notice, the Owner will provide written notice to the Contractor and the Surety to declare the Contractor to be in default of the Contract. The Owner will also provide written notice of default to the Surety. If the Contractor provides the Owner written notice of voluntary default of the Contract, the Owner may waive the 10 day notice of intent to declare the Contractor in default and immediately provide written notice of default to the Contractor and the Surety. Working day charges will continue until completion of the Contract. The Owner may suspend work in accordance with Section 8.4., "Temporary Suspension of Work or Working Day Charges," to investigate apparent fraud or other unfixable conduct before defaulting the Contractor. The Contractor may be subject to sanctions under the state and/or federal laws and regulations.

The Owner will determine the method used for the completion of the remaining work as follows:

- **Contracts without Performance Bonds.** The Owner will determine the most expeditious and efficient way to complete the work, and recover damages from the Contractor.

- **Contracts with Performance Bonds.** The Owner will, without violating the Contract, demand that the Contractor's Surety complete the remaining work in accordance with the terms of the original Contract. A completing Contractor will be considered a subcontractor of the Surety. The Owner reserves the right to approve or reject proposed subcontractors. Work may resume after the Owner receives and approves Certificates of Insurance as required in Section 3.4.3., "Insurance." Certificates of Insurance may be issued in the name of the completing Contractor. The Surety is responsible for making every effort to expedite the resumption of work and completion of the Contract. The Owner may complete the work using any or all materials at the work locations that it deems suitable and acceptable. Any costs incurred by the Owner for the completion of the work under the Contract will be the responsibility of the Surety. In case the surety should fail to commence compliance within ten (10) days after service of the herein above provided notice of abandonment and notice for completion, then the County may provide for completion of the Work in either of the following elective manners:
  - The County may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as the County may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to the Contractor, and expense so charged shall be deducted and paid by the County out of such monies as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of the Contract Documents. In case such expense is less than the sum which would have been payable under the Contract Documents if the same had been completed by the Contractor, the County will be entitled to retain the difference. In case such expense is greater than the sum which would have been payable under the Contract Documents if the same had been completed by the Contractor, then the Contractor and/or its surety shall pay the amount of such excess to the County, or
  - The County, under sealed bids, after twenty-one (21) days notice published one or more times in a newspaper having general circulation in the area of the location of the Project, may let a contract for the completion of the Work under substantially the same terms and conditions which are provided in the Contract Documents. In case there is any increase in cost to the County under the new contract as compared to what would have been the cost under the Contract Documents, such increase shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete any such contract prove to be less than what would have been the cost to complete under the Contract Documents, the County shall be entitled to retain the difference.

When the Work shall have reached Final Completion, the Contractor and its surety shall be so notified and Certificates of Completion and Acceptance, as provided in Section 5.12.2.2.b. herein above, shall be issued. A complete itemized statement of the contract accounts, certified by the Inspector as being correct, shall then be prepared and delivered to the Contractor and its surety, whereupon the Contractor and/or its surety, or the County as the case may be, shall pay the balance due as reflected by said statement within fifteen (15) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than that which would have been the cost to the County had the Work been completed by the Contractor under the terms of the Contract Documents, or when the Contractor and/or its surety shall pay the balance shown to be due by them to the County, then all machinery, equipment, tools, materials or supplies left on the site of the Project shall be turned over to the Contractor and/or its surety.

Should the cost to complete the Work exceed the amount the County would have been obligated to pay the Contractor had the Work been completed by the Contractor under the terms of the Contract Documents, and should the Contractor and/or its surety fail to pay the amount due the County within the time designated hereinabove, and should there remain any machinery, equipment, tools, materials or supplies on the site of the Project, notice thereof, together with an

itemized list of such equipment and materials, shall be mailed to the Contractor and its surety at the respective addresses designated in the Contract Documents. After properly tendering such notice, such property shall be held at the risk of the Contractor and its surety subject only to the duty of the County to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, the County may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and its surety. Such sale may be made at either public or private sale, with or without notice, as the County may elect. The County shall release, to their proper owners, any machinery, equipment, tools, materials, or supplies, which remain on the Project and which belong to persons other than the Contractor or its surety. The books on all operations provided herein shall be opened to the Contractor and its surety.

From the time of notification of the default until work resumes (either by the Surety or the Owner), the Owner will maintain traffic control devices and will do any other work it deems necessary, unless otherwise agreed upon by the Owner and the Surety. All costs associated with this work will be deducted from money due to the Surety.

The Owner will hold all money earned but not disbursed by the date of default. Upon resumption of the work after the default, all payments will be made to the Surety. All costs and charges incurred by the Owner as a result of the default, including the cost of completing the work under the Contract, costs of maintaining traffic control devices, costs for other work deemed necessary, and any applicable liquidated damages or disincentives will be deducted from money due the Contractor for completed work. If these costs exceed the sum that would have been payable under the Contract, the Surety will be liable and pay the Owner the balance of these costs in excess of the Contract price. In case the costs incurred by the Owner are less than the amount that would have been payable under the Contract if the work had been completed by the Contractor, the Owner will be entitled to retain the difference.

Comply with Article 8.2., "Subcontracting," and abide by the DBE/HUB/SBE commitments previously approved by the Owner .

No markups as defined in Article 9.7., "Payment for Extra Work and Force Account Method," will be allowed for the Surety.

7.2. **Wrongful Default.** Submit a written request to the Owner within 14 calendar days of receipt of the notice of default for consideration of wrongful default.

The Owner will determine if the Contractor has been wrongfully defaulted, and will proceed with the following:

- If the Owner determines the default is proper, the default will remain. If the Contractor is in disagreement, the Contractor may file a claim in accordance with Article 4.7., "Dispute or Claims Procedure."
- If the Owner determines it was a wrongful default, the Owner will terminate the Contract for convenience, in accordance with Article 8.8., "Termination of the Contract."

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## 8. TERMINATION OF THE CONTRACT

The Owner may terminate the Contract in whole or in part whenever:

- the Contractor is prevented from proceeding with the work as a direct result of an executive order of the President of the United States or the Governor of the State;
- the Contractor is prevented from proceeding with the work due to a national emergency, or when the work to be performed under the Contract is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor as the result of an order or a proclamation of the President of the United States;
- the Contractor is prevented from proceeding with the work due to an order of any federal authority;

- the Contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining court order where the issuance of the restraining order is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
- the Owner determines that termination of the Contract is in the best interest of the Owner or the public. This includes, but is not limited to, the discovery of significant hazardous material problems, right of way acquisition problems, or utility conflicts that would cause substantial delays or expense to the Contract.

8.1. **Procedures and Submittals.** The Engineer will provide written notice to the Contractor of termination specifying the extent of the termination and the effective date. Upon notice, immediately proceed in accordance with the following:

- stop work as specified in the notice;
- place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete a critical portion of the Contract, as approved;
- terminate all subcontracts to the extent they relate to the work terminated;
- complete performance of the work not terminated;
- settle all outstanding liabilities and termination settlement proposals resulting from the termination for public convenience of the Contract;
- create an inventory report, including all acceptable materials and products obtained for the Contract that have not been incorporated in the work that was terminated (include in the inventory report a description, quantity, location, source, cost, and payment status for each of the acceptable materials and products); and
- take any action necessary, or that the Engineer may direct, for the protection and preservation of the materials and products related to the Contract that are in the possession of the Contractor and in which the Owner has or may acquire an interest.

8.2. **Settlement Provisions.** Within 60 calendar days of the date of the notice of termination, submit a final termination settlement proposal, unless otherwise approved. The Engineer will prepare a change order that reduces the affected quantities of work and adds acceptable costs for termination. No claim for loss of anticipated profits will be considered. The Owner will pay reasonable and verifiable termination costs including:

- all work completed at the unit bid price and partial payment for incomplete work;
- the percentage of Item 500, "Mobilization," equivalent to the percentage of work complete or actual cost that can be supported by cost records, whichever is greater;
- expenses necessary for the preparation of termination settlement proposals and support data;
- the termination and settlement of subcontracts;
- storage, transportation, restocking, and other costs incurred necessary for the preservation, protection, or disposition of the termination inventory; and
- other expenses acceptable to the Owner.

8.3. **Termination for Convenience.** In connection with the Work outlined in the Contract Documents, it is agreed and fully understood by Contractor, that the County may cancel or indefinitely suspend further work hereunder or terminate the Contract for the convenience of the County, upon fifteen (15) days written notice to Contractor. In the event the County terminates the Contract for convenience, it is hereby understood and acknowledged by the Contractor that immediately upon receipt of the County's notice of termination, all work and labor being performed under the Contract Documents shall cease. Contractor shall invoice the County for all work satisfactorily completed and shall be compensated in accordance with the terms of the Contractor Documents for work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. However, no cost incurred after the effective date of the notice of termination shall be



treated as reimbursable costs unless it relates to carrying out the un-terminated portion or taking closeout measures.

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9.

## **WORKERS AND EQUIPMENT**

Furnish suitable machinery, equipment, and construction forces for the proper prosecution of the work. Provide adequate lighting to address quality requirements and inspection of nighttime work. At the written request of the Engineer, immediately remove from the work locations any employee or representative of the Contractor or a subcontractor who, in the opinion of the Engineer, does not perform work in a proper and skillful manner or who is disrespectful, intemperate, disorderly, uncooperative, or otherwise objectionable. Do not reinstate these individuals without the written consent of the Engineer. The Engineer may suspend the work without suspending working day charges until the Contractor complies with these requests. No illegal alien may be employed by any Contractor for work on this Project, and a penalty of \$500.00 per day will be assessed for each day and for each illegal alien who works for the Contractor at this Project.

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## Item 9L

### Measurement and Payment

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#### 1. MEASUREMENT OF QUANTITIES

The Engineer will measure all completed work using United States standard measures, unless otherwise specified.

- 1.1. **Linear Measurement.** Unless otherwise specified, all longitudinal measurements for surface areas will be made along the actual surface of the roadway and not horizontally. No deduction will be made for structures in the roadway with an area of 9 sq. ft. or less. For all transverse measurements for areas of base courses, surface courses, and pavements, the dimensions to be used in calculating the pay areas will be the neat dimensions and will not exceed those shown on the plans, unless otherwise directed.

- 1.2. **Volume Measurement.** Transport materials measured for payment by volume in approved hauling vehicles. Display a unique identification mark on each vehicle. Furnish information necessary to calculate the volume capacity of each vehicle. The Engineer may require verification of volume through weight measurement. Use body shapes that allow the capacity to be verified. Load and level the load to the equipment's approved capacity. Loads not hauled in approved vehicles may be rejected.

- 1.3. **Weight Measurement.** Transport materials measured for payment by weight or truck measure in approved hauling vehicles. Furnish certified measurements, tare weights, and legal gross weight calculations for all haul units. Affix a permanent, legible number on the truck and on the trailer to correspond with the certified information. Furnish certified weights of loaded haul units transporting material if requested.

The material will be measured at the point of delivery. The cost of supplying these volume and weight capacities is subsidiary to the pertinent item. For measurement by the ton, in the field, provide measurements in accordance with Item 520, "Weighing and Measuring Equipment," except for items where ton measurements are measured by standard tables.

The Engineer may reject loads and suspend hauling operations for overloading.

- 1.3.1. **Hauling on Routes Accessible to the Traveling Public.** For payment purposes on haul routes accessible to the traveling public, the net weight of the load will be calculated as follows:
- If the gross vehicle weight is less than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
  - If the gross vehicle weight is more than the maximum allowed by state law, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.
- 1.3.2. **Hauling on Routes Not Accessible to the Traveling Public.** For payment purposes on haul routes that are not accessible to the traveling public where advance permission is obtained in writing from the Engineer:
- If the gross vehicle weight is less than the maximum allowed, including applicable yearly weight tolerance permit, the net weight of the load will be determined by deducting the tare weight of the vehicle from the gross weight.
  - If the gross vehicle weight is more than the maximum allowed, the net weight of the load will be determined by deducting the tare weight of the vehicle from the maximum gross weight allowed.

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## 2. PLANS QUANTITY MEASUREMENT

Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised by the governing specifications or this article.

If the quantity measured as outlined under "Measurement" varies by more than 5% (or as stipulated under "Measurement" for specific Items) from the total estimated quantity for an individual item originally shown in the Contract, an adjustment may be made to the quantity of authorized work done for payment purposes.

When quantities are revised by a change in design approved by the Owner, by change order, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 5% variance will apply to the new plans quantity.

If the total Contract quantity multiplied by the unit bid price for an individual item is less than \$250 and the item is not originally a plans quantity item, then the item may be paid as a plans quantity item if the Engineer and Contractor agree in writing to fix the final quantity as a plans quantity.

For Contracts with callout work and work orders, plans quantity measurement requirements are not applicable.

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## 3. ADJUSTMENT OF QUANTITIES

The party to the Contract requesting the adjustment will provide field measurements and calculations showing the revised quantity. When approved, this revised quantity will constitute the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that item, except as provided for in Article 4.4., "Changes in the Work."

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## 4. SCOPE OF PAYMENT

Payment of the Contract unit price is full compensation for all materials, equipment, labor, tools, and supplies necessary to complete the item of work under the Contract. Until final acceptance in accordance with Article 5.12., "Final Acceptance," assume liability for completing the work according to the Contract documents and any loss or damage arising from the performance of the work or from the action of the elements, infringement of patent, trademark, or copyright, except as provided elsewhere in the Contract.

The Owner will only pay for material incorporated into the work in accordance with the Contract. Payment of progress estimates will in no way affect the Contractor's obligation under the Contract to repair or replace any defective parts in the construction or to replace any defective materials used in the construction and to be responsible for all damages due to defects if the defects and damages are discovered on or before final inspection and acceptance of the work.

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## 5. PROGRESS PAYMENTS

On or before the first Wednesday of each month, the Contractor shall submit to the Inspector a statement showing the total value of the Work performed up to and including the last day of the preceding month. The statement shall also include the value of all sound materials delivered on the job site and to be included in the Work and all partially completed work whether bid as a lump sum or a unit item which, in the opinion of the Inspector, is acceptable. The Inspector shall either examine and approve by signature or modify and approve such modified statement.

The Inspector shall review the Contractor's applications for payment and supporting data, determine the amount owed to the Contractor and recommend, in writing to the GEC for review, payment to the Contractor in such amounts; such recommendation of payment to the Contractor constitutes a representation to the County of the Inspector's professional judgment that the Work has progressed to the point indicated to the

best of its knowledge, information and belief, but such recommendation of an application for payment to the Contractor shall not be deemed as a representation by the Inspector that the Inspector has made any examination to determine how or for what purpose the Contractor has used the monies paid on account of the Contract Price.

The County shall then pay the Contractor, within 30 days of the statement submittal, the total amount of the approved statement, and further less all previous payments and all further sums that may be retained by the County under the terms of the Contract Documents and/or under state or federal law. It is understood, however, that in case the whole work be near completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, then the County may, upon written recommendation of the Inspector, pay a reasonable and equitable portion of the retained percentage to the Contractor, if any; or the Contractor, at the County's option, may be relieved of the obligation to fully complete the Work and, thereupon, the Contractor shall receive payment of the balance due Contractor under the contract subject to the conditions stated under Article 9.8.

As a minimum, invoices shall be on the form provided by the County and include: (1) Name, address, and telephone number of Contractor and similar information in the event the payment is to be made to a different address, (2) County contract number, (3) Identification of items or service as outlined in the Contract Documents, (4) Quantity or quantities, applicable unit prices, total prices, and total amount and (5) Any additional payment information which may be called for by the Contract Documents.

Payment inquiries should be directed to the GEC.

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## **6. PAYMENT FOR MATERIAL ON HAND (MOH)**

If payment for MOH is desired, request compensation for the invoice cost of acceptable nonperishable materials that have not been used in the work before the request, and that have been delivered to the work location or are in acceptable storage places. Nonperishable materials are those that do not have a shelf life or whose characteristics do not materially change when exposed to the elements. Include only materials that have been sampled, tested, approved, or certified, and are ready for incorporation into the work. Only materials which are completely constructed or fabricated on the Contractor's order for a specific Contract and are so marked and on which an approved test report has been issued are eligible. Payment for MOH may include the following types of items: concrete traffic barrier, precast concrete box culverts, concrete piling, reinforced concrete pipe, and illumination poles. Any repairs required after fabricated materials have been approved for storage will require approval of the Engineer before being made and will be made at the Contractor's expense. Include only those materials that have an invoice cost of at least \$1,000 in the request for MOH payment.

If the request is acceptable, the Engineer will include payment for MOH in a progress payment. Payment for MOH does not constitute acceptance of the materials. Payment will not exceed the actual cost of the material as established by invoice, or the total cost for the associated item less reasonable placement costs, whichever is less. Materials for which the Contractor does not have a paid invoice within 60 days will not be eligible for payment and will be removed from the estimate. Payment may be limited to a portion of the invoice cost or unit price if shown elsewhere in the Contract. Payment for precast products fabricated or constructed by the Contractor for which invoices or freight bills are not available may be made based on statements of actual cost.

Submit the request on forms provided by the Owner. These forms may be electronically reproduced, provided they are in the same format and contain all the required information and certifications. Continue to submit monthly MOH forms until the total value of MOH is \$0.

By submitting a request for MOH payment, the Contractor expressly authorizes the Owner to audit MOH records, and to perform process reviews of the record-keeping system. If the Owner determines noncompliance with any of the requirements of this provision, the Owner may exclude payment for any or all MOH for the duration of the Contract.

Maintain all records relating to MOH payment until final acceptance. Provide these records to the Engineer upon request.

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## 7. PAYMENT FOR EXTRA WORK AND FORCE ACCOUNT METHOD

Payment for extra work directed, performed, and accepted will be made in accordance with Article 4.4., "Changes in the Work." Payment for extra work may be established by agreed unit prices or by Force Account Method.

Agreed unit prices are unit prices that include markups and are comparable to recent bid prices for the same character of work. These unit prices may be established without additional breakdown justification.

When using Force Account Method, determine an estimated cost for the proposed work and establish labor and equipment rates and material costs. Maintain daily records of extra work and provide copies of these records daily, signed by the Contractor's representative, for verification by the Engineer. Request payment for the extra work no later than the 10th day of the month following the month in which the work was performed. Include copies of all applicable invoices. If the extra work to be performed has an estimated cost of less than \$10,000, submit for approval and payment an invoice of actual cost for materials, equipment, labor, tools, and incidentals necessary to complete the extra work.

7.1. **Markups.** Payment for extra work may include markups as compensation for the use of small tools, overhead expense, and profit.

7.1.1. **Labor.** Compensation will be made for payroll rates for each hour that the labor, foremen, or other approved workers are actually engaged in the work. In no case will the rate of wages be less than the minimum shown in the Contract for a particular category. An additional 25% of this sum will be paid as compensation for overhead, superintendence, profit, and small tools.

7.1.2. **Insurance and Taxes.** An additional 55% of the labor cost, excluding the 25% compensation provided in Section 9.7.1.1., "Labor," will be paid as compensation for labor insurance and labor taxes including the cost of premiums on non-project-specific liability (excluding vehicular) insurance, workers compensation insurance, Social Security, unemployment insurance taxes, and fringe benefits.

7.1.3. **Materials.** Compensation will be made for materials associated with the work based on actual delivered invoice costs, less any discount. An additional 25% of this sum will be paid as compensation for overhead and profit.

7.1.4. **Equipment.** Payment will be made for the established equipment hourly rates for each hour that the equipment is involved in the work. An additional 15% of this sum will be paid as compensation for overhead and profit not included in the rates.

Transportation cost for mobilizing equipment will be included if the equipment is mobilized from an off-site location.

7.1.4.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment, use the FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor to establish hourly rates. Use the rates in effect for each section of the *Rental Rate Blue Book* at the time of use.

If a rate has not been established for a particular piece of equipment in the *Rental Rate Blue Book*, the Engineer will allow a reasonable hourly rate. This price will include operating costs.

Payment for equipment will be made for the actual hours used in the work. The Owner reserves the right to withhold payment for low production or lack of progress. Payment will not be made for time lost for equipment breakdowns, time spent to repair equipment, or time after equipment is no longer needed.

If equipment is used intermittently while dedicated solely to the work, payment will be made for the duration the equipment is assigned to the work but no more than 8 hours will be paid during a 24-hour day, nor more than 40 hours per week, nor more than 176 hours per month, except when time is computed using a six-day or seven-day workweek. When using a six-day workweek, no more than 8 hours will be paid during a 24-hour day, nor more than 48 hours per week, nor more than 211 hours per month. When using a seven-day workweek, no more than 8 hours will be paid during a 24-hour day, nor more than 56 hours per week, nor more than 246 hours per month.

- 7.1.4.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor, payment will be made at the invoice daily rental rate for each day the equipment is needed for the work. The Owner reserves the right to limit the daily rate to comparable *Rental Rate Blue Book* rates. When the invoice specifies that the rental rate does not include fuel, lubricants, repairs, and servicing, the *Rental Rate Blue Book* hourly operating cost for each hour the equipment is operated will be added.

When the invoice specifies equipment operators as a component of the equipment rental, payment will be made at the invoice rate for each operator for each day the equipment is needed for the work.

- 7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9.7.1.4., "Equipment," except that:

- 7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned machinery, trucks, power tools, or other equipment:
- Standby will be paid at 50% (to remove operating cost) of the FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor.
  - Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

- 7.1.4.3.2. **Equipment Not Owned by the Contractor.** For equipment rented from a third party not owned by the Contractor:
- Standby will be paid at the invoice daily rental rate, excluding operating cost, which includes fuel, lubricants, repairs, and servicing. The Owner reserves the right to limit the daily standby rate to comparable FHWA rental rates found in the *Rental Rate Blue Book* multiplied by the regional adjustment factor and the rate adjustment factor.
  - Standby will be paid for equipment operators when included on the invoice and equipment operators are actually on standby.
  - Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

- 7.1.5. **Subcontracting.** An additional 5% of the actual invoice cost will be paid to the Contractor as compensation for administrative cost, superintendence, and profit.

- 7.1.6. **Law Enforcement.** An additional 5% of the actual invoice cost will be paid as compensation for administrative costs, superintendence, and profit.

- 7.1.7. **Railroad Flaggers.** An additional 5% of the actual invoice cost will be paid as compensation for administrative cost, superintendence, and profit.

- 7.1.8. **Bond Cost.** An additional 1% of the total compensation provided in Article 9.7., "Payment for Extra Work and Force Account Method," will be paid for the increase in bond.

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## 8. RETAINAGE

The Owner will withhold 5% retainage on the Contractor. The Contractor may withhold retainage on subcontractors in accordance with state and federal regulations.

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**PAYMENT PROVISIONS FOR SUBCONTRACTORS**

For the purposes of this article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the Engineer.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this article into all subcontract or material purchase agreements.

Pay subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Owner and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Owner; and
- the work done by the subcontractor has been inspected, approved, and paid by the Owner.

Provide a certification of prompt payment in accordance with the Owner's prompt payment procedure to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.17., "Contractor's Responsibility for Work."

The Owner may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations.

THE CONTRACTOR AGREES THAT IT WILL INDEMNIFY, DEFEND AND SAVE HARMLESS THE COUNTY, THE INSPECTOR, THE GEC AND THE ENGINEER OF RECORD, AS WELL AS ANY OF THEIR AGENTS, REPRESENTATIVES, OFFICERS OR EMPLOYEES FROM ALL CLAIMS GROWING OUT THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKERS, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY, MACHINERY PARTS, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THE WORK SUBJECT OF THE CONTRACT DOCUMENTS.

When so desired by the County, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails to furnish such evidence to County's complete satisfaction, then the County may either pay directly any unpaid bills of which the County has written notice of, or may withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims. When satisfactory evidence is furnished that all liabilities have been fully discharged, payments to the Contractor shall be resumed in full in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligation upon the County by either the Contractor or its surety.

**FINAL PAYMENT**

When the Contract has been completed, all work has been approved, final acceptance has been made in accordance with Article 5.12., "Final Acceptance," and Contractor submittals have been received, the Engineer will prepare a final estimate for payment showing the total quantity of work completed and the money owed the Contractor. The final payment will reflect the entire sum due, less any sums previously paid.

At the County's sole discretion, this payment may include payment for work remaining to be performed in association with the removal of temporary erosion controls or the establishment of permanent stabilization measures. On or after the 30th day, and before the 35th day after the date of the Certificate of Acceptance, the balance due the Contractor under the terms of the Contract Documents shall be paid. Neither the Certificate of Acceptance nor the Final Payment, nor any provision in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required.

The County may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect itself from loss on account of:

- Defective work not remedied or other obligations hereunder not completed.
- Claims filed or reasonable evidence indicating the probable or potential filing of claims.
- Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- Damage to the County or another contractor's work, material or equipment.
- Reasonable doubt that the Work can be completed for the unpaid balance of the contract amount or Contract Price.
- Reasonable indication that the Work will not be completed within the contract time.
- Other causes affecting the performance of the Work subject of the Contract Documents.

When the above grounds are removed or the Contractor provides a surety bond satisfactory to the County, which will protect the County in the amount withheld, payment shall be made for amounts withheld because of them.

Should the County fail to make payment to the Contractor of the sum named in any partial or final statement, when such payment is due, then the County shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. County's payment of the amount due plus said interest shall fully liquidate any injury to the Contractor growing out of such delay in payment. It is expressly agreed that delay by the County in making payment to the Contractor of the sum named in any partial or final statement shall not constitute, on the part of the County, a breach under the Contract Documents, nor shall it serve as an abandonment by the County. Furthermore, any delay by the County in making payment to the Contractor of the sum named in any partial or final statement shall not, to any extent or for any time, relieve the Contractor of its obligations to fully and completely perform pursuant to the terms of the Contract Documents.



# Special Specification 3076

## Dense-Graded Hot-Mix Asphalt



### 1. DESCRIPTION

Construct a hot-mix asphalt (HMA) pavement layer composed of a compacted, dense-graded mixture of aggregate and asphalt binder mixed hot in a mixing plant. Payment adjustments will apply to HMA placed under this specification unless the HMA is deemed exempt in accordance with Section 3076.4.9.4., "Exempt Production."

### 2. MATERIALS

Furnish uncontaminated materials of uniform quality that meet the requirements of the plans and specifications.

Notify the Engineer of all material sources and before changing any material source or formulation. The Engineer will verify that the specification requirements are met when the Contractor makes a source or formulation change, and may require a new laboratory mixture design, trial batch, or both. The Engineer may sample and test project materials at any time during the project to verify specification compliance in accordance with Item 6, "Control of Materials."

- 2.1. **Aggregate.** Furnish aggregates from sources that conform to the requirements shown in Table 1 and as specified in this Section. Aggregate requirements in this Section, including those shown in Table 1, may be modified or eliminated when shown on the plans. Additional aggregate requirements may be specified when shown on the plans. Provide aggregate stockpiles that meet the definitions in this Section for coarse, intermediate, or fine aggregate. Aggregate from reclaimed asphalt pavement (RAP) is not required to meet Table 1 requirements unless otherwise shown on the plans. Supply aggregates that meet the definitions in [Tex-100-E](#) for crushed gravel or crushed stone. The Engineer will designate the plant or the quarry as the sampling location. Provide samples from materials produced for the project. The Engineer will establish the Surface Aggregate Classification (SAC) and perform Los Angeles abrasion, magnesium sulfate soundness, and Micro-Deval tests. Perform all other aggregate quality tests listed in Table 1. Document all test results on the mixture design report. The Engineer may perform tests on independent or split samples to verify Contractor test results. Stockpile aggregates for each source and type separately. Determine aggregate gradations for mixture design and production testing based on the washed sieve analysis given in [Tex-200-F](#), Part II.

- 2.1.1. **Coarse Aggregate.** Coarse aggregate stockpiles must have no more than 20% material passing the No. 8 sieve. Aggregates from sources listed in the Department's *Bituminous Rated Source Quality Catalog* (BRSQC) are preapproved for use. Use only the rated values for hot-mix listed in the BRSQC. Rated values for surface treatment (ST) do not apply to coarse aggregate sources used in hot-mix asphalt.

For sources not listed on the Department's BRSQC:

- build an individual stockpile for each material;
- request the Department test the stockpile for specification compliance; and
- once approved, do not add material to the stockpile unless otherwise approved.

Provide aggregate from non-listed sources only when tested by the Engineer and approved before use. Allow 30 calendar days for the Engineer to sample, test, and report results for non-listed sources.

Provide coarse aggregate with at least the minimum SAC shown on the plans. SAC requirements only apply to aggregates used on the surface of travel lanes. SAC requirements apply to aggregates used on surfaces other than travel lanes when shown on the plans. The SAC for sources on the Department's *Aggregate Quality Monitoring Program* (AQMP) ([Tex-499-A](#)) is listed in the BRSQC.

- 2.1.1.1. **Blending Class A and Class B Aggregates.** Class B aggregate meeting all other requirements in Table 1 may be blended with a Class A aggregate to meet requirements for Class A materials, unless otherwise shown on the plans. Ensure that at least 50% by weight, or volume if required, of the material retained on the No. 4 sieve comes from the Class A aggregate source when blending Class A and B aggregates to meet a Class A requirement unless otherwise shown on the plans. Blend by volume if the bulk specific gravities of the Class A and B aggregates differ by more than 0.300. Coarse aggregate from RAP and Recycled Asphalt Shingles (RAS) will be considered as Class B aggregate for blending purposes.

The Engineer may perform tests at any time during production, when the Contractor blends Class A and B aggregates to meet a Class A requirement, to ensure that at least 50% by weight, or volume if required, of the material retained on the No. 4 sieve comes from the Class A aggregate source. The Engineer will use the Department's mix design template, when electing to verify conformance, to calculate the percent of Class A aggregate retained on the No. 4 sieve by inputting the bin percentages shown from readouts in the control room at the time of production and stockpile gradations measured at the time of production. The Engineer may determine the gradations based on either washed or dry sieve analysis from samples obtained from individual aggregate cold feed bins or aggregate stockpiles. The Engineer may perform spot checks using the gradations supplied by the Contractor on the mixture design report as an input for the template; however, a failing spot check will require confirmation with a stockpile gradation determined by the Engineer.

- 2.1.1.2. **Micro-Deval Abrasion.** The Engineer will perform a minimum of one Micro-Deval abrasion test in accordance with [Tex-461-A](#) for each coarse aggregate source used in the mixture design that has a Rated Source Soundness Magnesium (RSSM) loss value greater than 15 as listed in the BRSQC. The Engineer will perform testing before the start of production and may perform additional testing at any time during production. The Engineer may obtain the coarse aggregate samples from each coarse aggregate source or may require the Contractor to obtain the samples. The Engineer may waive all Micro-Deval testing based on a satisfactory test history of the same aggregate source.

The Engineer will estimate the magnesium sulfate soundness loss for each coarse aggregate source, when tested, using the following formula:

$$Mg_{est.} = (RSSM)(MD_{act.}/RSMD)$$

where:

$Mg_{est.}$  = magnesium sulfate soundness loss

$MD_{act.}$  = actual Micro-Deval percent loss

$RSMD$  = Rated Source Micro-Deval

When the estimated magnesium sulfate soundness loss is greater than the maximum magnesium sulfate soundness loss specified, the coarse aggregate source will not be allowed for use unless otherwise approved. The Engineer will consult the Soils and Aggregates Section of the Materials and Tests Division, and additional testing may be required before granting approval.

- 2.1.2. **Intermediate Aggregate.** Aggregates not meeting the definition of coarse or fine aggregate will be defined as intermediate aggregate. Supply intermediate aggregates, when used that are free from organic impurities. The Engineer may test the intermediate aggregate in accordance with [Tex-408-A](#) to verify the material is free from organic impurities. Supply intermediate aggregate from coarse aggregate sources, when used that meet the requirements shown in Table 1 unless otherwise approved.

Test the stockpile if 10% or more of the stockpile is retained on the No. 4 sieve, and verify that it meets the requirements in Table 1 for crushed face count ([Tex-460-A](#)) and flat and elongated particles ([Tex-280-F](#)).

2.1.3.

**Fine Aggregate.** Fine aggregates consist of manufactured sands, screenings, and field sands. Fine aggregate stockpiles must meet the gradation requirements in Table 2. Supply fine aggregates that are free from organic impurities. The Engineer may test the fine aggregate in accordance with [Tex-408-A](#) to verify the material is free from organic impurities. Unless otherwise shown on the plans, up to 10% of the total aggregate may be field sand or other uncrushed fine aggregate. Use fine aggregate, with the exception of field sand, from coarse aggregate sources that meet the requirements shown in Table 1 unless otherwise approved.

Test the stockpile if 10% or more of the stockpile is retained on the No. 4 sieve and verify that it meets the requirements in Table 1 for crushed face count ([Tex-460-A](#)) and flat and elongated particles ([Tex-280-F](#)).

**Table 1**  
**Aggregate Quality Requirements**

Property	Test Method	Requirement
<b>Coarse Aggregate</b>		
SAC	<a href="#">Tex-499-A</a> (AQMP)	As shown on the plans
Deleterious material, %, Max	<a href="#">Tex-217-F</a> , Part I	1.5
Decantation, %, Max	<a href="#">Tex-217-F</a> , Part II	1.5
Micro-Deval abrasion, %	<a href="#">Tex-461-A</a>	Note 1
Los Angeles abrasion, %, Max	<a href="#">Tex-410-A</a>	40
Magnesium sulfate soundness, 5 cycles, %, Max	<a href="#">Tex-411-A</a>	30
Crushed face count, <sup>2</sup> %, Min	<a href="#">Tex-460-A</a> , Part I	85
Flat and elongated particles @ 5:1, %, Max	<a href="#">Tex-280-F</a>	10
<b>Fine Aggregate</b>		
Linear shrinkage, %, Max	<a href="#">Tex-107-E</a>	3
Sand equivalent, %, Min	<a href="#">Tex-203-F</a>	45

1. Used to estimate the magnesium sulfate soundness loss in accordance with Section 3076.2.1.1.2., "Micro-Deval Abrasion."
2. Only applies to crushed gravel.

**Table 2**  
**Gradation Requirements for Fine Aggregate**

Sieve Size	% Passing by Weight or Volume
3/8"	100
#8	70–100
#200	0–30

2.2.

**Mineral Filler.** Mineral filler consists of finely divided mineral matter such as agricultural lime, crusher fines, hydrated lime, or fly ash. Mineral filler is allowed unless otherwise shown on the plans. Use no more than 2% hydrated lime or fly ash unless otherwise shown on the plans. Use no more than 1% hydrated lime if a substitute binder is used unless otherwise shown on the plans or allowed. Test all mineral fillers except hydrated lime and fly ash in accordance with [Tex-107-E](#) to ensure specification compliance. The plans may require or disallow specific mineral fillers. Provide mineral filler, when used, that:

- is sufficiently dry, free-flowing, and free from clumps and foreign matter as determined by the Engineer;
- does not exceed 3% linear shrinkage when tested in accordance with [Tex-107-E](#); and
- meets the gradation requirements in Table 3, unless otherwise shown on the plans.

**Table 3**  
**Gradation Requirements for Mineral Filler**

Sieve Size	% Passing by Weight or Volume
#8	100
#200	55–100

2.3.

**Baghouse Fines.** Fines collected by the baghouse or other dust-collecting equipment may be reintroduced into the mixing drum.

2.4.

**Asphalt Binder.** Furnish the type and grade of performance-graded (PG) asphalt specified on the plans.

- 2.5. **Tack Coat.** Furnish CSS-1H, SS-1H, or a PG binder with a minimum high-temperature grade of PG 58 for tack coat binder in accordance with Item 300, "Asphalts, Oils, and Emulsions." Specialized tack coat materials listed on the Department's MPL are allowed or required when shown on the plans. Do not dilute emulsified asphalts at the terminal, in the field, or at any other location before use.
- 2.6. **Additives.** Use the type and rate of additive specified when shown on the plans. Additives that facilitate mixing, compaction, or improve the quality of the mixture are allowed when approved. Provide the Engineer with documentation such as the bill of lading showing the quantity of additives used in the project unless otherwise directed.
- 2.6.1. **Lime and Liquid Antistripping Agent.** When lime or a liquid antistripping agent is used, add in accordance with Item 301, "Asphalt Antistripping Agents." Do not add lime directly into the mixing drum of any plant where lime is removed through the exhaust stream unless the plant has a baghouse or dust collection system that reintroduces the lime into the drum.
- 2.6.2. **Warm Mix Asphalt (WMA).** Warm Mix Asphalt (WMA) is defined as HMA that is produced within a target temperature discharge range of 215°F and 275°F using approved WMA additives or processes from the Department's MPL.
- WMA is allowed for use on all projects and is required when shown on the plans. When WMA is required, the maximum placement or target discharge temperature for WMA will be set at a value below 275°F.
- Department-approved WMA additives or processes may be used to facilitate mixing and compaction of HMA produced at target discharge temperatures above 275°F; however, such mixtures will not be defined as WMA.
- 2.6.3. **Compaction Aid.** Compaction Aid is defined as a chemical warm mix additive that is used to produce an asphalt mixture at a discharge temperature greater than 275°F.
- Compaction Aid is allowed for use on all projects and is required when shown on the plans.
- 2.7. **Recycled Materials.** Use of RAP and RAS is permitted unless otherwise shown on the plans. Use of RAS is restricted to only intermediate and base mixes unless otherwise shown on the plans. Do not exceed the maximum allowable percentages of RAP and RAS shown in Table 4. The allowable percentages shown in Table 4 may be decreased or increased when shown on the plans. Determine the asphalt binder content and gradation of the RAP and RAS stockpiles for mixture design purposes in accordance with [Tex-236-F](#), Part I. The Engineer may verify the asphalt binder content of the stockpiles at any time during production. Perform other tests on RAP and RAS when shown on the plans. Asphalt binder from RAP and RAS is designated as recycled asphalt binder. Calculate and ensure that the ratio of the recycled asphalt binder to total binder does not exceed the percentages shown in Table 5 during mixture design and HMA production when RAP or RAS is used. Use a separate cold feed bin for each stockpile of RAP and RAS during HMA production.
- Surface, intermediate, and base mixes referenced in Tables 4 and 5 are defined as follows:
- **Surface.** The final HMA lift placed at the top of the pavement structure or placed directly below mixtures produced in accordance with Items 316, 342, 347, or 348;
  - **Intermediate.** Mixtures placed below an HMA surface mix and less than or equal to 8.0 in. from the riding surface; and
  - **Base.** Mixtures placed greater than 8.0 in. from the riding surface. Unless otherwise shown on the plans, mixtures used for bond breaker are defined as base mixtures.
- 2.7.1. **RAP.** RAP is salvaged, milled, pulverized, broken, or crushed asphalt pavement. Fractionated RAP is defined as a stockpile that contains RAP material with a minimum of 95.0% passing the 3/8-in. or 1/2-in. sieve, before burning in the ignition oven, unless otherwise approved. The Engineer may allow the Contractor to use an alternate to the 3/8-in. or 1/2-in. screen to fractionate the RAP.

Use of Contractor-owned RAP including HMA plant waste is permitted unless otherwise shown on the plans. Department-owned RAP stockpiles are available for the Contractor's use when the stockpile locations are shown on the plans. If Department-owned RAP is available for the Contractor's use, the Contractor may use Contractor-owned fractionated RAP and replace it with an equal quantity of Department-owned RAP. Department-owned RAP generated through required work on the Contract is available for the Contractor's use when shown on the plans. Perform any necessary tests to ensure Contractor- or Department-owned RAP is appropriate for use. The Department will not perform any tests or assume any liability for the quality of the Department-owned RAP unless otherwise shown on the plans. The Contractor will retain ownership of RAP generated on the project when shown on the plans.

Do not use Department- or Contractor-owned RAP contaminated with dirt or other objectionable materials. Do not use Department- or Contractor-owned RAP if the decantation value exceeds 5% and the plasticity index is greater than 8. Test the stockpiled RAP for decantation in accordance with [Tex-406-A](#), Part I. Determine the plasticity index in accordance with [Tex-106-E](#) if the decantation value exceeds 5%. The decantation and plasticity index requirements do not apply to RAP samples with asphalt removed by extraction or ignition.

Do not intermingle Contractor-owned RAP stockpiles with Department-owned RAP stockpiles. Remove unused Contractor-owned RAP material from the project site upon completion of the project. Return unused Department-owned RAP to the designated stockpile location.

**Table 4**  
**Maximum Allowable Amounts of RAP<sup>1</sup>**

Maximum Allowable Fractionated RAP (%)		
Surface	Intermediate	Base
15.0	25.0	30.0

1. Must also meet the recycled binder to total binder ratio shown in Table 5.

#### 2.7.2.

**RAS.** Use of post-manufactured RAS or post-consumer RAS (tear-offs) is not permitted in surface mixtures unless otherwise shown on the plans. RAS may be used in intermediate and base mixtures unless otherwise shown on the plans. Up to 3% RAS may be used separately or as a replacement for fractionated RAP in accordance with Table 4 and Table 5. RAS is defined as processed asphalt shingle material from manufacturing of asphalt roofing shingles or from re-roofing residential structures. Post-manufactured RAS is processed manufacturer's shingle scrap by-product. Post-consumer RAS is processed shingle scrap removed from residential structures. Comply with all regulatory requirements stipulated for RAS by the TCEQ. RAS may be used separately or in conjunction with RAP.

Process the RAS by ambient grinding or granulating such that 100% of the particles pass the 3/8 in. sieve when tested in accordance with [Tex-200-F](#), Part I. Perform a sieve analysis on processed RAS material before extraction (or ignition) of the asphalt binder.

Add sand meeting the requirements of Table 1 and Table 2 or fine RAP to RAS stockpiles if needed to keep the processed material workable. Any stockpile that contains RAS will be considered a RAS stockpile and be limited to no more than 3.0% of the HMA mixture in accordance with Table 4.

Certify compliance of the RAS with [DMS-11000](#), "Evaluating and Using Nonhazardous Recyclable Materials Guidelines." Treat RAS as an established nonhazardous recyclable material if it has not come into contact with any hazardous materials. Use RAS from shingle sources on the Department's MPL. Remove substantially all materials before use that are not part of the shingle, such as wood, paper, metal, plastic, and felt paper. Determine the deleterious content of RAS material for mixture design purposes in accordance with [Tex-217-F](#), Part III. Do not use RAS if deleterious materials are more than 0.5% of the stockpiled RAS unless otherwise approved. Submit a sample for approval before submitting the mixture design. The Department will perform the testing for deleterious material of RAS to determine specification compliance.

2.8.

**Substitute Binders.** Unless otherwise shown on the plans, the Contractor may use a substitute PG binder listed in Table 5 instead of the PG binder originally specified, if using recycled materials, and if the substitute PG binder and mixture made with the substitute PG binder meet the following:

- the substitute binder meets the specification requirements for the substitute binder grade in accordance with Section 300.2.10., "Performance-Graded Binders;" and
- the mixture has less than 10.0 mm of rutting on the Hamburg Wheel test ([Tex-242-F](#)) after the number of passes required for the originally specified binder. Use of substitute PG binders may only be allowed at the discretion of the Engineer if the Hamburg Wheel test results are between 10.0 mm and 12.5 mm.

**Table 5**  
**Allowable Substitute PG Binders and Maximum Recycled Binder Ratios**

Originally Specified PG Binder	Allowable Substitute PG Binder for Surface Mixes	Allowable Substitute PG Binder for Intermediate and Base Mixes	Maximum Ratio of Recycled Binder <sup>1</sup> to Total Binder (%)		
			Surface	Intermediate	Base
76-22 <sup>4,5</sup>	70-22	70-22	10.0	20.0	25.0
70-22 <sup>2,5</sup>	N/A	64-22	10.0	20.0	25.0
64-22 <sup>2,3</sup>	N/A	N/A	10.0	20.0	25.0
76-28 <sup>4,5</sup>	70-28	70-28	10.0	20.0	25.0
70-28 <sup>2,5</sup>	N/A	64-28	10.0	20.0	25.0
64-28 <sup>2,3</sup>	N/A	N/A	10.0	20.0	25.0

1. Combined recycled binder from RAP and RAS. RAS is not permitted in surface mixtures unless otherwise shown on the plans.
2. Binder substitution is not allowed for surface mixtures.
3. Binder substitution is not allowed for intermediate and base mixtures.
4. Use no more than 10.0% recycled binder in surface mixtures when using this originally specified PG binder.
5. Use no more than 20.0% recycled binder when using this originally specified PG binder for intermediate mixtures. Use no more than 25.0% recycled binder when using this originally specified PG binder for base mixtures.

3.

### EQUIPMENT

Provide required or necessary equipment in accordance with Item 320, "Equipment for Asphalt Concrete Pavement."

4.

### CONSTRUCTION

Produce, haul, place, and compact the specified paving mixture. In addition to tests required by the specification, Contractors may perform other QC tests as deemed necessary. At any time during the project, the Engineer may perform production and placement tests as deemed necessary in accordance with Item 5, "Control of the Work." Schedule and participate in a mandatory pre-paving meeting with the Engineer on or before the first day of paving unless otherwise shown on the plans.

4.1.

**Certification.** Personnel certified by the Department-approved hot-mix asphalt certification program must conduct all mixture designs, sampling, and testing in accordance with Table 6. Supply the Engineer with a list of certified personnel and copies of their current certificates before beginning production and when personnel changes are made. Provide a mixture design developed and signed by a Level 2 certified specialist. Provide Level 1A certified specialists at the plant during production operations. Provide Level 1B certified specialists to conduct placement tests. Provide AGG101 certified specialists for aggregate testing.

**Table 6**  
**Test Methods, Test Responsibility, and Minimum Certification Levels**

Test Description	Test Method	Contractor	Engineer	Level <sup>1</sup>
<b>1. Aggregate and Recycled Material Testing</b>				
Sampling	<a href="#">Tex-221-F</a>	✓	✓	1A/AGG101
Dry sieve	<a href="#">Tex-200-F</a> , Part I	✓	✓	1A/AGG101
Washed sieve	<a href="#">Tex-200-F</a> , Part II	✓	✓	1A/AGG101
Deleterious material	<a href="#">Tex-217-F</a> , Parts I & III	✓	✓	AGG101
Decantation	<a href="#">Tex-217-F</a> , Part II	✓	✓	AGG101
Los Angeles abrasion	<a href="#">Tex-410-A</a>		✓	TxDOT
Magnesium sulfate soundness	<a href="#">Tex-411-A</a>		✓	TxDOT
Micro-Deval abrasion	<a href="#">Tex-461-A</a>		✓	AGG101
Crushed face count	<a href="#">Tex-460-A</a>	✓	✓	AGG101
Flat and elongated particles	<a href="#">Tex-280-F</a>	✓	✓	AGG101
Linear shrinkage	<a href="#">Tex-107-E</a>	✓	✓	AGG101
Sand equivalent	<a href="#">Tex-203-F</a>	✓	✓	AGG101
Organic impurities	<a href="#">Tex-408-A</a>	✓	✓	AGG101
<b>2. Asphalt Binder &amp; Tack Coat Sampling</b>				
Asphalt binder sampling	<a href="#">Tex-500-C</a> , Part II	✓	✓	1A/1B
Tack coat sampling	<a href="#">Tex-500-C</a> , Part III	✓	✓	1A/1B
<b>3. Mix Design &amp; Verification</b>				
Design and JMF changes	<a href="#">Tex-204-F</a>	✓	✓	2
Mixing	<a href="#">Tex-205-F</a>	✓	✓	2
Molding (TGC)	<a href="#">Tex-206-F</a>	✓	✓	1A
Molding (SGC)	<a href="#">Tex-241-F</a>	✓	✓	1A
Laboratory-molded density	<a href="#">Tex-207-F</a> , Parts I & VI	✓	✓	1A
Rice gravity	<a href="#">Tex-227-F</a> , Part II	✓	✓	1A
Ignition oven correction factors <sup>2</sup>	<a href="#">Tex-236-F</a> , Part II	✓	✓	2
Indirect tensile strength	<a href="#">Tex-226-F</a>	✓	✓	1A
Hamburg Wheel test	<a href="#">Tex-242-F</a>	✓	✓	1A
Boil test	<a href="#">Tex-530-C</a>	✓	✓	1A
<b>4. Production Testing</b>				
Selecting production random numbers	<a href="#">Tex-225-F</a> , Part I		✓	1A
Mixture sampling	<a href="#">Tex-222-F</a>	✓	✓	1A/1B
Molding (TGC)	<a href="#">Tex-206-F</a>	✓	✓	1A
Molding (SGC)	<a href="#">Tex-241-F</a>	✓	✓	1A
Laboratory-molded density	<a href="#">Tex-207-F</a> , Parts I & VI	✓	✓	1A
Rice gravity	<a href="#">Tex-227-F</a> , Part II	✓	✓	1A
Gradation & asphalt binder content <sup>2</sup>	<a href="#">Tex-236-F</a> , Part I	✓	✓	1A
Control charts	<a href="#">Tex-233-F</a>	✓	✓	1A
Moisture content	<a href="#">Tex-212-F</a> , Part II	✓	✓	1A/AGG101
Hamburg Wheel test	<a href="#">Tex-242-F</a>	✓	✓	1A
Micro-Deval abrasion	<a href="#">Tex-461-A</a>		✓	AGG101
Boil test	<a href="#">Tex-530-C</a>	✓	✓	1A
Abson recovery	<a href="#">Tex-211-F</a>		✓	TxDOT
<b>5. Placement Testing</b>				
Selecting placement random numbers	<a href="#">Tex-225-F</a> , Part II		✓	1B
Trimming roadway cores	<a href="#">Tex-251-F</a> , Parts I & II	✓	✓	1A/1B
In-place air voids	<a href="#">Tex-207-F</a> , Parts I & VI	✓	✓	1A
In-place density (nuclear method)	<a href="#">Tex-207-F</a> , Part III	✓		1B
Establish rolling pattern	<a href="#">Tex-207-F</a> , Part IV	✓		1B
Control charts	<a href="#">Tex-233-F</a>	✓	✓	1A
Ride quality measurement	<a href="#">Tex-1001-S</a>	✓	✓	Note 3
Segregation (density profile)	<a href="#">Tex-207-F</a> , Part V	✓	✓	1B
Longitudinal joint density	<a href="#">Tex-207-F</a> , Part VII	✓	✓	1B
Thermal profile	<a href="#">Tex-244-F</a>	✓	✓	1B
Shear Bond Strength Test	<a href="#">Tex-249-F</a>		✓	TxDOT

- Level 1A, 1B, AGG101, and 2 are certification levels provided by the Hot Mix Asphalt Center certification program.
- Refer to Section 3076.4.9.2.3., "Production Testing," for exceptions to using an ignition oven.
- Profiler and operator are required to be certified at the Texas A&M Transportation Institute facility when Surface Test Type B is specified.



4.2.

**Reporting and Responsibilities.** Use Department-provided templates to record and calculate all test data, including mixture design, production and placement QC/QA, control charts, thermal profiles, segregation density profiles, and longitudinal joint density. Obtain the current version of the templates at <http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/site-manager.html> or from the Engineer. The Engineer and the Contractor will provide any available test results to the other party when requested. The maximum allowable time for the Contractor and Engineer to exchange test data is as given in Table 7 unless otherwise approved. The Engineer and the Contractor will immediately report to the other party any test result that requires suspension of production or placement, a payment adjustment less than 1.000, or that fails to meet the specification requirements. Record and electronically submit all test results and pertinent information on Department-provided templates.

Subsequent sublots placed after test results are available to the Contractor, which require suspension of operations, may be considered unauthorized work. Unauthorized work will be accepted or rejected at the discretion of the Engineer in accordance with Article 5.3., "Conformity with Plans, Specifications, and Special Provisions."

**Table 7**  
**Reporting Schedule**

Reporting Schedule			
Description	Reported By	Reported To	To Be Reported Within
Production Quality Control			
Gradation <sup>1</sup>	Contractor	Engineer	1 working day of completion of the subplot
Asphalt binder content <sup>1</sup>			
Laboratory-molded density <sup>2</sup>			
Moisture content <sup>3</sup>			
Boil test <sup>3</sup>			
Production Quality Assurance			
Gradation <sup>3</sup>	Engineer	Contractor	1 working day of completion of the subplot
Asphalt binder content <sup>3</sup>			
Laboratory-molded density <sup>1</sup>			
Hamburg Wheel test <sup>4</sup>			
Boil test <sup>3</sup>			
Binder tests <sup>4</sup>			
Placement Quality Control			
In-place air voids <sup>2</sup>	Contractor	Engineer	1 working day of completion of the lot
Segregation <sup>1</sup>			
Longitudinal joint density <sup>1</sup>			
Thermal profile <sup>1</sup>			
Placement Quality Assurance			
In-place air voids <sup>1</sup>	Engineer	Contractor	1 working day after receiving the trimmed cores <sup>5</sup>
Segregation <sup>3</sup>			1 working day of completion of the lot
Longitudinal joint density <sup>3</sup>			
Thermal profile <sup>3</sup>			
Aging ratio <sup>4</sup>			
Payment adjustment summary	Engineer	Contractor	2 working days of performing all required tests and receiving Contractor test data

1. These tests are required on every subplot.
2. Optional test. When performed on split samples, report the results as soon as they become available.
3. To be performed at the frequency specified in Table 16 or as shown on the plans.
4. To be reported as soon as the results become available.
5. 2 days are allowed if cores cannot be dried to constant weight within 1 day.

The Engineer will use the Department-provided template to calculate all payment adjustment factors for the lot. Sublot samples may be discarded after the Engineer and Contractor sign off on the payment adjustment summary documentation for the lot.



Use the procedures described in [Tex-233-F](#) to plot the results of all quality control (QC) and quality assurance (QA) testing. Update the control charts as soon as test results for each subplot become available. Make the control charts readily accessible at the field laboratory. The Engineer may suspend production for failure to update control charts.

- 4.3. **Quality Control Plan (QCP).** Develop and follow the QCP in detail. Obtain approval for changes to the QCP made during the project. The Engineer may suspend operations if the Contractor fails to comply with the QCP.

Submit a written QCP before the mandatory pre-paving meeting. Receive approval of the QCP before beginning production. Include the following items in the QCP:

- 4.3.1. **Project Personnel.** For project personnel, include:

- a list of individuals responsible for QC with authority to take corrective action;
- current contact information for each individual listed; and
- current copies of certification documents for individuals performing specified QC functions.

- 4.3.2. **Material Delivery and Storage.** For material delivery and storage, include:

- the sequence of material processing, delivery, and minimum quantities to assure continuous plant operations;
- aggregate stockpiling procedures to avoid contamination and segregation;
- frequency, type, and timing of aggregate stockpile testing to assure conformance of material requirements before mixture production; and
- procedure for monitoring the quality and variability of asphalt binder.

- 4.3.3. **Production.** For production, include:

- loader operation procedures to avoid contamination in cold bins;
- procedures for calibrating and controlling cold feeds;
- procedures to eliminate debris or oversized material;
- procedures for adding and verifying rates of each applicable mixture component (e.g., aggregate, asphalt binder, RAP, RAS, lime, liquid antistripping, WMA);
- procedures for reporting job control test results; and
- procedures to avoid segregation and drain-down in the silo.

- 4.3.4. **Loading and Transporting.** For loading and transporting, include:

- type and application method for release agents; and
- truck loading procedures to avoid segregation.

- 4.3.5. **Placement and Compaction.** For placement and compaction, include:

- proposed agenda for mandatory pre-paving meeting, including date and location;
- proposed paving plan (e.g., paving widths, joint offsets, and lift thicknesses);
- type and application method for release agents in the paver and on rollers, shovels, lutes, and other utensils;
- procedures for the transfer of mixture into the paver, while avoiding segregation and preventing material spillage;
- process to balance production, delivery, paving, and compaction to achieve continuous placement operations and good ride quality;
- paver operations (e.g., operation of wings, height of mixture in auger chamber) to avoid physical and thermal segregation and other surface irregularities; and
- procedures to construct quality longitudinal and transverse joints.

#### 4.4. Mixture Design.

4.4.1. **Design Requirements.** The Contractor will design the mixture using a Superpave Gyratory Compactor (SGC). A Texas Gyratory Compactor (TGC) may be used when shown on the plans. Use the dense-graded design procedure provided in [Tex-204-F](#). Design the mixture to meet the requirements listed in Tables 1, 2, 3, 4, 5, 8, 9, and 10.

4.4.1.1. **Design Number of Gyration (N<sub>design</sub>) When The SGC Is Used.** Design the mixture at 50 gyrations (N<sub>design</sub>). Use a target laboratory-molded density of 96.0% to design the mixture; however, adjustments can be made to the N<sub>design</sub> value as noted in Table 9. The N<sub>design</sub> level may be reduced to at least 35 gyrations at the Contractor's discretion.

Use an approved laboratory from the Department's MPL to perform the Hamburg Wheel test, and provide results with the mixture design, or provide the laboratory mixture and request that the Department perform the Hamburg Wheel test. The Engineer will be allowed 10 working days to provide the Contractor with Hamburg Wheel test results on the laboratory mixture design.

The Engineer will provide the mixture design when shown on the plans. The Contractor may submit a new mixture design at any time during the project. The Engineer will verify and approve all mixture designs (JMF1) before the Contractor can begin production.

Provide the Engineer with a mixture design report using the Department-provided template. Include the following items in the report:

- the combined aggregate gradation, source, specific gravity, and percent of each material used;
- asphalt binder content and aggregate gradation of RAP and RAS stockpiles;
- the target laboratory-molded density (or N<sub>design</sub> level when using the SGC);
- results of all applicable tests;
- the mixing and molding temperatures;
- the signature of the Level 2 person or persons that performed the design;
- the date the mixture design was performed; and
- a unique identification number for the mixture design.

**Table 8**  
**Master Gradation Limits (% Passing by Weight or Volume) and VMA Requirements**

Sieve Size	B Fine Base	C Coarse Surface	D Fine Surface	F Fine Mixture
2"	—	—	—	—
1-1/2"	100.0 <sup>1</sup>	—	—	—
1"	98.0–100.0	100.0 <sup>1</sup>	—	—
3/4"	84.0–98.0	95.0–100.0	100.0 <sup>1</sup>	—
1/2"	—	—	98.0–100.0	100.0 <sup>1</sup>
3/8"	60.0–80.0	70.0–85.0	85.0–100.0	98.0–100.0
#4	40.0–60.0	43.0–63.0	50.0–70.0	70.0–90.0
#8	29.0–43.0	32.0–44.0	35.0–46.0	38.0–48.0
#30	13.0–28.0	14.0–28.0	15.0–29.0	12.0–27.0
#50	6.0–20.0	7.0–21.0	7.0–20.0	6.0–19.0
#200	2.0–7.0	2.0–7.0	2.0–7.0	2.0–7.0
<b>Design VMA, % Minimum</b>				
—	13.0	14.0	15.0	16.0
<b>Production (Plant-Produced) VMA, % Minimum</b>				
—	12.5	13.5	14.5	15.5

1. Defined as maximum sieve size. No tolerance allowed.

**Table 9**  
**Laboratory Mixture Design Properties**

Mixture Property	Test Method	Requirement
Target laboratory-molded density, % (SGC)	<a href="#">Tex-207-F</a>	96.0
Design gyrations (N <sub>design</sub> for SGC)	<a href="#">Tex-241-F</a>	50 <sup>1</sup>
Indirect tensile strength (dry), psi	<a href="#">Tex-226-F</a>	85–200 <sup>2</sup>
Boil test <sup>3</sup>	<a href="#">Tex-530-C</a>	–

1. Adjust within a range of 35–100 gyrations when shown on the plans or specification or when mutually agreed between the Engineer and Contractor.
2. The Engineer may allow the IDT strength to exceed 200 psi if the corresponding Hamburg Wheel rut depth is greater than 3.0 mm and less than 12.5 mm.
3. Used to establish baseline for comparison to production results. May be waived when approved.

**Table 10**  
**Hamburg Wheel Test Requirements**

High-Temperature Binder Grade	Test Method	Minimum # of Passes @ 12.5 mm <sup>1</sup> Rut Depth, Tested @ 50°C
PG 64 or lower	<a href="#">Tex-242-F</a>	10,000 <sup>2</sup>
PG 70		15,000 <sup>3</sup>
PG 76 or higher		20,000

1. When the rut depth at the required minimum number of passes is less than 3 mm, the Engineer may require the Contractor to increase the target laboratory-molded density (TGC) by 0.5% to no more than 97.5% or lower the N<sub>design</sub> level (SGC) to at least 35 gyrations.
2. May be decreased to at least 5,000 passes when shown on the plans.
3. May be decreased to at least 10,000 passes when shown on the plans.

4.4.1.2. **Target Laboratory-Molded Density When The TGC Is Used.** Design the mixture at a 96.5% target laboratory-molded density. Increase the target laboratory-molded density to 97.0% or 97.5% at the Contractor's discretion or when shown on the plans or specification.

4.4.2. **Job-Mix Formula Approval.** The job-mix formula (JMF) is the combined aggregate gradation, target laboratory-molded density (or N<sub>design</sub> level), and target asphalt percentage used to establish target values for hot-mix production. JMF1 is the original laboratory mixture design used to produce the trial batch. When WMA is used, JMF1 may be designed and submitted to the Engineer without including the WMA additive. When WMA is used, document the additive or process used and recommended rate on the JMF1 submittal. The Engineer and the Contractor will verify JMF1 based on plant-produced mixture from the trial batch unless otherwise approved. The Engineer may accept an existing mixture design previously used on a Department project and may waive the trial batch to verify JMF1. The Department may require the Contractor to reimburse the Department for verification tests if more than 2 trial batches per design are required.

4.4.2.1. **Contractor's Responsibilities.**

4.4.2.1.1. **Providing Gyratory Compactor.** Use a SGC calibrated in accordance with [Tex-241-F](#) to design the mixture in accordance with [Tex-204-F](#), Part IV, for molding production samples. Locate the SGC, if used, at the Engineer's field laboratory and make the SGC available to the Engineer for use in molding production samples. Furnish a TGC calibrated in accordance with [Tex-914-K](#) when shown on the plans to design the mixture in accordance with [Tex-204-F](#), Part I, for molding production samples.

4.4.2.1.2. **Gyratory Compactor Correlation Factors.** Use [Tex-206-F](#), Part II, to perform a gyratory compactor correlation when the Engineer uses a different gyratory compactor. Apply the correlation factor to all subsequent production test results.

4.4.2.1.3. **Submitting JMF1.** Furnish a mix design report (JMF1) with representative samples of all component materials and request approval to produce the trial batch. Provide approximately 10,000 g of the design mixture if opting to have the Department perform the Hamburg Wheel test on the laboratory mixture, and request that the Department perform the test.

- 4.4.2.1.4. **Supplying Aggregates.** Provide approximately 40 lb. of each aggregate stockpile unless otherwise directed.
- 4.4.2.1.5. **Supplying Asphalt.** Provide at least 1 gal. of the asphalt material and enough quantities of any additives proposed for use.
- 4.4.2.1.6. **Ignition Oven Correction Factors.** Determine the aggregate and asphalt correction factors from the ignition oven in accordance with [Tex-236-F](#), Part II. Provide correction factors that are not more than 12 months old. Provide the Engineer with split samples of the mixtures before the trial batch production, including all additives (except water), and blank samples used to determine the correction factors for the ignition oven used for QA testing during production. Correction factors established from a previously approved mixture design may be used for the current mixture design if the mixture design and ignition oven are the same as previously used, unless otherwise directed.
- 4.4.2.1.7. **Boil Test.** Perform the test and retain the tested sample from [Tex-530-C](#) until completion of the project or as directed. Use this sample for comparison purposes during production. The Engineer may waive the requirement for the boil test.
- 4.4.2.1.8. **Trial Batch Production.** Provide a plant-produced trial batch upon receiving conditional approval of JMF1 and authorization to produce a trial batch, including the WMA additive or process if applicable, for verification testing of JMF1 and development of JMF2. Produce a trial batch mixture that meets the requirements in Table 4, Table 5, and Table 11. The Engineer may accept test results from recent production of the same mixture instead of a new trial batch.
- 4.4.2.1.9. **Trial Batch Production Equipment.** Use only equipment and materials proposed for use on the project to produce the trial batch.
- 4.4.2.1.10. **Trial Batch Quantity.** Produce enough quantity of the trial batch to ensure that the mixture meets the specification requirements.
- 4.4.2.1.11. **Number of Trial Batches.** Produce trial batches as necessary to obtain a mixture that meets the specification requirements.
- 4.4.2.1.12. **Trial Batch Sampling.** Obtain a representative sample of the trial batch and split it into 3 equal portions in accordance with [Tex-222-F](#). Label these portions as "Contractor," "Engineer," and "Referee." Deliver samples to the appropriate laboratory as directed.
- 4.4.2.1.13. **Trial Batch Testing.** Test the trial batch to ensure the mixture produced using the proposed JMF1 meets the mixture requirements in Table 11. Ensure the trial batch mixture is also in compliance with the Hamburg Wheel requirement in Table 10. Use a Department-approved laboratory to perform the Hamburg Wheel test on the trial batch mixture or request that the Department perform the Hamburg Wheel test. The Engineer will be allowed 10 working days to provide the Contractor with Hamburg Wheel test results on the trial batch. Provide the Engineer with a copy of the trial batch test results.
- 4.4.2.1.14. **Development of JMF2.** Evaluate the trial batch test results after the Engineer grants full approval of JMF1 based on results from the trial batch, determine the optimum mixture proportions, and submit as JMF2. Adjust the asphalt binder content or gradation to achieve the specified target laboratory-molded density. The asphalt binder content established for JMF2 is not required to be within any tolerance of the optimum asphalt binder content established for JMF1; however, mixture produced using JMF2 must meet the voids in mineral aggregates (VMA) requirements for production shown in Table 8. If the optimum asphalt binder content for JMF2 is more than 0.5% lower than the optimum asphalt binder content for JMF1, the Engineer may perform or require the Contractor to perform [Tex-226-F](#) on Lot 1 production to confirm the indirect tensile strength does not exceed 200 psi. Verify that JMF2 meets the mixture requirements in Table 5.
- 4.4.2.1.15. **Mixture Production.** Use JMF2 to produce Lot 1 as described in Section 3076.4.9.3.1.1., "Lot 1 Placement," after receiving approval for JMF2 and a passing result from the Department's or a Department-approved

laboratory's Hamburg Wheel test on the trial batch. If desired, proceed to Lot 1 production, once JMF2 is approved, at the Contractor's risk without receiving the results from the Department's Hamburg Wheel test on the trial batch.

Notify the Engineer if electing to proceed without Hamburg Wheel test results from the trial batch. Note that the Engineer may require up to the entire subplot of any mixture failing the Hamburg Wheel test to be removed and replaced at the Contractor's expense.

4.4.2.1.16. **Development of JMF3.** Evaluate the test results from Lot 1, determine the optimum mixture proportions, and submit as JMF3 for use in Lot 2.

4.4.2.1.17. **JMF Adjustments.** If JMF adjustments are necessary to achieve the specified requirements, make the adjustments before beginning a new lot. The adjusted JMF must:

- be provided to the Engineer in writing before the start of a new lot;
- be numbered in sequence to the previous JMF;
- meet the mixture requirements in Table 4 and Table 5;
- meet the master gradation limits shown in Table 8; and
- be within the operational tolerances of JMF2 listed in Table 11.

4.4.2.1.18. **Requesting Referee Testing.** Use referee testing, if needed, in accordance with Section 3076.4.9.1., "Referee Testing," to resolve testing differences with the Engineer.

**Table 11**  
**Operational Tolerances**

Description	Test Method	Allowable Difference Between Trial Batch and JMF1 Target	Allowable Difference from Current JMF Target	Allowable Difference between Contractor and Engineer <sup>1</sup>
Individual % retained for #8 sieve and larger	<a href="#">Tex-200-F</a> or <a href="#">Tex-236-F</a>	Must be Within Master Grading Limits in Table 8	$\pm 5.0^{2,3}$	$\pm 5.0$
Individual % retained for sieves smaller than #8 and larger than #200			$\pm 3.0^{2,3}$	$\pm 3.0$
% passing the #200 sieve			$\pm 2.0^{2,3}$	$\pm 1.6$
Asphalt binder content, %	<a href="#">Tex-236-F</a>	$\pm 0.5$	$\pm 0.3^3$	$\pm 0.3$
Laboratory-molded density, %	<a href="#">Tex-207-F</a>	$\pm 1.0$	$\pm 1.0$	$\pm 1.0$
In-place air voids, %		N/A	N/A	$\pm 1.0$
Laboratory-molded bulk specific gravity		N/A	N/A	$\pm 0.020$
VMA, %, min	<a href="#">Tex-204-F</a>	Note <sup>4</sup>	Note <sup>4</sup>	N/A
Theoretical maximum specific (Rice) gravity	<a href="#">Tex-227-F</a>	N/A	N/A	$\pm 0.020$

1. Contractor may request referee testing only when values exceed these tolerances.
2. When within these tolerances, mixture production gradations may fall outside the master grading limits; however, the % passing the #200 will be considered out of tolerance when outside the master grading limits.
3. Only applies to mixture produced for Lot 1 and higher.
4. Test and verify that Table 8 requirements are met.

4.4.2.2. **Engineer's Responsibilities.**

4.4.2.2.1. **Gyratory Compactor.** For SGC mixtures designed in accordance with [Tex-204-F](#), Part IV, the Engineer will use a Department SGC, calibrated in accordance with [Tex-241-F](#), to mold samples for laboratory mixture design verification. For molding trial batch and production specimens, the Engineer will use the Contractor-provided SGC at the field laboratory or provide and use a Department SGC at an alternate location. The Engineer will make the Contractor-provided SGC in the Department field laboratory available to the Contractor for molding verification samples.

For TGC mixtures designed in accordance with [Tex-204-F](#), Part I, the Engineer will use a Department TGC, calibrated in accordance with [Tex-914-K](#), to mold samples for trial batch and production testing. The Engineer will make the Department TGC and the Department field laboratory available to the Contractor for molding verification samples, if requested by the Contractor.

4.4.2.2.2. **Conditional Approval of JMF1 and Authorizing Trial Batch.** The Engineer will review and verify conformance of the following information within 2 working days of receipt:

- the Contractor's mix design report (JMF1);
- the Contractor-provided Hamburg Wheel test results;
- all required materials including aggregates, asphalt, additives, and recycled materials; and
- the mixture specifications.

The Engineer will grant the Contractor conditional approval of JMF1 if the information provided on the paper copy of JMF1 indicates that the Contractor's mixture design meets the specifications. When the Contractor does not provide Hamburg Wheel test results with laboratory mixture design, 10 working days are allowed for conditional approval of JMF1. The Engineer will base full approval of JMF1 on the test results on mixture from the trial batch.

Unless waived, the Engineer will determine the Micro-Deval abrasion loss in accordance with Section 3076.2.1.1.2., "Micro-Deval Abrasion." If the Engineer's test results are pending after two working days, conditional approval of JMF1 will still be granted within two working days of receiving JMF1. When the Engineer's test results become available, they will be used for specification compliance.

After conditionally approving JMF1, including either Contractor- or Department-supplied Hamburg Wheel test results, the Contractor is authorized to produce a trial batch.

4.4.2.2.3. **Hamburg Wheel Testing of JMF1.** If the Contractor requests the option to have the Department perform the Hamburg Wheel test on the laboratory mixture, the Engineer will mold samples in accordance with [Tex-242-F](#) to verify compliance with the Hamburg Wheel test requirement in Table 10.

4.4.2.2.4. **Ignition Oven Correction Factors.** The Engineer will use the split samples provided by the Contractor to determine the aggregate and asphalt correction factors for the ignition oven used for QA testing during production in accordance with [Tex-236-F](#), Part II. Provide correction factors that are not more than 12 months old.

4.4.2.2.5. **Testing the Trial Batch.** Within 1 full working day, the Engineer will sample and test the trial batch to ensure that the mixture meets the requirements in Table 11. If the Contractor requests the option to have the Department perform the Hamburg Wheel test on the trial batch mixture, the Engineer will mold samples in accordance with [Tex-242-F](#) to verify compliance with the Hamburg Wheel test requirement in Table 10.

The Engineer will have the option to perform the following tests on the trial batch:

- [Tex-226-F](#), to verify that the indirect tensile strength meets the requirement shown in Table 9; and
- [Tex-530-C](#), to retain and use for comparison purposes during production.

4.4.2.2.6. **Full Approval of JMF1.** The Engineer will grant full approval of JMF1 and authorize the Contractor to proceed with developing JMF2 if the Engineer's results for the trial batch meet the requirements in Table 11. The Engineer will notify the Contractor that an additional trial batch is required if the trial batch does not meet these requirements.

4.4.2.2.7. **Approval of JMF2.** The Engineer will approve JMF2 within one working day if the mixture meets the requirements in Table 5 and the gradation meets the master grading limits shown in Table 8. The asphalt binder content established for JMF2 is not required to be within any tolerance of the optimum asphalt binder content established for JMF1; however, mixture produced using JMF2 must meet the VMA requirements shown in Table 8. If the optimum asphalt binder content for JMF2 is more than 0.5% lower than the optimum asphalt binder content for JMF1, the Engineer may perform or require the Contractor to perform [Tex-226-F](#) on Lot 1 production to confirm the indirect tensile strength does not exceed 200 psi.

- 4.4.2.2.8. **Approval of Lot 1 Production.** The Engineer will authorize the Contractor to proceed with Lot 1 production (using JMF2) as soon as a passing result is achieved from the Department's or a Department-approved laboratory's Hamburg Wheel test on the trial batch. The Contractor may proceed at its own risk with Lot 1 production without the results from the Hamburg Wheel test on the trial batch.

If the Department's or Department-approved laboratory's sample from the trial batch fails the Hamburg Wheel test, the Engineer will suspend production until further Hamburg Wheel tests meet the specified values. The Engineer may require up to the entire subplot of any mixture failing the Hamburg Wheel test be removed and replaced at the Contractor's expense.

- 4.4.2.2.9. **Approval of JMF3 and Subsequent JMF Changes.** JMF3 and subsequent JMF changes are approved if they meet the mixture requirements shown in Table 4, Table 5, and the master grading limits shown in Table 8, and are within the operational tolerances of JMF2 shown in Table 11.

- 4.5. **Production Operations.** Perform a new trial batch when the plant or plant location is changed. Take corrective action and receive approval to proceed after any production suspension for noncompliance to the specification. Submit a new mix design and perform a new trial batch when the asphalt binder content of:
- any RAP stockpile used in the mix is more than 0.5% higher than the value shown on the mixture design report; or
  - RAS stockpile used in the mix is more than 2.0% higher than the value shown on the mixture design report.

- 4.5.1. **Storage and Heating of Materials.** Do not heat the asphalt binder above the temperatures specified in Item 300, "Asphalts, Oils, and Emulsions," or outside the manufacturer's recommended values. Provide the Engineer with daily records of asphalt binder and hot-mix asphalt discharge temperatures (in legible and discernible increments) in accordance with Item 320, "Equipment for Asphalt Concrete Pavement," unless otherwise directed. Do not store mixture for a period long enough to affect the quality of the mixture, nor in any case longer than 12 hr. unless otherwise approved.

- 4.5.2. **Mixing and Discharge of Materials.** Notify the Engineer of the target discharge temperature and produce the mixture within 25°F of the target. Monitor the temperature of the material in the truck before shipping to ensure that it does not exceed the maximum production temperatures listed in Table 12 (or 275°F for WMA). The Department will not pay for or allow placement of any mixture produced above the maximum production temperatures listed in Table 12.

**Table 12**  
**Maximum Production Temperature**

High-Temperature Binder Grade <sup>1</sup>	Maximum Production Temperature
PG 64	325°F
PG 70	335°F
PG 76	345°F

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.

Produce WMA within the target discharge temperature range of 215°F and 275°F when WMA is required. Take corrective action any time the discharge temperature of the WMA exceeds the target discharge range. The Engineer may suspend production operations if the Contractor's corrective action is not successful at controlling the production temperature within the target discharge range. Note that when WMA is produced, it may be necessary to adjust burners to ensure complete combustion such that no burner fuel residue remains in the mixture.

Control the mixing time and temperature so that substantially all moisture is removed from the mixture before discharging from the plant. Determine the moisture content, if requested, by oven-drying in accordance with



[Tex-212-F](#), Part II, and verify that the mixture contains no more than 0.2% of moisture by weight. Obtain the sample immediately after discharging the mixture into the truck, and perform the test promptly.

- 4.6. **Hauling Operations.** Clean all truck beds before use to ensure that mixture is not contaminated. Use a release agent shown on the Department's MPL to coat the inside bed of the truck when necessary.

Use equipment for hauling as defined in Section 3076.4.7.3.3., "Hauling Equipment." Use other hauling equipment only when allowed.

- 4.7. **Placement Operations.** Collect haul tickets from each load of mixture delivered to the project and provide the Department's copy to the Engineer approximately every hour, or as directed. Use a hand-held thermal camera or infrared thermometer, when a thermal imaging system is not used, to measure and record the internal temperature of the mixture as discharged from the truck or Material Transfer Device (MTD) before or as the mix enters the paver and an approximate station number or GPS coordinates on each ticket. Calculate the daily yield and cumulative yield for the specified lift and provide to the Engineer at the end of paving operations for each day unless otherwise directed. The Engineer may suspend production if the Contractor fails to produce and provide haul tickets and yield calculations by the end of paving operations for each day.

Prepare the surface by removing raised pavement markers and objectionable material such as moisture, dirt, sand, leaves, and other loose impediments from the surface before placing mixture. Remove vegetation from pavement edges. Place the mixture to meet the typical section requirements and produce a smooth, finished surface with a uniform appearance and texture. Offset longitudinal joints of successive courses of hot-mix by at least 6 in. Place mixture so that longitudinal joints on the surface course coincide with lane lines and are not placed in the wheel path, or as directed. Ensure that all finished surfaces will drain properly. Place the mixture at the rate or thickness shown on the plans. The Engineer will use the guidelines in Table 13 to determine the compacted lift thickness of each layer when multiple lifts are required. The thickness determined is based on the rate of 110 lb./sq. yd. for each inch of pavement unless otherwise shown on the plans.

**Table 13**  
**Compacted Lift Thickness and Required Core Height**

Mixture Type	Compacted Lift Thickness Guidelines		Minimum Untrimmed Core Height (in.) Eligible for Testing
	Minimum (in.)	Maximum (in.)	
B	2.50	5.00	1.75
C	2.00	4.00	1.50
D	1.50	3.00	1.25
F	1.25	2.50	1.25

- 4.7.1. **Weather Conditions.**

- 4.7.1.1. **When Using a Thermal Imaging System.** Place mixture when the roadway surface is dry and the roadway surface temperature is at or above the temperatures listed in Table 14A. The Engineer may restrict the Contractor from paving surface mixtures if the ambient temperature is likely to drop below 32°F within 12 hr. of paving. Place mixtures only when weather conditions and moisture conditions of the roadway surface are suitable as determined by the Engineer. Provide output data from the thermal imaging system to demonstrate to the Engineer that no recurring severe thermal segregation exists in accordance with Section 3076.4.7.3.1.2., "Thermal Imaging System."



**Table 14A**  
**Minimum Pavement Surface Temperatures**

High-Temperature Binder Grade <sup>1</sup>	Minimum Pavement Surface Temperatures (°F)	
	Subsurface Layers or Night Paving Operations	Surface Layers Placed in Daylight Operations
PG 64	35	40
PG 70	45 <sup>2</sup>	50 <sup>2</sup>
PG 76	45 <sup>2</sup>	50 <sup>2</sup>

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Contractors may pave at temperatures 10°F lower than these values when a chemical WMA additive is used as a compaction aid in the mixture or when using WMA.

#### 4.7.1.2.

**When Not Using a Thermal Imaging System.** When using a thermal camera instead of the thermal imaging system, place mixture when the roadway surface temperature is at or above the temperatures listed in Table 14B unless otherwise approved or as shown on the plans. Measure the roadway surface temperature with a hand-held thermal camera or infrared thermometer. The Engineer may allow mixture placement to begin before the roadway surface reaches the required temperature if conditions are such that the roadway surface will reach the required temperature within 2 hr. of beginning placement operations. Place mixtures only when weather conditions and moisture conditions of the roadway surface are suitable as determined by the Engineer. The Engineer may restrict the Contractor from paving if the ambient temperature is likely to drop below 32°F within 12 hr. of paving.

**Table 14B**  
**Minimum Pavement Surface Temperatures**

High-Temperature Binder Grade <sup>1</sup>	Minimum Pavement Surface Temperatures (°F)	
	Subsurface Layers or Night Paving Operations	Surface Layers Placed in Daylight Operations
PG 64	45	50
PG 70	55 <sup>2</sup>	60 <sup>2</sup>
PG 76	60 <sup>2</sup>	60 <sup>2</sup>

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Contractors may pave at temperatures 10°F lower than these values when a chemical WMA additive is used as a compaction aid in the mixture, when using WMA, or utilizing a paving process with equipment that eliminates thermal segregation. In such cases, for each sublot and in the presence of the Engineer, use a hand-held thermal camera operated in accordance with [Tex-244-F](#) to demonstrate to the satisfaction of the Engineer that the uncompacted mat has no more than 10°F of thermal segregation.

#### 4.7.2.

##### **Tack Coat.**

##### 4.7.2.1.

**Application.** Clean the surface before placing the tack coat. The Engineer will set the rate between 0.04 and 0.10 gal. of residual asphalt per square yard of surface area. Apply a uniform tack coat at the specified rate unless otherwise directed. Apply the tack coat in a uniform manner to avoid streaks and other irregular patterns. Apply the tack coat to all surfaces that will come in contact with the subsequent HMA placement, unless otherwise directed. Allow adequate time for emulsion to break completely before placing any material. Prevent splattering of tack coat when placed adjacent to curb, gutter, and structures. Do not dilute emulsified asphalts at the terminal, in the field, or at any other location before use.

##### 4.7.2.2.

**Sampling.** The Engineer will obtain at least one sample of the tack coat binder per project in accordance with [Tex-500-C](#), Part III, and test it to verify compliance with Item 300, "Asphalts, Oils, and Emulsions." The Engineer will notify the Contractor when the sampling will occur and will witness the collection of the sample from the asphalt distributor immediately before use.

For emulsions, the Engineer may test as often as necessary to ensure the residual of the emulsion is greater than or equal to the specification requirement in Item 300, "Asphalts, Oils, and Emulsions."

- 4.7.3. **Lay-Down Operations.** Use the placement temperatures in Table 15 to establish the minimum placement temperature of the mixture delivered to the paver.

**Table 15**  
**Minimum Mixture Placement Temperature**

High-Temperature Binder Grade <sup>1</sup>	Minimum Placement Temperature (Before Entering Paver) <sup>2,3</sup>
PG 64	260°F
PG 70	270°F
PG 76	280°F

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Minimum placement temperatures may be reduced 10°F if using a chemical WMA additive as a compaction aid.
3. When using WMA, the minimum placement temperature is 215°F.

- 4.7.3.1. **Thermal Profile.** Use a hand-held thermal camera or a thermal imaging system to obtain a continuous thermal profile in accordance with [Tex-244-F](#). Thermal profiles are not applicable in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas."
- 4.7.3.1.1. **Thermal Segregation.**
- 4.7.3.1.1.1. **Moderate.** Any areas that have a temperature differential greater than 25°F, but not exceeding 50°F, are deemed as moderate thermal segregation.
- 4.7.3.1.1.2. **Severe.** Any areas that have a temperature differential greater than 50°F are deemed as severe thermal segregation.
- 4.7.3.1.2. **Thermal Imaging System.** Review the output results when a thermal imaging system is used, and provide the automated report described in [Tex-244-F](#) to the Engineer daily unless otherwise directed. Modify the paving process as necessary to eliminate any recurring (moderate or severe) thermal segregation identified by the thermal imaging system. The Engineer may suspend paving operations if the Contractor cannot successfully modify the paving process to eliminate recurring severe thermal segregation. Density profiles are not required and not applicable when using a thermal imaging system. Provide the Engineer with electronic copies of all daily data files that can be used with the thermal imaging system software to generate temperature profile plots daily or upon completion of the project or as requested by the Engineer.
- 4.7.3.1.3. **Thermal Camera.** When using a thermal camera instead of the thermal imaging system, take immediate corrective action to eliminate recurring moderate thermal segregation when a hand-held thermal camera is used. Evaluate areas with moderate thermal segregation by performing density profiles in accordance with Section 3076.4.9.3.3.2., "Segregation (Density Profile)." Provide the Engineer with the thermal profile of every subplot within one working day of the completion of each lot. When requested by the Engineer, provide the thermal images generated using the thermal camera. Report the results of each thermal profile in accordance with Section 3076.4.2., "Reporting and Responsibilities." The Engineer will use a hand-held thermal camera to obtain a thermal profile at least once per project. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that contains severe thermal segregation. Suspend operations and take immediate corrective action to eliminate severe thermal segregation unless otherwise directed. Resume operations when the Engineer determines that subsequent production will meet the requirements of this Section. Evaluate areas with severe thermal segregation by performing density profiles in accordance with Section 3076.4.9.3.3.2., "Segregation (Density Profile)." Remove and replace the material in any areas that have both severe thermal segregation and a failing result for Segregation (Density Profile) unless otherwise directed. The subplot in question may receive a production and placement payment adjustment greater than 1.000, if applicable, when the defective material is successfully removed and replaced.
- 4.7.3.2. **Windrow Operations.** Operate windrow pickup equipment so that when hot-mix is placed in windrows, substantially all the mixture deposited on the roadbed is picked up and loaded into the paver.

4.7.3.3. **Hauling Equipment.** Use belly dumps, live bottom, or end dump trucks to haul and transfer mixture; however, with exception of paving miscellaneous areas, end dump trucks are only allowed when used in conjunction with an MTD with remixing capability or when a thermal imaging system is used unless otherwise allowed.

4.7.3.4. **Screed Heaters.** Turn off screed heaters to prevent overheating of the mat if the paver stops for more than 5 min. The Engineer may evaluate the suspect area in accordance with Section 3076.4.9.3.3.4., "Recovered Asphalt Dynamic Shear Rheometer (DSR)," if the screed heater remains on for more than 5 min. while the paver is stopped.

4.8. **Compaction.** Compact the pavement uniformly to contain between 3.8% and 8.5% in-place air voids. Take immediate corrective action to bring the operation within 3.8% and 8.5% when the in-place air voids exceed the range of these tolerances. The Engineer will allow paving to resume when the proposed corrective action is likely to yield between 3.8% and 8.5% in-place air voids.

Obtain cores in areas placed under Exempt Production, as directed, at locations determined by the Engineer. The Engineer may test these cores and suspend operations or require removal and replacement if the in-place air voids are less than 2.7% or more than 9.9%. Areas defined in Section 3076.4.9.3.1.4., "Miscellaneous Areas," are not subject to in-place air void determination.

Furnish the type, size, and number of rollers required for compaction as approved. Use additional rollers as required to remove any roller marks. Use only water or an approved release agent on rollers, tamps, and other compaction equipment unless otherwise directed.

Use the control strip method shown in [Tex-207-F](#), Part IV, on the first day of production to establish the rolling pattern that will produce the desired in-place air voids unless otherwise directed.

Use tamps to thoroughly compact the edges of the pavement along curbs, headers, and similar structures and in locations that will not allow thorough compaction with rollers. The Engineer may require rolling with a trench roller on widened areas, in trenches, and in other limited areas.

Complete all compaction operations before the pavement temperature drops below 160°F unless otherwise allowed. The Engineer may allow compaction with a light finish roller operated in static mode for pavement temperatures below 160°F.

Allow the compacted pavement to cool to 160°F or lower before opening to traffic unless otherwise directed. Sprinkle the finished mat with water or limewater, when directed, to expedite opening the roadway to traffic.

4.9. **Acceptance Plan.** Payment adjustments for the material will be in accordance with Article 3076.6., "Payment."

Sample and test the hot-mix on a lot and subplot basis. Suspend production until test results or other information indicates to the satisfaction of the Engineer that the next material produced or placed will result in payment factors of at least 1.000, if the production payment factor given in Section 3076.6.1., "Production Payment Adjustment Factors," for two consecutive lots or the placement pay factor given in Section 3076.6.2., "Placement Payment Adjustment Factors," for two consecutive lots is below 1.000.

4.9.1. **Referee Testing.** The Materials and Tests Division is the referee laboratory. The Contractor may request referee testing if a "remove and replace" condition is determined based on the Engineer's test results, or if the differences between Contractor and Engineer test results exceed the maximum allowable difference shown in Table 11 and the differences cannot be resolved. The Contractor may also request referee testing if the Engineer's test results require suspension of production and the Contractor's test results are within specification limits. Make the request within five working days after receiving test results and cores from the Engineer. Referee tests will be performed only on the subplot in question and only for the particular tests in question. Allow 10 working days from the time the referee laboratory receives the samples for test results to

be reported. The Department may require the Contractor to reimburse the Department for referee tests if more than three referee tests per project are required and the Engineer's test results are closer to the referee test results than the Contractor's test results.

The Materials and Tests Division will determine the laboratory-molded density based on the molded specific gravity and the maximum theoretical specific gravity of the referee sample. The in-place air voids will be determined based on the bulk specific gravity of the cores, as determined by the referee laboratory and the Engineer's average maximum theoretical specific gravity for the lot. With the exception of "remove and replace" conditions, referee test results are final and will establish payment adjustment factors for the subplot in question. The Contractor may decline referee testing and accept the Engineer's test results when the placement payment adjustment factor for any subplot results in a "remove and replace" condition. Placement sublots subject to be removed and replaced will be further evaluated in accordance with Section 3076.6.2.2., "Placement Sublots Subject to Removal and Replacement."

#### 4.9.2. **Production Acceptance.**

4.9.2.1. **Production Lot.** A production lot consists of four equal sublots. The default quantity for Lot 1 is 1,000 tons; however, when requested by the Contractor, the Engineer may increase the quantity for Lot 1 to no more than 4,000 tons. The Engineer will select subsequent lot sizes based on the anticipated daily production such that approximately three to four sublots are produced each day. The lot size will be between 1,000 tons and 4,000 tons. The Engineer may change the lot size before the Contractor begins any lot.

If the optimum asphalt binder content for JMF2 is more than 0.5% lower than the optimum asphalt binder content for JMF1, the Engineer may perform or require the Contractor to perform [Tex-226-F](#) on Lot 1 to confirm the indirect tensile strength does not exceed 200 psi. Take corrective action to bring the mixture within specification compliance if the indirect tensile strength exceeds 200 psi unless otherwise directed.

4.9.2.1.1. **Incomplete Production Lots.** If a lot is begun but cannot be completed, such as on the last day of production or in other circumstances deemed appropriate, the Engineer may close the lot. Adjust the payment for the incomplete lot in accordance with Section 3076.6.1., "Production Payment Adjustment Factors." Close all lots within five working days unless otherwise allowed.

#### 4.9.2.2. **Production Sampling.**

4.9.2.2.1. **Mixture Sampling.** Obtain hot-mix samples from trucks at the plant in accordance with [Tex-222-F](#). The sampler will split each sample into three equal portions in accordance with [Tex-200-F](#) and label these portions as "Contractor," "Engineer," and "Referee." The Engineer will perform or witness the sample splitting and take immediate possession of the samples labeled "Engineer" and "Referee." The Engineer will maintain the custody of the samples labeled "Engineer" and "Referee" until the Department's testing is completed.

4.9.2.2.1.1. **Random Sample.** At the beginning of the project, the Engineer will select random numbers for all production sublots. Determine sample locations in accordance with [Tex-225-F](#). Take one sample for each subplot at the randomly selected location. The Engineer will perform or witness the sampling of production sublots.

4.9.2.2.1.2. **Blind Sample.** For one subplot per lot, the Engineer will obtain and test a "blind" sample instead of the random sample collected by the Contractor. Test either the "blind" or the random sample; however, referee testing (if applicable) will be based on a comparison of results from the "blind" sample. The location of the Engineer's "blind" sample will not be disclosed to the Contractor. The Engineer's "blind" sample may be randomly selected in accordance with [Tex-225-F](#) for any subplot or selected at the discretion of the Engineer. The Engineer will use the Contractor's split sample for sublots not sampled by the Engineer.

4.9.2.2.2. **Informational Shear Bond Strength Testing.** Select one random subplot from Lot 2 or higher for shear bond strength testing. Obtain full depth cores in accordance with [Tex-249-F](#). Label the cores with the Control Section Job (CSJ), producer of the tack coat, mix type, shot rate, lot, and subplot number and provide to the

Engineer. The Engineer will ship the cores to the Materials and Tests Division or district laboratory for shear bond strength testing. Results from these tests will not be used for specification compliance.

- 4.9.2.2.3. **Asphalt Binder Sampling.** Obtain a 1-qt. sample of the asphalt binder witnessed by the Engineer for each lot of mixture produced. The Contractor will notify the Engineer when the sampling will occur. Obtain the sample at approximately the same time the mixture random sample is obtained. Sample from a port located immediately upstream from the mixing drum or pug mill and upstream from the introduction of any additives in accordance with [Tex-500-C](#), Part II. Label the can with the corresponding lot and subplot numbers, producer, producer facility location, grade, district, date sampled, and project information including highway and CSJ. The Engineer will retain these samples for one year. The Engineer may also obtain independent samples. If obtaining an independent asphalt binder sample and upon request of the Contractor, the Engineer will split a sample of the asphalt binder with the Contractor.

At least once per project, the Engineer will collect split samples of each binder grade and source used. The Engineer will submit one split sample to MTD to verify compliance with Item 300, "Asphalts, Oils, and Emulsions" and will retain the other split sample for one year.

- 4.9.2.3. **Production Testing.** The Contractor and Engineer must perform production tests in accordance with Table 16. The Contractor has the option to verify the Engineer's test results on split samples provided by the Engineer. Determine compliance with operational tolerances listed in Table 11 for all sublots.

Take immediate corrective action if the Engineer's laboratory-molded density on any subplot is less than 95.0% or greater than 97.0% to bring the mixture within these tolerances. The Engineer may suspend operations if the Contractor's corrective actions do not produce acceptable results. The Engineer will allow production to resume when the proposed corrective action is likely to yield acceptable results.

The Engineer may allow alternate methods for determining the asphalt binder content and aggregate gradation if the aggregate mineralogy is such that [Tex-236-F](#), Part I does not yield reliable results. Provide evidence that results from [Tex-236-F](#), Part I are not reliable before requesting permission to use an alternate method unless otherwise directed. Use the applicable test procedure as directed if an alternate test method is allowed.

**Table 16**  
**Production and Placement Testing Frequency**

Description	Test Method	Minimum Contractor Testing Frequency	Minimum Engineer Testing Frequency
Individual % retained for #8 sieve and larger	<a href="#">Tex-200-F</a> or <a href="#">Tex-236-F</a>	1 per subplot	1 per 12 sublots <sup>1</sup>
Individual % retained for sieves smaller than #8 and larger than #200			
% passing the #200 sieve			
Laboratory-molded density	<a href="#">Tex-207-F</a>	N/A	1 per subplot <sup>1</sup>
Laboratory-molded bulk specific gravity			
In-place air voids			
VMA	<a href="#">Tex-204-F</a>	1 per subplot	1 per project
Segregation (density profile) <sup>2</sup>	<a href="#">Tex-207-F</a> , Part V		
Longitudinal joint density	<a href="#">Tex-207-F</a> , Part VII		
Moisture content	<a href="#">Tex-212-F</a> , Part II	When directed	1 per project
Theoretical maximum specific (Rice) gravity	<a href="#">Tex-227-F</a>	N/A	
Asphalt binder content	<a href="#">Tex-236-F</a>	1 per subplot	
Hamburg Wheel test	<a href="#">Tex-242-F</a>	N/A	
Recycled Asphalt Shingles (RAS) <sup>3</sup>	<a href="#">Tex-217-F</a> , Part III	N/A	
Thermal profile <sup>2</sup>	<a href="#">Tex-244-F</a>	1 per subplot	
Asphalt binder sampling and testing	<a href="#">Tex-500-C</a> , Part II	1 per lot (sample only) <sup>4</sup>	
Tack coat sampling and testing	<a href="#">Tex-500-C</a> , Part III	N/A	
Boil test <sup>5</sup>	<a href="#">Tex-530-C</a>	1 per lot	
Shear Bond Strength Test <sup>6</sup>	<a href="#">Tex-249-F</a>	1 per project (sample only)	

1. For production defined in Section 3076.4.9.4., "Exempt Production," the Engineer will test one per day if 100 tons or more are produced. For Exempt Production, no testing is required when less than 100 tons are produced.
2. Not required when a thermal imaging system is used.
3. Testing performed by the Materials and Tests Division or designated laboratory.
4. Obtain witnessed by the Engineer. The Engineer will retain these samples for one year.
5. The Engineer may reduce or waive the sampling and testing requirements based on a satisfactory test history.
6. Testing performed by the Materials and Tests Division or District for informational purposes only.

4.9.2.4. **Operational Tolerances.** Control the production process within the operational tolerances listed in Table 11. When production is suspended, the Engineer will allow production to resume when test results or other information indicates the next mixture produced will be within the operational tolerances.

4.9.2.4.1. **Gradation.** Suspend operation and take corrective action if any aggregate is retained on the maximum sieve size shown in Table 8. A subplot is defined as out of tolerance if either the Engineer's or the Contractor's test results are out of operational tolerance. Suspend production when test results for gradation exceed the operational tolerances in Table 11 for three consecutive sublots on the same sieve or four consecutive sublots on any sieve unless otherwise directed. The consecutive sublots may be from more than one lot.

4.9.2.4.2. **Asphalt Binder Content.** A subplot is defined as out of operational tolerance if either the Engineer's or the Contractor's test results exceed the values listed in Table 11. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that is out of operational tolerance for asphalt binder content. Suspend production and shipment of the mixture if the Engineer's or the Contractor's asphalt binder content deviates from the current JMF by more than 0.5% for any subplot.

4.9.2.4.3. **Voids in Mineral Aggregates (VMA).** The Engineer will determine the VMA for every subplot. For sublots when the Engineer does not determine asphalt binder content, the Engineer will use the asphalt binder content results from QC testing performed by the Contractor to determine VMA.

Take immediate corrective action if the VMA value for any subplot is less than the minimum VMA requirement for production listed in Table 8. Suspend production and shipment of the mixture if the Engineer's VMA results on two consecutive sublots are below the minimum VMA requirement for production listed in Table 8. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that does not

meet the minimum VMA requirement for production listed in Table 8 based on the Engineer's VMA determination.

Suspend production and shipment of the mixture if the Engineer's VMA result is more than 0.5% below the minimum VMA requirement for production listed in Table 8. In addition to suspending production, the Engineer may require removal and replacement or may allow the subplot to be left in place without payment.

- 4.9.2.4.4. **Hamburg Wheel Test.** The Engineer may perform a Hamburg Wheel test at any time during production, including when the boil test indicates a change in quality from the materials submitted for JMF1. In addition to testing production samples, the Engineer may obtain cores and perform Hamburg Wheel tests on any areas of the roadway where rutting is observed. Suspend production until further Hamburg Wheel tests meet the specified values when the production or core samples fail the Hamburg Wheel test criteria in Table 10. Core samples, if taken, will be obtained from the center of the finished mat or other areas excluding the vehicle wheel paths. The Engineer may require up to the entire subplot of any mixture failing the Hamburg Wheel test to be removed and replaced at the Contractor's expense.

If the Department's or Department approved laboratory's Hamburg Wheel test results in a "remove and replace" condition, the Contractor may request that the Department confirm the results by re-testing the failing material. The Materials and Tests Division will perform the Hamburg Wheel tests and determine the final disposition of the material in question based on the Department's test results.

- 4.9.2.5. **Individual Loads of Hot-Mix.** The Engineer can reject individual truckloads of hot-mix. When a load of hot-mix is rejected for reasons other than temperature, contamination, or excessive uncoated particles, the Contractor may request that the rejected load be tested. Make this request within 4 hr. of rejection. The Engineer will sample and test the mixture. If test results are within the operational tolerances shown in Table 11, payment will be made for the load. If test results are not within operational tolerances, no payment will be made for the load.

4.9.3. **Placement Acceptance.**

- 4.9.3.1. **Placement Lot.** A placement lot consists of four placement sublots. A placement subplot consists of the area placed during a production subplot.

- 4.9.3.1.1. **Lot 1 Placement.** Placement payment adjustments greater than 1.000 for Lot 1 will be in accordance with Section 3076.6.2., "Placement Payment Adjustment Factors"; however, no placement adjustment less than 1.000 will be assessed for any subplot placed in Lot 1 when the in-place air voids are greater than or equal to 2.7% and less than or equal to 9.9%. Remove and replace any subplot with in-place air voids less than 2.7% or greater than 9.9%.

- 4.9.3.1.2. **Incomplete Placement Lots.** An incomplete placement lot consists of the area placed as described in Section 3076.4.9.2.1.1., "Incomplete Production Lots," excluding areas defined in Section 3076.4.9.3.1.4., "Miscellaneous Areas." Placement sampling is required if the random sample plan for production resulted in a sample being obtained from an incomplete production subplot.

- 4.9.3.1.3. **Shoulders, Ramps, Etc.** Shoulders, ramps, intersections, acceleration lanes, deceleration lanes, and turn lanes are subject to in-place air void determination and payment adjustments unless designated on the plans as not eligible for in-place air void determination. Intersections may be considered miscellaneous areas when determined by the Engineer.

- 4.9.3.1.4. **Miscellaneous Areas.** Miscellaneous areas include areas that typically involve significant handwork or discontinuous paving operations, such as temporary detours, driveways, mailbox turnouts, crossovers, gores, spot level-up areas, and other similar areas. Temporary detours are subject to in-place air void determination when shown on the plans. Miscellaneous areas also include level-ups and thin overlays when the layer thickness specified on the plans is less than the minimum untrimmed core height eligible for testing shown in Table 13. The specified layer thickness is based on the rate of 110 lb./sq. yd. for each inch of



pavement unless another rate is shown on the plans. When "level up" is listed as part of the item bid description code, a payment adjustment factor of 1.000 will be assigned for all placement sublots as described in Article 3076.6, "Payment." Miscellaneous areas are not eligible for random placement sampling locations. Compact miscellaneous areas in accordance with Section 3076.4.8., "Compaction." Miscellaneous areas are not subject to in-place air void determination, thermal profiles testing, segregation (density profiles), or longitudinal joint density evaluations.

#### 4.9.3.2.

**Placement Sampling.** The Engineer will select random numbers for all placement sublots at the beginning of the project. The Engineer will provide the Contractor with the placement random numbers immediately after the subplot is completed. Mark the roadway location at the completion of each subplot and record the station number. Determine one random sample location for each placement subplot in accordance with [Tex-225-F](#). Adjust the random sample location by no more than necessary to achieve a 2-ft. clearance if the location is within 2 ft. of a joint or pavement edge.

Shoulders, ramps, intersections, acceleration lanes, deceleration lanes, and turn lanes are always eligible for selection as a random sample location; however, if a random sample location falls on one of these areas and the area is designated on the plans as not subject to in-place air void determination, cores will not be taken for the subplot and a 1.000 pay factor will be assigned to that subplot.

Provide the equipment and means to obtain and trim roadway cores on site. On-site is defined as in close proximity to where the cores are taken. Obtain the cores within one working day of the time the placement subplot is completed unless otherwise approved. Obtain two 6-in. diameter cores side-by-side from within 1 ft. of the random location provided for the placement subplot. For Type D and Type F mixtures, 4-in. diameter cores are allowed. Mark the cores for identification, measure and record the untrimmed core height, and provide the information to the Engineer. The Engineer will witness the coring operation and measurement of the core thickness. Visually inspect each core and verify that the current paving layer is bonded to the underlying layer. Take corrective action if an adequate bond does not exist between the current and underlying layer to ensure that an adequate bond will be achieved during subsequent placement operations.

Trim the cores immediately after obtaining the cores from the roadway in accordance with [Tex-251-F](#) if the core heights meet the minimum untrimmed value listed in Table 13. Trim the cores on site in the presence of the Engineer. Use a permanent marker or paint pen to record the lot and subplot numbers on each core as well as the designation as Core A or B. The Engineer may require additional information to be marked on the core and may choose to sign or initial the core. The Engineer will take custody of the cores immediately after witnessing the trimming of the cores and will retain custody of the cores until the Department's testing is completed. Before turning the trimmed cores over to the Engineer, the Contractor may wrap the trimmed cores or secure them in a manner that will reduce the risk of possible damage occurring during transport by the Engineer. After testing, the Engineer will return the cores to the Contractor.

The Engineer may have the cores transported back to the Department's laboratory at the HMA plant via the Contractor's haul truck or other designated vehicle. In such cases where the cores will be out of the Engineer's possession during transport, the Engineer will use Department-provided security bags and the Roadway Core Custody protocol located at <http://www.txdot.gov/business/specifications.htm> to provide a secure means and process that protects the integrity of the cores during transport.

Decide whether to include the pair of cores in the air void determination for that subplot if the core height before trimming is less than the minimum untrimmed value shown in Table 13. Trim the cores as described above before delivering to the Engineer if electing to have the cores included in the air void determination. Deliver untrimmed cores to the Engineer and inform the Engineer of the decision to not have the cores included in air void determination if electing to not have the cores included in air void determination. The placement pay factor for the subplot will be 1.000 if cores will not be included in air void determination.

Instead of the Contractor trimming the cores on site immediately after coring, the Engineer and the Contractor may mutually agree to have the trimming operations performed at an alternate location such as a field laboratory or other similar location. In such cases, the Engineer will take possession of the cores



immediately after they are obtained from the roadway and will retain custody of the cores until testing is completed. Either the Department or Contractor representative may perform trimming of the cores. The Engineer will witness all trimming operations in cases where the Contractor representative performs the trimming operation.

Dry the core holes and tack the sides and bottom immediately after obtaining the cores. Fill the hole with the same type of mixture and properly compact the mixture. Repair core holes with other methods when approved.

4.9.3.3. **Placement Testing.** Perform placement tests in accordance with Table 16. After the Engineer returns the cores, the Contractor may test the cores to verify the Engineer's test results for in-place air voids. The allowable differences between the Contractor's and Engineer's test results are listed in Table 11.

4.9.3.3.1. **In-Place Air Voids.** The Engineer will measure in-place air voids in accordance with [Tex-207-F](#) and [Tex-227-F](#). Before drying to a constant weight, cores may be pre-dried using a CoreDry or similar vacuum device to remove excess moisture. The Engineer will average the values obtained for all sublots in the production lot to determine the theoretical maximum specific gravity. The Engineer will use the average air void content for in-place air voids.

The Engineer will use the vacuum method to seal the core if required by [Tex-207-F](#). The Engineer will use the test results from the unsealed core to determine the placement payment adjustment factor if the sealed core yields a higher specific gravity than the unsealed core. After determining the in-place air void content, the Engineer will return the cores and provide test results to the Contractor.

4.9.3.3.2. **Segregation (Density Profile).** Test for segregation using density profiles in accordance with [Tex-207-F](#), Part V when using a thermal camera instead of the thermal imaging system. Density profiles are not required and are not applicable when using a thermal imaging system. Density profiles are not applicable in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas."

Perform a minimum of one density profile per subplot. Perform additional density profiles when any of the following conditions occur, unless otherwise approved:

- the paver stops due to lack of material being delivered to the paving operations and the temperature of the uncompacted mat before the initial break down rolling is less than the temperatures shown in Table 17;
- areas that are identified by either the Contractor or the Engineer with thermal segregation;
- any visibly segregated areas that exist.

**Table 17**  
**Minimum Uncompacted Mat Temperature Requiring a Segregation Profile**

<b>High-Temperature Binder Grade<sup>1</sup></b>	<b>Minimum Temperature of the Uncompacted Mat Allowed Before Initial Break Down Rolling<sup>2,3,4</sup></b>
PG 64	<250°F
PG 70	<260°F
PG 76	<270°F

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Segregation profiles are required in areas with moderate and severe thermal segregation as described in Section 3076.4.7.3.1.3.
3. Minimum uncompacted mat temperature requiring a segregation profile may be reduced 10°F if using a chemical WMA additive as a compaction aid.
4. When using WMA, the minimum uncompacted mat temperature requiring a segregation profile is 215°F.

Provide the Engineer with the density profile of every subplot in the lot within one working day of the completion of each lot. Report the results of each density profile in accordance with Section 3076.4.2., "Reporting and Responsibilities."

The density profile is considered failing if it exceeds the tolerances in Table 18. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that contains a failing density profile. When a hand-held thermal camera is used instead of a thermal imaging system, the Engineer will measure the density profile at least once per project. The Engineer's density profile results will be used when available. The Engineer may require the Contractor to remove and replace the area in question if the area fails the density profile and has surface irregularities as defined in Section 3076.4.9.3.3.5., "Irregularities." The subplot in question may receive a production and placement payment adjustment greater than 1.000, if applicable, when the defective material is successfully removed and replaced.

Investigate density profile failures and take corrective actions during production and placement to eliminate the segregation. Suspend production if 2 consecutive density profiles fail unless otherwise approved. Resume production after the Engineer approves changes to production or placement methods.

**Table 18**  
**Segregation (Density Profile) Acceptance Criteria**

<b>Mixture Type</b>	<b>Maximum Allowable Density Range (Highest to Lowest)</b>	<b>Maximum Allowable Density Range (Average to Lowest)</b>
Type B	8.0 pcf	5.0 pcf
Type C, Type D & Type F	6.0 pcf	3.0 pcf

#### 4.9.3.3.3. Longitudinal Joint Density.

**4.9.3.3.3.1. Informational Tests.** Perform joint density evaluations while establishing the rolling pattern and verify that the joint density is no more than 3.0 pcf below the density taken at or near the center of the mat. Adjust the rolling pattern, if needed, to achieve the desired joint density. Perform additional joint density evaluations, at least once per subplot, unless otherwise directed.

**4.9.3.3.3.2. Record Tests.** Perform a joint density evaluation for each subplot at each pavement edge that is or will become a longitudinal joint. Joint density evaluations are not applicable in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas." Determine the joint density in accordance with [Tex-207-E](#), Part VII. Record the joint density information and submit results on Department forms to the Engineer. The evaluation is considered failing if the joint density is more than 3.0 pcf below the density taken at the core random sample location and the correlated joint density is less than 90.0%. The Engineer will make independent joint density verification at least once per project and may make independent joint density verifications at the random sample locations. The Engineer's joint density test results will be used when available.

Provide the Engineer with the joint density of every subplot in the lot within one working day of the completion of each lot. Report the results of each joint density in accordance with Section 3076.4.2., "Reporting and Responsibilities."

Investigate joint density failures and take corrective actions during production and placement to improve the joint density. Suspend production if the evaluations on two consecutive sublots fail unless otherwise approved. Resume production after the Engineer approves changes to production or placement methods.

4.9.3.3.4. **Recovered Asphalt Dynamic Shear Rheometer (DSR).** The Engineer may take production samples or cores from suspect areas of the project to determine recovered asphalt properties. Asphalt binders with an aging ratio greater than 3.5 do not meet the requirements for recovered asphalt properties and may be deemed defective when tested and evaluated by the Materials and Tests Division. The aging ratio is the DSR value of the extracted binder divided by the DSR value of the original unaged binder. Obtain DSR values in accordance with AASHTO T 315 at the specified high temperature performance grade of the asphalt. The Engineer may require removal and replacement of the defective material at the Contractor's expense. The asphalt binder will be recovered for testing from production samples or cores in accordance with [Tex-211-F](#).

4.9.3.3.5. **Irregularities.** Identify and correct irregularities including segregation, rutting, raveling, flushing, fat spots, mat slippage, irregular color, irregular texture, roller marks, tears, gouges, streaks, uncoated aggregate particles, or broken aggregate particles. The Engineer may also identify irregularities, and in such cases, the Engineer will promptly notify the Contractor. If the Engineer determines that the irregularity will adversely affect pavement performance, the Engineer may require the Contractor to remove and replace (at the Contractor's expense) areas of the pavement that contain irregularities. The Engineer may also require the Contractor to remove and replace (at the Contractor's expense) areas where the mixture does not bond to the existing pavement.

If irregularities are detected, the Engineer may require the Contractor to immediately suspend operations or may allow the Contractor to continue operations for no more than one day while the Contractor is taking appropriate corrective action.

4.9.4. **Exempt Production.** The Engineer may deem the mixture as exempt production for the following conditions:

- anticipated daily production is less than 500 tons;
- total production for the project is less than 5,000 tons;
- when mutually agreed between the Engineer and the Contractor; or
- when shown on the plans.

For exempt production, the Contractor is relieved of all production and placement sampling and testing requirements, except for coring operations when required by the Engineer. The production and placement pay factors are 1.000 if the specification requirements listed below are met, all other specification requirements are met, and the Engineer performs acceptance tests for production and placement listed in Table 16 when 100 tons or more per day are produced.

- produce, haul, place, and compact the mixture in compliance with the specification and as directed;
- control mixture production to yield a laboratory-molded density that is within  $\pm 1.0\%$  of the target laboratory-molded density as tested by the Engineer;
- compact the mixture in accordance with Section 3076.4.8., "Compaction;" and
- when a thermal imaging system is not used, the Engineer may perform segregation (density profiles) and thermal profiles in accordance with the specification.

4.9.5. **Ride Quality.** Measure ride quality in accordance with Item 585, "Ride Quality for Pavement Surfaces," unless otherwise shown on the plans.

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## 5. MEASUREMENT

- 5.1. **Dense Graded Hot-Mix Asphalt.** Hot mix will be measured by the ton of composite hot-mix, which includes asphalt, aggregate, and additives. Measure the weight on scales in accordance with Item 520, "Weighing and Measuring Equipment."
- 5.2. **Tack Coat.** Tack coat will be measured at the applied temperature by strapping the tank before and after road application and determining the net volume in gallons from the calibrated distributor. The Engineer will witness all strapping operations for volume determination. All tack, including emulsions, will be measured by the gallon applied.

The Engineer may allow the use of a metering device to determine asphalt volume used and application rate if the device is accurate within 1.5% of the strapped volume.

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## 6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under Section 3076.5.1, "Measurement," will be paid for at the unit bid price for "Dense Graded Hot-Mix Asphalt" of the mixture type, SAC, and binder specified. These prices are full compensation for surface preparation, materials, placement, equipment, labor, tools, and incidentals.

The work performed and materials furnished in accordance with this Item and measured as provided under Article 3076.5.2, "Measurement," will be paid for at the unit bid price for "Tack Coat" of the tack coat provided. These prices are full compensation for materials, placement, equipment, labor, tools, and incidentals. Payment adjustments will be applied as determined in this Item; however, a payment adjustment factor of 1.000 will be assigned for all placement sublots for "level ups" only when "level up" is listed as part of the item bid description code. A payment adjustment factor of 1.000 will be assigned to all production and placement sublots when "exempt" is listed as part of the item bid description code, and all testing requirements are met.

Payment for each subplot, including applicable payment adjustments greater than 1.000, will only be paid for sublots when the Contractor supplies the Engineer with the required documentation for production and placement QC/QA, thermal profiles, segregation density profiles, and longitudinal joint densities in accordance with Section 3076.4.2., "Reporting and Responsibilities." When a thermal imaging system is used, documentation is not required for thermal profiles or segregation density profiles on individual sublots; however, the thermal imaging system automated reports described in [Tex-244-F](#) are required.

Trial batches will not be paid for unless they are included in pavement work approved by the Department.

Payment adjustment for ride quality will be determined in accordance with Item 585, "Ride Quality for Pavement Surfaces."

- 6.1. **Production Payment Adjustment Factors.** The production payment adjustment factor is based on the laboratory-molded density using the Engineer's test results. The bulk specific gravities of the samples from each subplot will be divided by the Engineer's maximum theoretical specific gravity for the subplot. The individual sample densities for the subplot will be averaged to determine the production payment adjustment factor in accordance with Table 19 for each subplot, using the deviation from the target laboratory-molded density defined in Table 9. The production payment adjustment factor for completed lots will be the average of the payment adjustment factors for the four sublots sampled within that lot.

**Table 19**  
**Production Payment Adjustment Factors for Laboratory-Molded Density<sup>1</sup>**

<b>Absolute Deviation from Target Laboratory-Molded Density</b>	<b>Production Payment Adjustment Factor (Target Laboratory-Molded Density)</b>
0.0	1.050
0.1	1.050
0.2	1.050
0.3	1.044
0.4	1.038
0.5	1.031
0.6	1.025
0.7	1.019
0.8	1.013
0.9	1.006
1.0	1.000
1.1	0.965
1.2	0.930
1.3	0.895
1.4	0.860
1.5	0.825
1.6	0.790
1.7	0.755
1.8	0.720
> 1.8	Remove and replace

1. If the Engineer's laboratory-molded density on any subplot is less than 95.0% or greater than 98.0%, take immediate corrective action to bring the mixture within these tolerances. The Engineer may suspend operations if the Contractor's corrective actions do not produce acceptable results. The Engineer will allow production to resume when the proposed corrective action is likely to yield acceptable results.

6.1.1. **Payment for Incomplete Production Lots.** Production payment adjustments for incomplete lots, described under Section 3076.4.9.2.1.1., "Incomplete Production Lots," will be calculated using the average production payment factors from all sublots sampled.

A production payment factor of 1.000 will be assigned to any lot when the random sampling plan did not result in collection of any samples within the first subplot.

6.1.2. **Production Sublots Subject to Removal and Replacement.** If after referee testing, the laboratory-molded density for any subplot results in a "remove and replace" condition as listed in Table 19, the Engineer may require removal and replacement or may allow the subplot to be left in place without payment. The Engineer may also accept the subplot in accordance with Section 3076.5.3.1., "Acceptance of Defective or Unauthorized Work." Replacement material meeting the requirements of this Item will be paid for in accordance with this Section.

6.2. **Placement Payment Adjustment Factors.** The placement payment adjustment factor is based on in-place air voids using the Engineer's test results. The bulk specific gravities of the cores from each subplot will be divided by the Engineer's average maximum theoretical specific gravity for the lot. The individual core densities for the subplot will be averaged to determine the placement payment adjustment factor in accordance with Table 20 for each subplot that requires in-place air void measurement. A placement payment adjustment factor of 1.000 will be assigned to the entire subplot when the random sample location falls in an area designated on the plans as not subject to in-place air void determination. A placement payment adjustment factor of 1.000 will be assigned to quantities placed in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas." The placement payment adjustment factor for completed lots will be the average of the placement payment adjustment factors for up to four sublots within that lot.

**Table 20**  
**Placement Payment Adjustment Factors for In-Place Air Voids**

<b>In-Place Air Voids</b>	<b>Placement Pay Adjustment Factor</b>	<b>In-Place Air Voids</b>	<b>Placement Pay Adjustment Factor</b>
< 2.7	Remove and Replace	6.4	1.042
2.7	0.710	6.5	1.040
2.8	0.740	6.6	1.038
2.9	0.770	6.7	1.036
3.0	0.800	6.8	1.034
3.1	0.830	6.9	1.032
3.2	0.860	7.0	1.030
3.3	0.890	7.1	1.028
3.4	0.920	7.2	1.026
3.5	0.950	7.3	1.024
3.6	0.980	7.4	1.022
3.7	0.998	7.5	1.020
3.8	1.002	7.6	1.018
3.9	1.006	7.7	1.016
4.0	1.010	7.8	1.014
4.1	1.014	7.9	1.012
4.2	1.018	8.0	1.010
4.3	1.022	8.1	1.008
4.4	1.026	8.2	1.006
4.5	1.030	8.3	1.004
4.6	1.034	8.4	1.002
4.7	1.038	8.5	1.000
4.8	1.042	8.6	0.998
4.9	1.046	8.7	0.996
5.0	1.050	8.8	0.994
5.1	1.050	8.9	0.992
5.2	1.050	9.0	0.990
5.3	1.050	9.1	0.960
5.4	1.050	9.2	0.930
5.5	1.050	9.3	0.900
5.6	1.050	9.4	0.870
5.7	1.050	9.5	0.840
5.8	1.050	9.6	0.810
5.9	1.050	9.7	0.780
6.0	1.050	9.8	0.750
6.1	1.048	9.9	0.720
6.2	1.046	> 9.9	Remove and Replace
6.3	1.044		

6.2.1.

**Payment for Incomplete Placement Lots.** Payment adjustments for incomplete placement lots described under Section 3076.4.9.3.1.2., "Incomplete Placement Lots," will be calculated using the average of the placement payment factors from all sublots sampled and sublots where the random location falls in an area designated on the plans as not eligible for in-place air void determination.

If the random sampling plan results in production samples, but not in placement samples, the random core location and placement adjustment factor for the sublot will be determined by applying the placement random number to the length of the sublot placed.

If the random sampling plan results in placement samples, but not in production samples, no placement adjustment factor will apply for that sublot placed.

A placement payment adjustment factor of 1.000 will be assigned to any lot when the random sampling plan did not result in collection of any production samples.

- 6.2.2. **Placement Sublots Subject to Removal and Replacement.** If after referee testing, the placement payment adjustment factor for any subplot results in a “remove and replace” condition as listed in Table 20, the Engineer will choose the location of two cores to be taken within 3 ft. of the original failing core location. The Contractor will obtain the cores in the presence of the Engineer. The Engineer will take immediate possession of the untrimmed cores and submit the untrimmed cores to the Materials and Tests Division, where they will be trimmed if necessary and tested for bulk specific gravity within 10 working days of receipt.

The bulk specific gravity of the cores from each subplot will be divided by the Engineer's average maximum theoretical specific gravity for the lot. The individual core densities for the subplot will be averaged to determine the new payment adjustment factor of the subplot in question. If the new payment adjustment factor is 0.700 or greater, the new payment adjustment factor will apply to that subplot. If the new payment adjustment factor is less than 0.700, no payment will be made for the subplot. Remove and replace the failing subplot, or the Engineer may allow the subplot to be left in place without payment. The Engineer may also accept the subplot in accordance with Section 3076.5.3.1., “Acceptance of Defective or Unauthorized Work.” Replacement material meeting the requirements of this Item will be paid for in accordance with this Section.

- 6.3. **Total Adjusted Pay Calculation.** Total adjusted pay (TAP) will be based on the applicable payment adjustment factors for production and placement for each lot.

$$TAP = (A+B)/2$$

where:

$A = \text{Bid price} \times \text{production lot quantity} \times \text{average payment adjustment factor for the production lot}$

$B = \text{Bid price} \times \text{placement lot quantity} \times \text{average payment adjustment factor for the placement lot} + (\text{bid price} \times \text{quantity placed in miscellaneous areas} \times 1.000)$

*Production lot quantity* = Quantity actually placed - quantity left in place without payment

*Placement lot quantity* = Quantity actually placed - quantity left in place without payment - quantity placed in miscellaneous areas

# Special Specification 6001

## Portable Changeable Message Sign



### 1. DESCRIPTION

Furnish, operate, and maintain portable trailer mounted changeable message sign (PCMS) units.

### 2. MATERIALS

Furnish new or used material in accordance with the requirements of this Item and the details shown on the plans. Provide a self-contained PCMS unit with the following:

- Sign controller
- Changeable Message Sign
- Trailer
- Power source

Paint the exterior surfaces of the power supply housing, supports, trailer, and sign with Federal Orange No. 22246 or Federal Yellow No. 13538 of Federal Standard 595C, except paint the sign face assembly flat black.

2.1. **Sign Controller.** Provide a controller with permanent storage of a minimum of 75 pre-programmed messages. Provide an external input device for random programming and storage of a minimum of 75 additional messages. Provide a controller capable of displaying up to 3 messages sequentially. Provide a controller with adjustable display rates. Enclose sign controller equipment in a lockable enclosure.

2.2. **Changeable Message Sign.** Provide a sign capable of being elevated to at least 7 ft. above the roadway surface from the bottom of the sign. Provide a sign capable of being rotated 360° and secured against movement in any position.

Provide a sign with 3 separate lines of text and 8 characters per line minimum. Provide a minimum 18 in. character height. Provide a 5 × 7 character pixel matrix. Provide a message legibility distance of 600 ft. for nighttime conditions and 800 ft. for normal daylight conditions. Provide for manual and automatic dimming light sources.

The following are descriptions for 3 screen types of PCMS:

- **Character Modular Matrix.** This screen type comprises of character blocks.
- **Continuous Line Matrix.** This screen type uses proportionally spaced fonts for each line of text.
- **Full Matrix.** This screen type uses proportionally spaced fonts, varies the height of characters, and displays simple graphics on the entire sign.

2.3. **Trailer.** Provide a 2 wheel trailer with square top fenders, 4 leveling jacks, and trailer lights. Do not exceed an overall trailer width of 96 in. Shock mount the electronics and sign assembly.

2.4. **Power Source.** Provide a diesel generator, solar powered power source, or both. Provide a backup power source as necessary.

2.5. **Cellular Telephone.** When shown on the plans, provide a cellular telephone connection to communicate with the PCMS unit remotely.



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**3. CONSTRUCTION**

Place or relocate PCMS units as shown on the plans or as directed. The plans will show the number of PCMS units needed, for how many days, and for which construction phases.

Maintain the PCMS units in good working condition. Repair damaged or malfunctioning PCMS units as soon as possible. PCMS units will remain the property of the Contractor.

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**4. MEASUREMENT**

This Item will be measured by each PCMS or by the day used. All PCMS units must be set up on a work area and operational before a calendar day can be considered measurable. When measurement by the day is specified, a day will be measured for each PCMS set up and operational on the worksite.

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**5. PAYMENT**

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Portable Changeable Message Sign." This price is full compensation for PCMS units; set up; relocating; removing; replacement parts; batteries (when required); fuel, oil, and oil filters (when required); cellular telephone charges (when required); software; and equipment, materials, tools, labor, and incidentals.

# Special Specification 6185

## Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)



### 1. DESCRIPTION

Furnish, operate, maintain and remove upon completion of work, Truck Mounted Attenuator (TMA) or Trailer Attenuator (TA).

### 2. MATERIALS

Furnish, operate and maintain new or used TMAs or TAs. Assure used attenuators are in good working condition and are approved for use. A list of approved TMA/TA units can be found in the Department's Compliant Work Zone Traffic Control Devices List. The host vehicle for the TMA and TA must weigh a minimum of 19,000 lbs. Host vehicles may be ballasted to achieve the required weight. Any weight added to the host vehicle must be properly attached or contained within it so that it does not present a hazard and that proper energy dissipation occurs if the attenuator is impacted from behind by a large truck. The weight of a TA will not be considered in the weight of the host vehicle but the weight of a TMA may be included in the weight of the host vehicle. Upon request, provide either a manufacturer's curb weight or a certified scales weight ticket to the Engineer.

### 3. CONSTRUCTION

Place or relocate TMA/TAs as shown on the plans or as directed. The plans will show the number of TMA/TAs needed, for how many days or hours, and for which construction phases.

Maintain the TMA/TAs in good working condition. Replace damaged TMA/TAs as soon as possible.

### 4. MEASUREMENT

4.1. **Truck Mounted Attenuator/Trailer Attenuator (Stationary).** This Item will be measured by the each or by the day. TMA/TAs must be set up in a work area and operational before a calendar day can be considered measurable. When measurement by the day is specified, a day will be measured for each TMA/TA set up and operational on the worksite.

4.2. **Truck Mounted Attenuator/Trailer Attenuator (Mobile Operation).** This Item will be measured by the hour. The time begins once the TMA/TA is ready for operation at the predetermined site and stops when notified by the Engineer. A minimum of 4 hr. will be paid each day for each operating TMA/TA used in a mobile operation.

### 5. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Truck Mounted Attenuators/Trailer Attenuators (Stationary)," or "Truck Mounted Attenuators/Trailer Attenuators (Mobile Operation)." This price is full compensation for furnishing TMA/TA: set up; relocating; removing; operating; fuel; and equipment, materials, tools, labor, and incidentals.

# Special Provision to Item 247

## Flexible Base



Item 247, "Flexible Base" of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Section 2.4., "Certification."** This section is added.

Personnel certified by the Department-approved soils and base certification program must conduct all sampling, field testing, and laboratory testing required by the following:

- Section 2.1, "Aggregate,"
- Section 2.1.3.2, "Recycled Material (Including Crushed Concrete) Requirements,"
- Section 4.3, "Compaction," for measuring flexible base depth, and
- Section 4.3.2, "Density Control," for determining the roadway density and moisture content.

Supply the Engineer with a list of certified personnel and copies of their current certificates before laboratory and field testing is performed and when personnel changes are made. At any time during the project, the Engineer may perform production tests as deemed necessary in accordance with Item 5, "Control of the Work."

**Section 2.5., "Reporting and Responsibilities."** This section is added.

Use Department-provided templates to record and calculate all test data. Obtain the current version of the templates at <http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/site-manager.html> or from the Engineer. The Engineer and the Contractor will provide any available test results to the other party when requested. Record and electronically submit all test results and pertinent information on Department-provided templates.

**Section 2.6., "Sampling."** This section is added.

The Engineer will sample flexible base from stockpiles located at the production site or at the project location in accordance with [Tex-400-A](#), Section 5.3. The Engineer will label the sample containers as "Engineer," "Contractor" or "Supplier," and "CST/M&P." Witness the sampling and take immediate possession of the sample containers labeled "Contractor" or "Supplier." The Engineer will maintain custody of the samples labeled "CST/M&P" until testing and reporting is completed.

**Section 2.7., "Referee Testing."** This section is added.

CST/M&P is the referee laboratory. The Contractor may request referee testing when the Engineer's test results fail to meet any of the material requirements listed in Table 1. Make the request via email within 5 working days after receiving test results from the Engineer. Submit test reports signed and sealed by a licensed professional engineer from a commercial laboratory listed on the Department's Material Producer List (MPL) of laboratories approved to perform compaction and triaxial compression testing located at <http://ftp.dot.state.tx.us/pub/txdot-info/cmd/mpl/complabs.pdf>. Submit completed test reports electronically on Department-provided templates in their original format. The referee laboratory will report test results to the Engineer within the allowable number of working days listed in Table 2 from the time the referee laboratory receives the samples. It is at the discretion of the Engineer or the referee laboratory to deny a referee request upon review of the test reports provided by the Contractor.

**Table 2**  
**Number of Allowable Working Days to Report Referee Test Results**

Material Property	Test Method	Working Days
Gradation	Tex-110-E, Part I	5
Liquid Limit (Multi-Point Method)	Tex-104-E, Part I	5
Plasticity Index	Tex-106-E	5
Wet Ball Mill Value	Tex-116-E, Parts I and II	5
Wet Ball Mill, % Increase passing #40 sieve		
Compressive Strength <sup>1</sup>	Tex-117-E, Part II	6
Compressive Strength <sup>2</sup>	Tex-117-E	12

1. Moisture-Density curve provided by the District
2. Moisture-Density curve determined by the referee laboratory

**Section 4.6., “Ride Quality.”** This section is voided and replaced by the following.

Measurement of ride quality only applies to the final travel lanes that receive a 1- or 2-course surface treatment for the final riding surface, unless otherwise shown on the plans. Measure the ride quality of the base course either before or after the application of the prime coat, as directed, and before placement of the surface treatment. Use a certified profiler operator from the Department’s MPL. When requested, furnish the Engineer documentation for the person certified to operate the profiler.

Provide all profile data to the Engineer in electronic data files within 3 days of measuring the ride quality using the format specified in [Tex-1001-S](#). The Engineer will use Department software to evaluate longitudinal profiles to determine areas requiring corrective action. Correct 0.1-mi.sections for each wheel path having an average international roughness index (IRI) value greater than 100 in. per mile to an IRI value of 100 in. per mile or less, unless otherwise shown on the plans.

Re-profile and correct sections that fail to maintain ride quality, as directed. Correct re-profiled sections until specification requirements are met, as approved. Perform this work at no additional expense to the Department.

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## Special Provision to Item 316

### Seal Coat

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Item 316, "Seal Coat" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

**Section 4.8, "Asphalt Placement"** is supplemented by the following:

4.8.5. Collect all samples in accordance with Tex-500-C, "Sampling Bituminous Materials, Pre-Molded Joint Fillers, and Joint Sealers" from the distributor and with witness by the Engineer.

At least once per project, collect split samples of each binder grade and source used. The Engineer will submit one split sample to MTD for testing and retain the other split sample.

In addition, collect one sample of each binder grade and source used on the project for each production day. The Engineer will retain these samples.

The Engineer will keep all retained samples for one yr., for hot-applied binders and cutback asphalts; or for two mo., for emulsified asphalts. The Engineer may submit retained samples to MTD for testing as necessary or as requested by MTD.

# Special Provision to Item 462

## Concrete Box Culverts and Drains



Item 462, "Concrete Box Culverts and Drains," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Section 2.1., "General."** The last paragraph is voided and replaced with the following:

Furnish material for precast formed and machine-made box culverts in accordance with DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

**Sections 2.2.2., "Formed Precast," and 2.2.3., "Machine-Made Precast,"** are voided and replaced by the following.

**2.2.2 Precast.** Precast formed and machine –made box culvert fabrication plants must be approved in accordance with DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures." The Construction Division maintains a list of approved precast box culvert fabrication plants on the Department's MPL. Fabricate precast boxes in accordance with DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

**Sections 2.3.2., "Formed Precast," and 2.3.3., "Machine-Made Precast,"** are voided and replaced by the following.

**2.3.2 Precast.** Make, cure, and test compressive test specimens for precast formed and machine –made box culverts in accordance with DMS-7305, "Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures."

**Section 2.5., "Marking,"** the first paragraph is voided and replaced with the following.

**Marking.** Clearly mark each precast unit with the following:

- Name or trademark of fabricator and plant location;
- ASTM designation and product designation (when applicable);
- Date of manufacture,
- Box size,
- Minimum and maximum fill heights,
- Designation "TX" for precast units fabricated per DMS-7305,
- Fabricator's designated approval stamp for each approved unit,
- Designation "SR" for boxes meeting sulfate-resistant concrete plan requirements (when applicable), and
- Precast drainage structures used for jacking and boring (when applicable).

**Section 2.6., "Tolerances."** The section is voided and replaced with the following.

Ensure precast sections meet the permissible variations listed in ASTM C1577.

Ensure that the sides of a section at each end do not vary from being perpendicular to the top and bottom by more than 1/2 in. when measured diagonally between opposite interior corners. Deviations from this tolerance will be acceptable if the sections can be fitted at the plant and the joint opening at any point does not exceed 1 in. Use match-marks for proper installation on sections that have been accepted in this manner.

Ensure wall and slab thicknesses are not less than shown on the plans except for occasional deficiencies not greater than 3/16 in. or 5%, whichever is greater. If proper jointing is not affected, thicknesses in excess of plan requirements are acceptable.

**Section 2.7., “Defects and Repair.”** The section is voided and replaced with the following:

Fine cracks on the surface of members that do not extend to the plane of the nearest reinforcement are acceptable unless the cracks are numerous and extensive. Repair cracks that extend into the plane of the reinforcing steel in accordance with the Department’s Concrete Repair Manual. The Engineer may accept boxes with repairs that are sound, properly finished, and cured in conformance with pertinent specifications. Discontinue further production of precast sections until corrections are made and proper curing is provided when fine cracks on the surface indicate poor curing practices.

Repair precast boxes in accordance with DMS-7305, “Fabrication and Qualification Procedure for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures.”

**Section 2.8., “Storage and Shipment.”** This section is voided and replaced with the following:

- 2.8      **Storage and Shipment.** Store precast sections on a level surface. Do not place any load on the sections until design strength is reached and curing is complete. Store and ship precast boxes in accordance with DMS-7305, “Fabrication and Qualification Production for Multi-Project Fabrication Plants of Precast Concrete Drainage Structures.

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## Special Provision to Item 502

### Barricades, Signs and Traffic Handling

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Item 502, "Barricades, Signs and Traffic Handling" of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 502.1., "Description,"** is supplemented by the following:

Temporary work-zone (TWZ) traffic control devices manufactured after December 31, 2019, must have been successfully tested to the crashworthiness requirements of the 2016 edition of the Manual for Assessing Safety Hardware (MASH). Such devices manufactured on or before this date and successfully tested to NCHRP Report 350 or the 2009 edition of MASH may continue to be used throughout their normal service lives. An exception to the manufacture date applies when, based on the project's date of letting, a category of MASH-2016 compliant TWZ traffic control devices are not approved, or are not self-certified after the December 31, 2019, date. In such case, devices that meet NCHRP-350 or MASH-2009 may be used regardless of the manufacture date.

Such TWZ traffic control devices include: portable sign supports, barricades, portable traffic barriers designated exclusively for use in temporary work zones, crash cushions designated exclusively for use in temporary work zones, longitudinal channelizers, truck and trailer mounted attenuators. Category I Devices (i.e., lightweight devices) such as cones, tubular markers and drums without lights or signs attached however, may be self-certified by the vendor or provider, with documentation provided to Department or as are shown on Department's Compliant Work Zone Traffic Control Device List.

**Article 502.4., "Payment,"** is supplemented by the following:

Truck mounted attenuators and trailer attenuators will be paid for under Special Specification, "Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)." Portable Changeable Message Signs will be paid for under Special Specification, "Portable Changeable Message Sign." Portable Traffic Signals will be paid for under Special Specification, "Portable Traffic Signals."



# Special Provision to Item 506

## Temporary Erosion, Sedimentation, and Environmental Controls



For this project, Item 506, "Temporary Erosion, Sedimentation, and Environmental Controls," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 506.1., "Description,"** is voided and replaced by the following:

Install, maintain, and remove erosion, sedimentation, and environmental control measures to prevent or reduce the discharge of pollutants in accordance with the Storm Water Pollution Prevention Plan (SWP3) or as directed. Ensure the installation and maintenance of control measures is performed in accordance with the manufacturer's or designer's specifications. Erosion and sediment control devices must be selected from the "Erosion Control Approved Products" or "Sediment Control Approved Products" lists. Perform work in a manner to prevent degradation of receiving waters, facilitate project construction, and comply with applicable federal, state, and local regulations.

**Article 506.3., "Qualifications, Training, and Employee Requirements,"** is voided and not replaced.

**Section 506.4.1., "Contractor Responsibilities," Section 506.4.2., "Implementation," and Section 506.4.3., "General,"** are voided and replaced by the following:

- 4.1. **Contractor Responsibilities.** Implement the SWP3 for the project site in accordance with the plans and specifications, and as directed. Coordinate storm water management with all other work on the project. Develop and implement an SWP3 for project-specific material supply plants within and outside of the Department's right of way in accordance with the specific or general storm water permit requirements. Prevent water pollution from storm water associated with construction activity from entering any surface water or private property on or adjacent to the project site.
- 4.2. **Implementation.**
  - 4.2.1. **Commencement.** Implement the SWP3 as shown and as directed. Contractor proposed recommendations for changes will be allowed as approved. Do not implement changes until approval has been received and changes have been incorporated into the plans by the Engineer. Minor adjustments to meet field conditions are allowed and will be recorded by the Engineer in the SWP3.

Implement control measures before the commencement of activities that result in soil disturbance. Phase and minimize the soil disturbance to the areas shown on the plans. Coordinate temporary control measures with permanent control measures and all other work activities on the project to assure economical, effective, safe, continuous water pollution prevention. Provide control measures that are appropriate to the construction means, methods, and sequencing allowed by the Contract.

Do not prolong final grading and shaping. Preserve vegetation where possible throughout the project and minimize clearing, grubbing, and excavation within stream banks, bed, and approach sections.
- 4.3. **General.**
  - 4.3.1. **Temporary Alterations or Control Measure Removal.** Altering or removal of control measures is allowed when control measures are restored within the same working day.

- 4.3.2. **Stabilization.** Initiate stabilization for disturbed areas no more than 14 days after the construction activities in that portion of the site has temporarily or permanently ceased. Establish a uniform vegetative cover or use another stabilization practice as approved.
- 4.3.3. **Finished Work.** Upon the Engineer's acceptance of vegetative cover or other stabilization practice, remove and dispose of all temporary control measures unless otherwise directed. Complete soil disturbing activities and establish a uniform perennial vegetative cover. A project will not be considered for acceptance until a vegetative cover of 70% density of existing adjacent undisturbed areas is obtained or equivalent permanent stabilization is obtained as approved.
- 4.3.4. **Restricted Activities and Required Precautions.** Do not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, bitumens, or any other petroleum product. Operate and maintain equipment on site in a manner as to prevent actual or potential water pollution. Manage, control, and dispose of litter on site such that no adverse impacts to water quality occur. Prevent dust from creating a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property. Wash out concrete trucks only in approved contained areas. Use appropriate controls to minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water (i.e. dewatering). Prevent discharges that would contribute to a violation of Edwards Aquifer Rules, water quality standards, the impairment of a listed water body, or other state or federal law.

**Section 506.4.4., "Installation, Maintenance, and Removal Work."** The first paragraph is voided and replaced by the following.

Perform work in accordance with the SWP3, and according to the manufacturers' guidelines. Install and maintain the integrity of temporary erosion and sedimentation control devices to accumulate silt and debris until soil disturbing activities are completed and permanent erosion control features are in place or the disturbed area has been adequately stabilized as determined by the Engineer.

**Section 506.4.5., "Monitoring and Documentation,"** is voided and not replaced.

**Section 506.6.5.2., "Maintenance Earthwork for Erosion and Sediment Control for Cleaning and/or Restoring Control Measures,"** is voided and replaced by the following:

Earthwork needed to remove and obliterate of erosion-control features will not be paid for directly but is subsidiary to pertinent Items unless otherwise shown on the plans.

Sprinkling and rolling required by this Item will not be paid for directly but will be subsidiary to this Item.

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## Special Provision to Item 540

### Metal Beam Guard Fence

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Item 540, "Metal Beam Guard Fence" of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

**Article 540.4.7, "Measurement,"** is voided and replaced with the following:

**Long Span System.** Measurement will be by each long span system, complete in place. Each long span system will be from the first CRT to the last CRT in the system.

# Special Provision to Item 666

## Retroreflectorized Pavement Markings



Item 666, "Retroreflectorized Pavement Markings," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

**Section 2.3., "Glass Traffic Beads."** The first paragraph is voided and replaced by the following:

Furnish drop-on glass beads in accordance with DMS-8290, "Glass Traffic Beads," or as approved. Furnish a double-drop of Type II and Type III drop-on glass beads for longitudinal pavement markings where each type bead is applied separately in equal portions (by weight), unless otherwise approved. Apply the Type III beads before applying the Type II beads. Furnish Type II beads for work zone pavement markings and transverse markings or symbols.

**Section 4.3.1., "Type I Markings.,"** is supplemented by the following:

**4.3.1.3. Spot Striping.** Perform spot striping on a callout basis with a minimum callout quantity as shown on the plans.

**Section 4.3.2., "Type II Markings.,"** is supplemented by the following:

**4.3.2.1. Spot Striping.** Perform spot striping on a callout basis with a minimum callout quantity as shown on the plans.

**Section 4.4., "Retroreflectivity Requirements.,"** is voided and replaced by the following.

Type I markings for Contracts totaling more than 20,000 ft. of pavement markings must meet the following minimum retroreflectivity values for all longitudinal edgeline, centerline or no passing barrier-line, and lane line markings when measured any time after 3 days, but not later than 10 days after application.

- White markings: 250 millicandelas per square meter per lux (mcd/m<sup>2</sup>/lx)
- Yellow markings: 175 mcd/m<sup>2</sup>/lx

Retroreflectivity requirements for Type I markings are not required for Contracts with less than 20,000 ft. of pavement markings or Contracts with callout work, unless otherwise shown on the plans.

**Section 4.5., "Retroreflectivity Measurements.,"** is voided and replaced by the following:

Use a mobile retroreflectometer to measure retroreflectivity for Contracts totaling more than 50,000 ft. of pavement markings, unless otherwise shown on the plans. For Contracts with less than 50,000 ft. of pavement markings, mobile or portable retroreflectometers may be used at the Contractor's discretion. Coordinate with and obtain authorization from the Engineer before starting any retroreflectivity data collection.

**Section 4.5.1., "Mobile Retroreflectometer Measurements."** The last paragraph is voided and replaced by the following.

Restripe again at the Contractor's expense with a minimum of 0.060 in. (60 mils) of Type I marking material if the average of these measurements falls below the minimum retroreflectivity requirements. Take measurements every 0.1 miles a minimum of 10 days after this third application within that mile segment for that series of markings. If the markings do not meet minimum retroreflectivity after this third application, the Engineer may require removal of all existing markings, a new application as initially specified, and a repeat of the application process until minimum retroreflectivity requirements are met.

**Section 4.5.2., "Portable Retroreflectometer Measurements."** The first and second paragraphs are voided and replaced by the following.

Provide portable measurement averages for every 1.0 mile unless otherwise specified or approved. Take a minimum of 20 measurements for each 1-mi. section of roadway for each series of markings (e.g., edgeline, center skip line, each line of a double line) and direction of traffic flow when using a portable reflectometer. Measure each line in both directions for centerlines on two-way roadways (i.e., measure both double solid lines in both directions and measure all center skip lines in both directions). The spacing between each measurement must be at least 100 ft. The Engineer may decrease the mileage frequency for measurements if the previous measurements provide satisfactory results. The Engineer may require the original number of measurements if concerns arise.

Restripe at the Contractor's expense with a minimum of 0.060 in. (60 mils) of Type I marking material if the averages of these measurements fail. Take a minimum of 10 more measurements after 10 days of this second application within that mile segment for that series of markings. Restripe again at the Contractor's expense with a minimum of 0.060 in. (60 mils) of Type I marking material if the average of these measurements falls below the minimum retroreflectivity requirements. If the markings do not meet minimum retroreflectivity after this third application, the Engineer may require removal of all existing markings, a new application as initially specified, and a repeat of the application process until minimum retroreflectivity requirements are met.

**Section 4.6. "Performance Period."** The first sentence is voided and replaced by the following:

All longitudinal markings must meet the minimum retroreflectivity requirements within the time frame specified. All markings must meet all other performance requirements of this specification for at least 30 calendar days after installation.

**Article 6. "Payment."** The first two paragraphs are voided and replaced by the following.

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Pavement Sealer" of the size specified; "Retroreflectorized Pavement Markings" of the type and color specified and the shape, width, size, and thickness (Type I markings only) specified, as applicable; "Retroreflectorized Pavement Markings with Retroreflective Requirements" of the types, colors, sizes, widths, and thicknesses specified; "Retroreflectorized Profile Pavement Markings" of the various types, colors, shapes, sizes, and widths specified; or "Reflectorized Pavement Marking (Call Out)" of the shape, width, size, and thickness (Type I markings only) specified, as applicable; or "Pavement Sealer (Call Out)" of the size specified.

This price is full compensation for materials, application of pavement markings, equipment, labor, tools, and incidentals.

**APPENDIX A**  
**QUALITY ASSURANCE PROGRAM**  
**FOR CONSTRUCTION PROJECTS**



# Quality Assurance Program for Design-Bid-Build Projects

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January 2022

TxDOT Materials and Tests Division

## Summary of Program Changes: January 2022 Update

### **Purpose**

The Quality Assurance Program for Design-Bid-Build Projects has been revised to address updated business practices, provide clarification for new and existing practices, and update internal and external document references.

### **Contents**

#### **Chapter 1, “Introduction”**

- Section 1.2, “Support”
  - Updated MTD Administration contact phone number.

#### **Chapter 2, “Acceptance Program”**

- Section 2.2, “Sampling and Testing Frequency and Location”
  - Added that material tested for acceptance must be representative of the material used on the project.
  - Added that laboratory testing used in the acceptance decision must be performed at a laboratory location qualified under Section 8.
  - Added that the location of sampling and testing must be documented in SiteManager.
- Section 2.3, “Documentation”
  - Added subsections 2.3.1, “Material Test Reports,” and 2.3.2, “Authorization of Material Tests,” to distinguish between test report requirements and material authorization requirements.
  - In Section 2.3.1, “Material Test Reports,” clarified that any acceptance testing will be documented on TxDOT-approved templates and identified key fields which are required to be completed within the test report.
  - In Section 2.3.2, “Authorization of Material Tests,” added:
    - requirements concerning the timing and documentation of material authorizations in SiteManager and changes to SiteManager sampling and testing requirements;
    - description of material exception and reference to material certification letter requirements; and
    - how samples or tests which are not used for project acceptance should be addressed in SiteManager.

#### **Chapter 3, “Independent Assurance Program”**

- Moved and reordered previous Sections 3.3-3.6, as follows:
  - Section 3.3 was consolidated into Sections 7 and 8.
  - Section 3.4 was consolidated into Section 6.



- Section 3.5 became Section 3.3, “Comparing Test Results.”
- Section 3.6 became Section 3.4, “Annual Report of IA Program Results.”
- Section 3.4, “Annual Report of IA Program Results”
  - Updated metrics which are required to be identified in the IA annual report.

## **Chapter 4, “Materials Certification”**

- Section 4.1, “Overview”
  - Revised to clarify the intent of the material certification.
- Section 4.2, “Submission of Material Certification Letter”
  - Added section to establish requirements for completing and submitting material certification letters.
- Section 4.3, “Material Exceptions”
  - Added section to establish the definition of a material exception, and the requirements for documenting material exceptions on the material certification letter.
- Section 4.4, “Materials and Tests Division Oversight”
  - Added section to establish a quarterly review process for MTD to verify completeness and accuracy of material certification letters.

## **Chapter 6, “Technician Qualification Program”**

- Section 6.3, “Who Must Be Qualified?”
  - Added that any individual who performs material sampling must be qualified in the relevant sampling test procedure.
- Section 6.4, “Who Can Qualify Sampling and Testing Personnel?”
  - Clarified which District laboratory personnel may qualify sampling and testing personnel.
  - Clarified that the laboratory personnel must have a current ACI certification.
- Section 6.5, “Required Certifications for Non-TxDOT Personnel”
  - Renamed to encompass all non-TxDOT personnel.
- Section 6.6, “Qualification Procedure”
  - Clarified the minimum passing requirements of written exams for concrete test methods.
  - Clarified that written exams and performance evaluations must be completed within a 30-day period.
- Section 6.8, “Responsibility and Documentation”
  - Added Form 2687 as a required supporting document for technician qualifications.
  - Clarified that supporting documentation must be retained for a minimum of 10 years.

## Chapter 7, “Requirements and Frequencies for Laboratory Equipment”

- Moved and reordered previous Sections 7.1-7.7, as follows:
  - Sections 7.1-7.3 and 7.5-7.7 were consolidated into Chapter 8.
  - Section 7.4 became Section 7.2, “Calibration, Standardizations, Checks, and Verification.”
- Renamed chapter to emphasize the focus on equipment requirements.
- Section 7.1, “Overview”
  - Added section to summarize overall requirements of laboratory equipment for TxDOT and non-TxDOT laboratories.
- Section 7.2, “Calibration, Standardizations, Checks, and Verification”
  - Revised to incorporate reference to all types of laboratory equipment requirements.
- Section 7.3, “Contractor Shared Equipment”
  - Added section to establish requirements for sharing laboratory equipment between the Contractor and TxDOT or TxDOT’s representative.
- Section 7.4, “Documentation”
  - Added section to establish documentation requirements for laboratory equipment, including responsibility and records retention.

## Chapter 8, “Laboratory Qualification Program”

- Moved and reordered previous Sections 7.1-7.3 and 7.5-7.7 to align with the tiered approach of the laboratory qualification process, as follows:
  - Section 7.1 became Section 8.1, “Purpose.”
  - Section 7.3 became Section 8.2, “Qualification.”
  - Section 7.2 became Section 8.3, “Laboratory Responsibility.”
  - Section 7.6 became Section 8.4, “Documentation.”
  - Sections 7.5 and 7.7 were consolidated into Section 8.5, “Non-Compliance.”
- Section 8.2, “Qualification”
  - Clarified that field and are included in the MTD central laboratory qualification; area office and project laboratories are included in the District laboratory qualification; and CEI firms performing material testing require qualification.
  - Added that laboratory qualifications issued through the Design-Build QAP will be valid under the Design-Bid-Build program.
  - Renamed and revised Section 8.2.1, “District Accreditation,” to emphasize the application of the qualification to the entire District and to further detail the District accreditation process, including:

- Added that the accreditation inspection process involves review of the District's quality management system, technician certifications, equipment records, and oversight of CEI projects;
- Added that the report rating will be issued with the District Accreditation Report, and that report ratings of 3 will result in a re-inspection;
- Added the process for reviewing and issuing the District Accreditation Report;
- Clarified the corrective action response timeline, and added a communication plan for addressing corrective action responses;
- Added the process for closing out the accreditation inspection;
- Added the process for District accreditation re-inspections when a report rating of 3 is issued; and
- Added requirements for submission of peer review documentation.
- Revised Section 8.2.2, "Commercial Laboratory and CEI Qualification Process," to address the following:
  - Added that the firm's location, contact person, and project role must be identified on Form 2682;
  - Clarified that the Visual Inspection Equipment Checklist must be used to document laboratory equipment;
  - Added requirements for completing and submitting qualification documentation; and
  - Clarified annual audit requirements and the tools and resources which should be used to conduct and document the reviews.
- Section 8.3, "Laboratory Responsibility"
  - Revised to establish requirements for the documentation and submission of District quality assurance standard operating procedures on an annual basis, and to further define the responsibilities of CEI firms, area office personnel, and the District material quality champion.
- Section 8.4, "Documentation"
  - Clarified that laboratory qualification documentation must be retained by the qualifying authority and the qualified laboratory for 10 years.

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# 1. Introduction

## **1.1 Overview**

The Texas Department of Transportation (TxDOT) established the Quality Assurance Program (QAP) for Design-Bid-Build (DBB) Projects to ensure that materials and workmanship incorporated into highway construction projects are in reasonable conformity with the requirements of the approved plans and specifications, including any approved changes. This program was developed in accordance with the criteria in 23 CFR 637 B, where the Materials and Tests Division (MTD) central laboratory will be accredited under the AASHTO Accreditation Program (AAP) which oversees the statewide qualification program.

The QAP consists of an "Acceptance Program" and "Independent Assurance (IA) Program" based on test results obtained by qualified persons and equipment.

The QAP allows for the use of validated Contractor-performed quality control (QC) test results as part of an acceptance decision. It also allows for the use of test results obtained by commercial laboratories in acceptance decisions. The acceptance of all materials and workmanship is the responsibility of the Engineer.

## **1.2 Support**

For more information regarding the information and procedures in the program, contact MTD Administration at 512/975-9755.

## 2. Acceptance Program



## 2.1 Overview

The QAP assures materials incorporated into any highway construction project, are subject to verification sampling and testing, as well as QC sampling and testing when required by the specifications.

The District Engineer will delegate an individual at the District-level for the accountability of certification verification in SiteManager (SM) and at the laboratory for various project delivery options applicable to the DBB program, in accordance with [Section 8.3.3](#).

The delegation of authority should encompass a mechanism that provides oversight authority and an audit function to ensure compliance. Additional information can be found in [Section 8.3](#).

## 2.2 Sampling and Testing Frequency and Location

Verification sampling and testing will be performed at the location and frequency established in the TxDOT [Guide Schedule of Sampling and Testing for Design Bid Build \(DBB\) Projects](#) (DBB Guide Schedule) or specifications specific to each project. Material that is tested for acceptance must be representative of the material used on the project.

Laboratory testing used in the acceptance decision must be performed at a laboratory location qualified under [Section 8](#). The location of sampling and testing must be documented in SM in accordance with [Section 2.3](#).

## 2.3 Documentation

### 2.3.1 Material Test Reports

Any acceptance testing will be documented within SM on the TxDOT-approved Excel templates. All key fields within the test report must be completed, including but not limited to, sampler name, sample location, tester name, test date, and all relevant test results. When the tester does not enter test results directly into SM, the hardcopy will need to be scanned and attached to the SM sample documenting the tester's name.

The laboratory location where testing is performed must be documented in SM using the appropriate Lab ID. In instances where a non-TxDOT technician performs material testing in a TxDOT laboratory, the laboratory location where testing was performed must be documented as a comment in the test report.

### 2.3.2 Authorization of Material Tests

Material samples must be tested, reviewed, and authorized by a minimum of two separate individuals, and they must be authorized within 30 days of sample collection. When authorization within the 30 day period is not possible, a justification for the delay must be documented in SM, including an estimated timeframe for resolution.

An engineering justification must be documented in SM to explain the reason for acceptance of material when:

- the material has failing test results;
- the material was not sampled and tested in accordance with DBB Guide Schedule requirements; or
- adjustments were made to SM sampling and testing requirements (e.g., adjusting conversion factors or zeroing testing frequencies).

Adjustments to SM sampling and testing requirements should be made only when corrections are needed to accurately represent project needs. Changes must be made only by designated District personnel, and the individual who approved the change must be documented within the required justification.

Acceptance of material which deviates from the specifications or DBB Guide Schedule requirements constitutes a material exception, as defined in [Section 4](#), and must be documented on the material certification letter upon project close-out.

Samples which are created in SM but are not used for a project should be authorized as “Void” to invalidate the Sample ID. The omit indicator can be used to exclude specific tests within one Sample ID. The omit indicator will prevent the tests from meeting project sampling and testing requirements.

## **2.4 Quality Control Sampling and Testing**

Contractor-performed QC sampling and testing may be used as part of an acceptance decision when required or allowed by specification.

QC sampling and testing personnel, laboratories, and equipment will be qualified in accordance with [Section 6](#) and [Section 8](#) and will be evaluated under [Section 3](#).

QC test results will be validated by verification test results obtained from independently taken samples. Qualified TxDOT personnel or their designated agents will perform verification sampling and testing.

## **2.5 Dispute Resolution**

When QC test results are used in the acceptance decision, the MTD central laboratory or an accredited independent laboratory approved by MTD will perform the referee testing. The referee laboratory decision will be final.

### **3. Independent Assurance Program**

### 3.1 Overview

The IA program evaluates all sampling and testing procedures, personnel, and equipment used as part of an acceptance decision.

The IA program evaluates the qualified sampling and testing personnel and testing equipment and is established using the system approach. The system approach bases frequency of IA activities on time – regardless of the number of tests, quantities of materials, or numbers of projects tested by the individual being evaluated.

### 3.2 Required Frequencies and Activities

Table 1 gives the frequencies and activities required for evaluating sampling and testing personnel and equipment under the system approach to IA.

Table 1: Frequencies and Activities Required Under IA System Approach

Time	Activity
Before performing acceptance sampling and testing.	Qualification required under <a href="#">Section 6</a> and <a href="#">Section 8</a> of this QAP.
Within 12 mo. after Observation and Qualification, not to exceed 15 mo.	Each qualified technician is required to participate in the first available proficiency or split sample for each test method requiring IA. Results must compare to the IA test results to within the established tolerance.
Within 24 mo. after Observation and Qualification, not to exceed 27 mo.	Each qualified technician is required to participate in one proficiency or split sample test for each test method requiring IA. Results must compare to the IA test results to within the established tolerance.
Within 36 mo. of Qualification. (Only required for certifications issued by TxDOT or HMAC with a 3 yr. cycle.)	Qualification is again required under <a href="#">Section 6</a> and <a href="#">Section 8</a> of this QAP.
Within 36 mo. after Observation and Qualification, not to exceed 39 mo. (Only required for ACI, which has a 5 yr. certification cycle.)	Each qualified technician is required to participate in one proficiency or split sample test for each test method requiring IA. Results must compare to the IA test results to within the established tolerance.

Within 48 mo. after Observation and Qualification, not to exceed 51 mo. (Only required for ACI, which has a 5 yr. certification cycle.)

Each qualified technician is required to participate in one proficiency or split sample test for each test method requiring IA. Results must compare to the IA test results to within the established tolerance.

Within 60 mo. of qualification (Only required for certifications issued by ACI with a 5 yr. cycle).

Qualification is again required under [Section 6](#) and [Section 8](#) of this QAP.

Maintaining technician qualification under the IA system approach requires continuation of the above cycle of qualification and successful split or proficiency sample testing.

### 3.3 Comparing Test Results

Comparison of the split sample test results can be used if equipment or procedures issues are suspected. [Appendix B](#) gives the acceptable tolerance limits for comparing test results from split and proficiency samples.

If the comparisons of the test results do not comply with the tolerances, an engineering review of the test procedures and equipment will be performed immediately to determine the source of the discrepancy.

### 3.4 Annual Report of IA Program Results

MTD will compose and submit an annual report to the Federal Highway Administration (FHWA) summarizing the results of TxDOT's systems approach IA program. See [Appendix C](#) for the annual report form.

This report identifies:

- number of sampling and testing personnel evaluated by the systems approach IA testing,
- number of personnel removed for non-participation,
- number of IA evaluations completed,
- number of IA evaluations found to meet tolerances in [Appendix B](#),
- number of IA evaluations found to not meet tolerances in [Appendix B](#), and
- summary of any significant system-wide corrective actions taken.

## 4. Materials Certification

## 4.1 Overview

A material certification must be submitted for each construction project subject to TxDOT or FHWA oversight activities. The intent of the material certification is to ensure that the quality of all materials incorporated into the project is in conformance with the plans and specifications.

## 4.2 Submission of Material Certification Letters

Upon final acceptance of a construction project, a material certification letter must be submitted to MTD via email at [MTD\\_Materials\\_Cert@txdot.gov](mailto:MTD_Materials_Cert@txdot.gov). The letter will conform in substance to the examples shown in [Appendix D](#) or [Appendix E](#) for projects with federal or state oversight, respectively. MTD is responsible for making the material certification letters available to the FHWA, as applicable.

Material certification letters must be authorized by the TxDOT office designated to oversee the project. The letter may be signed by the Area Engineer or Director of Construction. Material certification letters authorized by Construction Engineering and Inspection (CEI) firms or other non-TxDOT personnel will not be accepted for submission.

## 4.3 Material Exceptions

A material exception is defined as any material represented by an acceptance test that does not meet the criteria contained on the plans and specifications. Exceptions should be investigated to determine if the material is in reasonably close conformity with the plans and specifications.

An exception exists when:

- any material is tested and does not meet minimum specifications if the material is left in place, either with or without pay; and
- any material is not sampled and tested in accordance with minimum testing requirements if the material is left in place, either with or without pay.

When material exceptions exist for a project, the exceptions must be indicated on the material exception letter. Documentation of the material exceptions and the corresponding justifications should be attached to the material certification letter when submitted.

## 4.4 Materials and Tests Division Oversight

MTD will perform a quarterly review of completed material certification letters on a sample basis to verify the completeness and accuracy of the material certification letters, including material exceptions identified and corresponding justifications. Inconsistencies identified during the review will be communicated to appropriate District personnel, and Districts will correct and re-submit material certification letters when necessary.

## 5. Conflict of Interest



## 5.1 Overview

To avoid an appearance of a conflict of interest, any qualified non-TxDOT laboratory will perform only one of the following functions on the same project:

- verification sampling and testing,
- QC sampling and testing,
- IA testing, or
- referee testing.

## **6. Technician Qualification Program**

## 6.1 Purpose

This program provides uniform statewide procedures for technician qualification to ensure that sampling and testing required by the specifications are performed according to the prescribed sampling and testing methods.

## 6.2 Technician Qualification

Sampling and testing personnel will be qualified to perform sampling and testing for the acceptance of materials in the areas of soils, bituminous, aggregate, and concrete materials.

The test methods for which individuals can be qualified are included in the following series of the [TxDOT Test Procedures](#):

- [100-E Series \(Soils\).](#)
- [200-F Series \(Bituminous\).](#)
- [400-A Series \(Aggregates and Concrete\), and](#)
- [500-C Series \(Asphalt – Tex-500-C and Tex-530-C\).](#)

## 6.3 Who Must Be Qualified?

Any individual who performs sampling and testing on the materials listed in [Section 6.2](#), for acceptance, must be qualified in each test procedure they perform. Any individual who performs material sampling must be qualified in the relevant sampling test procedure (e.g., Tex-100-E, Tex-221-F, Tex-222-F, Tex-400-A, Tex-500-C, etc.).

Reciprocity may be granted to individuals who have been successfully qualified under another state's program. These situations will be considered on a case-by-case basis and must meet the approval of the MTD Director.

## 6.4 Who Can Qualify Sampling and Testing Personnel?

The following personnel may qualify an individual to perform the required sampling and testing of materials:

- MTD personnel;
- District laboratory personnel who have been qualified directly by MTD;
- TxDOT-approved entities such as the Hot-Mix Asphalt Center (HMAC) and the American Concrete Institute (ACI);
- District laboratory personnel who have been qualified by the HMAC can issue provisional certifications or sampling certifications; and
- District laboratory personnel who have been qualified by ACI can issue concrete certifications.

Certifications received from HMAC and ACI may be used to satisfy the written exam and observation part of the Technician Qualification Program.

Each District laboratory will maintain a minimum of one individual qualified by MTD or its designated agent, for each test procedure performed within the District. To qualify District personnel for TxDOT concrete test methods, the District laboratory personnel must have a current corresponding ACI Field or Strength certification.

## **6.5 Required Certifications for Non-TxDOT Personnel**

Non-TxDOT laboratory personnel performing sampling and testing for TxDOT, or as required by specification, must obtain and keep current the following certifications pertinent to their scope of testing:

- [ACI Concrete Field Testing Technician – Grade 1](#),
- [ACI Concrete Strength Testing Technician](#),
- [HMAC Level 1A – Plant Mix Specialist](#),
- [HMAC Level 1B – Roadway Specialist](#),
- [HMAC Level 2 – Mix Design Specialist](#),
- [HMAC SB 101 – Materials Properties Specialist](#),
- [HMAC SB 102 – Field Specialist](#),
- [HMAC SB 103 – Materials Analyst Specialist](#),
- [HMAC SB 201 – Strength Specialist](#),
- [HMAC SB 202 – Compressive Strength Specialist](#), and
- [HMAC AGG 101 – Aggregate Specialist](#).

For testing procedures not covered by the above certifications, the following personnel may qualify an individual to perform the required sampling and testing of materials:

- MTD personnel, and
- District laboratory personnel who have been certified by MTD to perform technician qualifications.

## 6.6 Qualification Procedure

To qualify, an authorized evaluator must witness an individual successfully perform the specific test and the necessary calculations required to determine specification compliance. Successful performance is defined as demonstrating the ability to properly perform the key elements for each test method. If the individual fails to demonstrate the ability to perform a test, the individual will be allowed one retest per test method at the evaluator's convenience. The maximum number of attempts cannot exceed three trials in a 90 day period.

In addition to successful performance of a test method, the individual must pass a written examination (minimum score of 80%<sup>1</sup>) administered by an authorized evaluator or their designee. The maximum amount of time allocated per test will be 1 hr. If an individual cannot complete the written test in 1 hr., it will result in failure. An individual failing the written examination may request a retest. The retest must be scheduled and administered within 30 days of notification of failure; however, the maximum number of attempts cannot exceed three trials in a 90 day period.

<sup>1</sup> For TxDOT concrete test methods where written examinations are grouped together to be completed, the minimum score for any individual test method must be 70%, and the overall minimum score for all test methods combined must be 80%.

Under unique circumstances, the qualification authority may grant a verbal examination upon request. The reasons for requesting a verbal examination must be presented and documented before the individual is allowed to take the examination. Should the technician fail the retest examination, the technician will not be allowed to test again unless a written notification is received from the technician's employer or supervisor stating that the technician has received additional training. MTD or its representative will determine the adequacy of the additional training. Failure to pass the third written examination will be considered as failing the entire qualification.

Successful qualification is defined as passing both the written and performance examinations, which must be completed within a 30 day period.

In addition, the individual must participate in split or proficiency samples administered by the qualifying authority to validate the qualification as defined in [Appendix B](#). MTD determines the qualifying authority for the split or proficiency sample.

Unless otherwise stated, qualification of an individual is valid for not more than 3 yr., after which the individual must be re-qualified. Under the IA system approach, annual split or proficiency evaluations will be required as specified in [Section 3.2](#). Failure to satisfactorily complete annual split or proficiency testing will result in certification revocation.

## 6.7 Provisional Certifications

If the required certifications for TxDOT, CEI, commercial laboratories, and Contractor personnel cannot be readily obtained due to course availability, schedule conflicts, or other extenuating circumstances, provisional certifications administered by MTD or TxDOT District laboratory will be allowed, per the following stipulations:

- provisional certifications must be approved by MTD or TxDOT District laboratory;
- provisional certifications will be valid for one month after the HMAC or ACI examination dates; and
- the candidate must show evidence of being enrolled in the required HMAC or ACI course.

## 6.8 Responsibility and Documentation

MTD and the District materials Engineer, laboratory supervisor, or designee are responsible for maintaining documentation of all individuals qualified under their authority who perform required tests for acceptance of materials. The CEI firm must identify a coordinator with the responsibility to communicate with the area office (AO), who will then coordinate with the District-level responsible person to satisfy the requirements for qualified testers. SM will be used to send email notifications on certification status to the owner (i.e., technician) as well as the District-level responsible person. SM will be the official system of record for qualified or certified TxDOT and commercial laboratory personnel.

Issuance of qualification certificates by the TxDOT qualifying authority is not required. A qualification summary listing all tests for which an individual is qualified is available in SM and may be printed or signed at the District's discretion. Documentation must be maintained through the Object Linking and Embedding (OLE) attachment window. This function allows all qualified personnel supporting documentation to be viewed in SM which includes:

- copies of certificates issued by HMAC and ACI; or
- copies of certificates issued by MTD or TxDOT District laboratory, if issued;
- written examination report with clear identification of technician's name, score, and date taken;
- original performance examinations saved as a PDF file for test procedures administered to each technician by the TxDOT qualifying authority, with clear identification of technician's name, qualifier's name, qualification status, and date; and
- copies of [Form 2687, "Examinee's Certification Acknowledgment."](#)

Supporting documentation for technician qualification must be retained for a minimum of 10 yr. Results of annual proficiency testing administered by MTD or HMAC will be stored in their respective central repositories through SharePoint. Annual split sample evaluations will be stored in SM.

## 6.9 Disqualification

Accusations of misconduct by testing technicians are made to the responsible TxDOT District representative and reported to MTD. Table 2 defines the three levels of misconduct: neglect, abuse, and breach of trust.

Table 2: Levels of Misconduct

Term	Definition
Neglect	Unintentional deviations from testing procedures or specifications.
Abuse	Careless or deliberate deviation from testing procedures or specifications.
Breach of Trust	Violation of the trust placed in the certified technician including, but not limited to, acts such as: <ul style="list-style-type: none"><li>▪ falsification of records;</li><li>▪ being aware of improprieties in sampling, testing, or production by others and not reporting them to appropriate supervisors involved in the project;</li><li>▪ re-sampling or retesting without awareness and consent of appropriate supervisors involved in the project; and</li><li>▪ manipulating compensation or production.</li></ul>

The applicable certification steering committee will investigate accusations of misconduct with the assistance of the responsible District. Depending on the severity of the misconduct, MTD may impose penalties ranging from a written reprimand, a temporary suspension, or a permanent revocation of the certification, contingent upon the findings of the investigation. A technician with a revoked certification will be removed from the project and will not be allowed to be employed on any TxDOT project statewide.

## **7. Requirements and Frequencies for Laboratory Equipment**



## 7.1 Overview

All laboratory equipment used in acceptance testing must be calibrated, standardized, checked, or verified in accordance with applicable procedures, including both TxDOT laboratories and non-TxDOT commercial laboratories.

## 7.2 Calibration, Standardizations, Checks, and Verification

Calibration, standardization, checks, and verification of TxDOT equipment may be performed by MTD of the TxDOT District laboratory. TxDOT may also hire a qualified third-party entity to perform equipment requirements in accordance with corresponding test procedures.

The procedures for laboratory equipment requirements and intervals are shown in:

- [Tex-198-E](#), “Minimum Standards for Acceptance of a Laboratory for Soils and Flexible Base Testing,”
- [Tex-237-F](#), “Minimum Standards for Acceptance of a Laboratory for Hot Mix Testing,”
- [Tex-498-A](#), “Minimum Standards for Acceptance of a Laboratory for Concrete and Aggregate Testing,” and
- [Tex-900-K series](#), procedures for calibrating, standardizing, checking, verifying, and certifying equipment.

When applicable, equipment that is moved may require calibration, standardization, checks, or verification.

## 7.3 Contractor Shared Equipment

Unless otherwise stated on the plans and specifications, testing equipment cannot be provided by the Contractor to use for acceptance testing performed by TxDOT or its representative. When allowed by specifications, Contractor-provided testing equipment must be in a location where TxDOT has oversight of the equipment.

Calibration records for shared equipment are required to be retained by TxDOT in accordance with [Section 7.4](#).

## 7.4 Documentation

TxDOT District laboratories are responsible for maintaining documentation of equipment calibration, standardization, checks, and verification for any testing equipment used for acceptance testing. Records must be retained in a PDF file in a central repository location, as defined by MTD, for a minimum of 10 yr.

## **8. Laboratory Qualification Program**

## 8.1 Purpose

This program provides uniform statewide procedures to ensure that laboratory facilities, including equipment and personnel, are qualified for the performance of required sampling and testing methods.

## 8.2 Qualification

All laboratories performing sampling and testing for TxDOT require qualification. Laboratories which require qualification include, but are not limited to, the following:

- MTD central laboratory, which includes MTD’s field laboratories;
- District laboratories, which includes area office and project laboratories (e.g., field laboratories at hot-mix plants); and
- CEI and commercial laboratories.

TxDOT laboratory qualifications issued in accordance with the [Quality Assurance Program for CDA/Design-Build Projects – Section 4.4](#) will be recognized as valid under the DBB program.

### 8.2.1 District Accreditation

MTD is responsible for accrediting TxDOT Districts on a 3 yr. cycle. The accreditation inspection consists of an evaluation of laboratory procedures and equipment necessary for the performance of TxDOT test methods in the material areas of concrete, hot-mix asphalt, and soils and aggregates. The assessment also includes a review of the District’s quality management system, including records of technician certification, equipment calibration, and oversight of CEI projects. The District accreditation issued by MTD encompasses all TxDOT laboratories managed by the District, including the District laboratory, area offices, and TxDOT laboratories at plant locations.

#### 8.2.1.1 Report Rating

MTD will document the accreditation review on a District Accreditation Report, which will be issued to the District upon completion of the review. The report will include an assigned rating level to assess the District’s overall performance based on the associated risks to TxDOT. Report rating levels are described in Table 3 below. Districts which receive a rating of 3 on the District Accreditation Report will be subject to the re-inspection process described in [Section 8.2.1.6](#).

Table 3: Rating Legend

Rating	Rating Description
1	Excellent review with minor or no deficiencies notated.
2	Several deficiencies or repetitive observations were notated.
3	A level of negligence was found programmatically violating compliance requirements.

### 8.2.1.2 Report Review and Distribution

Upon completion of the accreditation inspection, MTD will hold a report review meeting with the District to discuss the draft District Accreditation Report, including the report rating and details of the findings. The District Director of Construction and Laboratory Supervisor or Lead Worker (as applicable) are required to attend the meeting. The draft report will be modified as needed based on the discussion during this meeting and before the report is finalized by MTD.

The final District Accreditation Report will be distributed to the MTD Director and Deputy Director, as well as the District Director of Construction and Laboratory Supervisor (when applicable) for the TxDOT District laboratory. The MTD Director will then issue a memo to the District Engineer, conforming in substance to the example shown in [Appendix E](#), as well as a copy of the report. The memo will include the District's current and prior report rating level, and any additional feedback deemed necessary. When the District Accreditation Report rating is a 3, the memo will also be distributed to the TxDOT Director of District Operations and Director of Engineering & Safety Operations.

### 8.2.1.3 Resolution of Findings

The District Accreditation Report summarizes the accreditation inspection, where a finding is classified as either a deficiency or an observation, defined as follows.

- **Deficiency:** A finding that indicates policy or practice contrary to the requirements of the applicable test methods or documented quality procedures.
- **Observation:** Observations are intended as comments for improvements relating to specific technical information to offer recommendations for best practice. Specifically, observations are noted for any technically related deficiencies where judgment and experience indicate it is not likely to affect the laboratory's ability to produce valid and accurate test results.

A corrective action report (CAR) and supporting documentation are collectively submitted to MTD by the District to address the findings notated in the report. The CAR will document actions that have been taken to prevent recurrence and to show a formal resolution to the findings.

- **Deficiencies:** Deficiencies require a formal written response describing the corrective actions taken or planned and enough documentation, (i.e., copies of records, new or revised procedures, equipment invoices, photographs, etc.) to substantiate actions taken. Corrective actions should be permanently implemented to prevent recurrence of the problem.
- **Observations:** No written response is required for findings identified as observations. However, the laboratory should take necessary corrective action to address the observation to prevent possible recurrence. Repeat observations may result in deficiencies.

### 8.2.1.4 Corrective Action Response Timeline

The resolution of all findings should be completed within 21 days from the issuance of the final District Accreditation Report, including submission of the CAR and supporting documentation to MTD. If the District

cannot satisfy the findings in the report within the stated timeframe, an extension may be requested for additional time, typically 7 days, to resolve any outstanding or pending findings. Additional time extensions may be granted on a case-by-case basis; however, extensions may not exceed 90 days cumulatively. The MTD Director may notify the TxDOT Director of District Operations and Director of Engineering & Safety Operations of any outstanding issues that remain unresolved after 60 days to ensure that the findings are resolved within the 90 day period.

To maintain transparency and ensure that appropriate individuals stay informed throughout the corrective action process, all correspondence between MTD and the Districts will include the individuals listed in Table 4 below.

Table 4: Corrective Action Response Communication Plan

Days Since Final Report Issuance	District Contacts	MTD Contacts
0-45 days	<ul style="list-style-type: none"> <li>Director of Construction</li> <li>District Laboratory Staff</li> </ul>	<ul style="list-style-type: none"> <li>Deputy Division Director</li> <li>Quality Assurance Staff</li> </ul>
45+ days	<ul style="list-style-type: none"> <li>District Engineer</li> <li>Deputy District Engineer</li> <li>Director of Construction</li> <li>District Laboratory Staff</li> </ul>	<ul style="list-style-type: none"> <li>Division Director</li> <li>Deputy Division Director</li> <li>Quality Assurance Staff</li> </ul>
60+ days	MTD Director may escalate outstanding issues to TxDOT Director of District Operations and Director of Engineering and Safety Operations.	

#### 8.2.1.5 Accreditation Close-Out

Upon satisfactory completion of the District accreditation process, MTD will provide the District with official notification that the accreditation process has been closed out. MTD will update the District's accreditation scope on the MTD Directory of Active Accredited Labs.

#### 8.2.1.6 District Accreditation Re-Inspection

TxDOT Districts which receive a rating of 3 on the District Accreditation Report will be subject to a re-inspection by MTD approximately 12-18 mo. following the accreditation close-out. MTD will continue to re-inspect the District annually until a minimum rating of 2 is achieved.

Each re-inspection will focus on the portions of the District Accreditation Report or prior re-inspection which resulted in the rating of 3. Upon completion of the re-inspection, MTD will issue a memo with the re-inspection results, conforming in substance to the example shown in [Appendix G](#).

Following each re-inspection, MTD will work with the District to resolve deficiencies identified during the re-inspection. The District will be given 90 days to resolve deficiencies in accordance with [Section 8.2.1.4](#). All

correspondence between MTD and Districts regarding re-inspections will include, at a minimum, the individuals identified under “45+ days” in Table 4 above. The MTD Director may notify the TxDOT Director of District Operations and Director of Engineering & Safety Operations of any outstanding issues that remain unresolved after 60 days to ensure that the findings are resolved within the 90-day period.

The re-inspection memo will include an updated rating as described in Section [8.2.1.1](#). Districts that receive a re-inspection rating of 2 will return to the standard cyclical accreditation schedule. Districts that receive a re-inspection rating of 3 will be referred to the TxDOT Director of District Operations and Director of Engineering & Safety Operations, and the District will continue to be re-inspected by MTD annually.

### **8.2.1.7 District Laboratory Peer Review Program**

Districts are required to host a District Laboratory Peer Review within 12-24 mo. after the QAP District accreditation. Districts will also participate as “peers” by conducting a review of other Districts, as assigned by MTD. The peer review will include a minimum of one District-managed project and two projects managed by CEI firms to ensure program compliance. When complete, documentation of the peer review must be submitted to MTD via email at [MTD\\_Peer\\_Review@txdot.gov](mailto:MTD_Peer_Review@txdot.gov).

## **8.2.2 Commercial Laboratory and CEI Qualification Process**

### **8.2.2.1 Quality System Inspection**

At the District level, the District laboratory will be the qualifying authority for CEI firms and commercial laboratories, only in the areas for which the District laboratory is accredited. The laboratory qualifying authority will use [Form 2682, “Quality System Inspection – Commercial Laboratory,”](#) to document the following:

- identify the firm’s location, contact person, and project role;
- identify the scope of testing to be performed;
- verify that test methods used to perform tests are available and current;
- document that the laboratory has the required equipment to perform the tests using the [Visual Inspection Equipment Checklist](#);
- check the calibration/verification records for each piece of equipment, to include:
  - description of equipment,
  - identification of any traceable standard used,
  - frequency of calibration,
  - date of calibration,
  - date of last calibration,
  - date of next calibration,
  - calibrating technician,
  - procedure used to calibrate/verify equipment, and

- detailed results of calibration; and
- verify that the laboratory has qualified/certified technicians to perform required testing.

In addition, all equipment may be subject to calibration, verification, or other inspection by the qualifying authority, in accordance with [Section 7](#).

#### **8.2.2.2 Material Producer List**

Laboratories performing acceptance sampling and testing should use results from [TxDOT's Material Producer List](#) (MPL) and perform materials sampling and testing in accordance with TxDOT's DBB Guide Schedule.

Materials that are not monitored or not pre-approved by TxDOT are subject to sampling and testing as part of the acceptance program, except as noted in the DBB Guide Schedule remarks.

Project/field laboratories performing Tex-113-E, Tex-117-E, and Tex-242-F tests must be an approved laboratory from TxDOT's MPL.

#### **8.2.2.3 Qualification Certificate**

After qualifying a CEI or commercial laboratory, the District must notify MTD within 14 days by submitting a copy of the completed Form 2682, "Quality System Inspection – Commercial Laboratory," and laboratory qualification certificate to [MTD\\_QAP@txdot.gov](mailto:MTD_QAP@txdot.gov). MTD will post the certificate to the Directory of Active Accredited Laboratories available through the MTD Crossroads intranet site and will update the laboratory's qualification effective dates within SM.

Commercial laboratory qualifications are valid for 3 yr., and the effective period of the qualification must be listed on the certificate. Laboratories will be removed from the Directory of Active Accredited Laboratories as of the expiration date listed on the certificate unless the laboratory has been re-qualified before that date. SM will be used to notify MTD and laboratory contacts of upcoming laboratory qualification expiration dates.

#### **8.2.2.4 Annual Audit**

An annual audit will be conducted by the designated District staff for each CEI or commercial laboratory to ensure continual compliance with technician records and equipment intervals. The following tools and resources should be used to conduct and document the review for program compliance:

- Form 2682, "Quality System Inspection – Commercial Laboratory," to document the review;
- SM "Material Test History Report – Area Engineer Inspected Materials" query that shows material testing completed for a project;
- SM "Testers and Users by District" query that allows filtering to determine expiring certifications; and
- equipment calibration or verification records retain in the MTD-designated location.

## 8.3 Laboratory Responsibility

The responsibilities are spread among varying roles and are defined below to achieve a level of quality and to maintain program compliance. Communication between the District laboratory, area offices, and CEI firms is key to ensuring that all sampling and testing laboratories, equipment, and personnel employed on TxDOT projects are appropriately qualified.

District Engineers are responsible for ensuring this communication takes place and documenting the communication channels in a District quality assurance standard operating procedure (SOP) that conforms in substance to the outline shown in [Appendix H](#). The SOP must be reviewed, updated as needed, and approved by the District Engineer annually by April 1st, with a copy provided to MTD via email at [MTD\\_QAP@txdot.gov](mailto:MTD_QAP@txdot.gov).

### 8.3.1 CEI Firm

The CEI firm must:

- provide certified personnel that are knowledgeable of all material testing procedures;
- provide copies of current certifications for all personnel performing project acceptance testing;
- provide a completed Form 2682, “Design-Bid-Build Quality System Inspection – Commercial Laboratory,” documenting pre-accreditation of the testing laboratory, including equipment calibrations and verifications and technician certifications, to the area office (AO) within 10 days after execution of the Contract;
- submit commercial laboratory accreditation request to the AO, with enough notice to ensure that laboratories are accredited within 30 days of Contract execution;
- perform all material tests at the facility shown on the Contract, except tests performed at the plant or on the roadway;
- use only material testing laboratories that are accredited by the Laboratory Qualification Program outlined in [Section 8.2](#);
- perform an annual audit to validate ongoing laboratory accreditation, equipment calibrations and verifications, and technician certifications for the duration of the Contract;
- develop a Quality Control Plan (QCP) that:
  - is project-specific,
  - demonstrates how quality is to be achieved through acceptance testing per project,
  - addresses how the CEI firm will track and ensure that only certified technicians perform acceptance on equipment that is calibrated and in good working order, and
  - meets the requirements established in the CEI Contract scope of work, as outlined in Appendix I; and
- provide the QCP to the AO within 10 days after the execution of the Contract.



### 8.3.2 District Area Office Personnel

Each Area Engineer will designate an AO coordinator. The AO coordinator is required to:

- provide District laboratory personnel with monthly status of the CEI projects;
- provide the District laboratory contacts for CEI firms and their subcontracted commercial laboratories;
- invite District laboratory personnel to the kick-off and associated pre-construction meetings;
- review the CEI project-specific testing, certification, and equipment needs to validate that required documentation has been received;
- forward all CEI technician certifications, equipment calibrations and verifications, and laboratory requests to the District laboratory;
- submit the CEI's QCP to the District laboratory;
- approve or reject the QCP based on recommendations from the District laboratory; and
- ensure that an issue-based evaluation of the CEI firm is completed when there are issues of non-compliance with requirements of [Section 8.3.1](#), including missing deliverables or use of unqualified laboratories or technicians throughout the duration of the project.

### 8.3.3 District Material Quality Champion

The District Engineer will designate a District Material Quality Champion to serve as primary point of contact for the District regarding material quality. The Material Quality Champion is responsible for ensuring that the District meets the following requirements:

- Review and make recommendations to the AO coordinator for approval or rejection of the CEI's QCP;
- coordinate the inspection of the commercial laboratory facility and equipment once the QCP has been approved;
- communicate the status of the inspection with the CEI firm;
- use SM to auto-notify the owner (i.e., technician) and the District laboratory designee before certification expiration; and
- conduct and document, at a minimum annually, an internal audit of the District for continual quality program compliance using the following tools and resources:
  - SM “Testers and Users by District” query that allows filtering to determine expiring certifications;
  - SM “Equipment Calibrations” query to show equipment status and upcoming expiration dates;
  - Equipment calibration or verification records retained in the MTD-designated location; and
  - MTD’s Material Samples dashboards to show completeness, accuracy, and timely authorization of SM material samples.

## 8.4 Documentation

The qualifying authority is responsible for verifying that laboratories are qualified to perform sampling and testing. Upon satisfactory completion of the laboratory qualification process, the qualifying authority will issue a certificate covering the scope of testing in which the laboratory has been qualified. Laboratory qualification documentation must be retained by the qualifying authority and the qualified laboratory for a minimum of 10 yr.

Laboratory qualification documentation to be maintained by the qualifying authority includes:

- availability and calibration or verification records for each piece of equipment,
- personnel qualified or certified to perform required testing, and
- copy of laboratory qualification certificate issued.

## 8.5 Non-Compliance

A laboratory that does not meet all the above requirements is subject to disqualification or suspension.

Any equipment in a qualified laboratory failing to meet specified equipment requirements for a specific test method will not be used for that test method. MTD or the TxDOT District laboratory responsible for the certification or audit will immediately notify all applicable area offices of non-conformance for those test methods.

The next higher qualification authority will resolve disputes concerning calibration and verification of equipment. For disputes that cannot be resolved at the District level, MTD will be the final authority.

## 9. Appendices

## Appendix A Acronyms and Definitions

The following terms and definitions are referenced in this document and have the meanings set forth below.

<b>AAP</b>	AASHTO Accreditation Program (AASHTO re:source and CCRL)
<b>AASHTO</b>	American Association of State Highway Transportation Officials
<b>ACI</b>	American Concrete Institute
<b>AO</b>	Area Office
<b>AQMP</b>	Aggregate Quality Monitoring Program
<b>CAR</b>	Corrective Action Report
<b>CCRL</b>	Concrete and Cement Reference Laboratory
<b>CEI</b>	Construction Engineering and Inspection
<b>CFR</b>	Code of Federal Regulations
<b>DBB</b>	Design-Bid-Build
<b>MTD</b>	Materials and Tests Division
<b>CMEC</b>	Construction Materials Engineering Council
<b>FHWA</b>	Federal Highway Administration
<b>HMA</b>	Hot-Mix Asphalt
<b>HMAC</b>	Hot-Mix Asphalt Center
<b>IA</b>	Independent Assurance
<b>L-A-B</b>	Laboratory Accreditation Bureau
<b>MPL</b>	Material Producer List
<b>OLE</b>	Object Linking and Embedding attachment window
<b>QAP</b>	Quality Assurance Program
<b>QAT</b>	Quality Assurance Test
<b>QC</b>	Quality Control
<b>QCP</b>	Quality Control Plan
<b>SM</b>	SiteManager
<b>SOP</b>	Standard Operating Procedure
<b>TXAPA</b>	Texas Asphalt Pavement Association
<b>TxDOT</b>	Texas Department of Transportation

**Abuse**—Careless or deliberate deviation from testing procedures or specifications.

**Acceptance Program**—All factors that comprise TxDOT’s program to determine the quality of the product as specified in the Contract requirements. These factors include verification sampling, testing, and inspection and may include results of QC sampling and testing.

**Accredited Laboratories**—Laboratories that are recognized by a formal accrediting body as meeting quality system requirements including demonstrated competence to perform standard test procedures.

**Breach of Trust**—Violation of the trust placed in the certified technician including, but not limited to, acts such as, falsification of records; being aware of improprieties in sampling, testing, or production by others and not reporting them to appropriate supervisors involved in the project; re-sampling or retesting without awareness and consent of appropriate supervisors involved in the project; and manipulating compensation or production.

**Certified Technician**—A technician certified by some agency as proficient in performing certain duties.

**Independent Assurance (IA) Program**—Activities that are an unbiased and independent evaluation of all the sampling and testing procedures, equipment, and personnel qualifications used in the acceptance program.

**Material Producer List (MPL)**—TxDOT-approved products and materials from various manufacturers and producers are located at: <https://www.txdot.gov/business/resources/producer-list.html>

**Neglect**—Unintentional deviations from testing procedures or specifications.

**Proficiency Samples**—Homogenous samples that are distributed and tested by two or more laboratories or personnel. The test results are compared to assure that the laboratories or personnel are obtaining the same results.

**Qualified Laboratories**—Laboratories that are capable as defined by appropriate programs established by TxDOT. As a minimum, the qualification program must include provisions for checking testing equipment, and the laboratory must keep records of calibration checks.

**Qualified Sampling and Testing Personnel**—Personnel who are capable as defined by appropriate programs established by TxDOT.

**Quality Assurance (QA)**—All planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

**Quality Control (QC)**—All Contractor operational techniques and activities performed or conducted to fulfill the Contract requirements.

**TxDOT Standard Specifications**—the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the Texas Department of Transportation, including all revisions thereto applicable on the effective date of the Contract documents.

**Verification Sampling and Testing**—Sampling and testing performed to verify the quality of the product.

## Appendix B

### Test Methods for Split/Proficiency Evaluation

After observation and qualification, each qualified technician is required to participate annually in one proficiency or split sample test for each test method requiring independent assurance. Split sample test results must compare to the independent assurance test results below. Proficiency sample test results must be within  $\pm 2$  standard deviations of the proficiency sample mean.

*Laboratory Testing Procedures and Tolerance Limits*

Test Procedure	Description	Tolerance
Tex-104-E	Liquid Limit of Soils	15% of mean <sup>1</sup>
Tex-105-E	Plastic Limit of Soils	15% of mean <sup>1</sup>
Tex-106-E	Plasticity Index of Soils	20% of mean <sup>1</sup>
Tex-107-E	Bar Linear Shrinkage of Soils	$\pm 2\%$
Tex-110-E	Particle Size Analysis of Soils, Part I	> No. 4 sieve: $\pm 5\%$ points
		$\leq$ No. 4 sieve: $\pm 3\%$ points
Tex-113-E	Moisture-Density Relationship of Base Materials	Density $\pm 2.0$ PCF
		Moisture Content $\pm 0.5\%$
Tex-117-E	Triaxial Compression for Disturbed Soils and Base Materials, Part II	Strength $\pm 15$ psi
		Moisture Content $\pm 0.5\%$
Tex-200-F	Asphaltic Concrete Combined Aggregate	>5/8" sieve: $\pm 5.0\%$ points (individual % retained)
		$\leq 5/8$ " sieve–No. 200: $\pm 3.0\%$ (individual % retained)
		Passing No. 200: $\pm 1.6\%$ points
Tex-206-F	Compacting Test Specimens of Bituminous Mixtures	$\pm 1.0\%$ laboratory-molded density in accordance with Tex-207-F
Tex-207-F	Determining Density of Compacted Bituminous Mixtures	Laboratory-Molded Density: $\pm 1.0\%$
		Laboratory-Molded Bulk Specific Gravity: $\pm 0.020$
		In-place air voids (cores): $\pm 1.0\%$
Tex-227-F	Theoretical Maximum Specific Gravity of Bituminous Mixtures	$\pm 0.020$
Tex-236-F	Asphalt Content of Asphalt Paving Mixtures by the Ignition Method	$\pm 0.3\%$

Test Procedure	Description	Tolerance
Tex-241-F	Compacting Bituminous Specimens Using the Superpave Gyratory Compactor (SGC)	$\pm 1.0\%$ laboratory-molded density in accordance with Tex-207-F
Tex-418-A	Compressive Strength of Cylindrical Concrete Specimens	17% of mean <sup>1</sup> (4 × 8" specimen)
		14% of mean <sup>1</sup> (6 × 12" specimen)

<sup>1</sup> The difference between compared test results must not exceed the indicated percentage of the mean of the compared test results, where the mean is the average of the two test results.

EXAMPLE: Plasticity Index

Tolerance = 20% of the mean

Technician test value	18
IA technician test value	22
Mean	20
20% difference	4

Both values are within 20% of the mean.

## Appendix C IA Annual Report

{Date}

Independent Assurance Program Manager  
Materials and Tests Division (MTD)  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, TX 78701

RE: Annual Report of Independent Assurance (IA) Program Results – {Project Name}

Dear Sir:

In accordance with the requirements set forth in the TxDOT Quality Assurance Program for Design-Bid-Build Projects, the information below summarizes the results of system approach independent assurance (IA) testing conducted by our firm on the {Project Name} project for calendar year {XXXX}.


TxDOT Independent Assurance Program Results			
IA Activities	TxDOT	Non-TxDOT	Total
Number of personnel evaluated under system approach			
Number of personnel removed from the IA program			
Number of IA evaluations completed			
Number of IA evaluations meeting tolerance			
Number of IA evaluations not meeting tolerance			

CC: Materials and Tests Division Director  
TxDOT - MTD



## Appendix D Material Certification Letter Example – Federal Oversight

A form-fillable version of the Material Certification Letter can be found [here](#).



**Texas Department of Transportation**

ADDRESS, CITY, TEXAS, ZIP | TELEPHONE | WWW.TXDOT.GOV

Date

Division Administrator  
Federal Highway Administration, Texas Division  
300 East 8th Street  
Austin, TX 78701

RE: Final Materials Certification Letter

Project: Federal Aid Project No.: Federal Project No.  
CSJ: CSJ Number  
County: County

Dear FHWA Texas Division Administrator,

This letter is to certify:

The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and in the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. Any material represented by an acceptance test that does not meet the criteria contained in the plans and specifications is considered an exception.

☐ Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

☐ There are no exceptions to the plans and specifications on this project.

Sincerely,


Name of TxDOT District Area Engineer or Director of Construction, P.E.  
Title

cc: FHWA Texas Division  
Director, Materials & Tests Division, TxDOT

QAP (QAPB, Report, Inspection, Acceptance)  
QAP (QAPB, Report, Inspection, Acceptance)  
QAP (QAPB, Report, Inspection, Acceptance)

## Appendix E Material Certification Letter Example – Non-Federal Oversight

A form-fillable version of the Material Certification Letter can be found [here](#).



**Texas Department of Transportation**

ADDRESS, CITY, TEXAS, ZIP | TELEPHONE | WWW.TXDOT.GOV

Date

TxDOT District Engineer  
Title

RE: Final Materials Certification Letter

Project: SH Contract No.: SH Contract No.  
CSJ: CSJ Number  
County: County

Dear District Engineer,

This letter is to certify:

The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and in the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. Any material represented by an acceptance test that does not meet the criteria contained in the plans and specifications is considered an exception.

☐ Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

☐ There are no exceptions to the plans and specifications on this project.

Sincerely,

Name of TxDOT District Area Engineer or Director of Construction, P.E.  
Title

cc: Director, Materials & Tests Division, TxDOT

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It is to be used only for the purpose for which it was prepared.

## Appendix F District Accreditation Results Memo Example



# MEMO

(Date)

**To:** (TxDOT District Engineer)

**From:** (MTD Director)

**Subject:** District QAP Accreditation

The Materials and Tests Division (MTD) has completed an accreditation inspection of the (District), in accordance with the TxDOT Quality Assurance Program for Construction.

The District Accreditation Report has been issued with an overall rating of (1/2/3), indicating (an excellent review with minor or no deficiencies were noted/several deficiencies or repetitive observations were noted/a level of negligence was found programmatically violating compliance requirements). This represents (an improvement/no change/a decline) from the previous rating of (1/2/3) issued in the (Month, Year) District Accreditation Report.

MTD has requested that the District Director of Construction provide a formal written response describing the corrective actions taken to address the deficiencies, as well as sufficient documentation to substantiate the corrective actions by (Date). MTD will work with the district staff to resolve all deficiencies within 90 days (i.e., by (Date)). To assist in meeting this deadline, any deficiencies which remain outstanding after 45 days will be communicated to the District Engineer. Deficiencies that are outstanding after 60 days may be communicated to the TxDOT Director of District Operations and Director of Engineering & Safety Operations.

**Rating of 3**

In addition, the district will be subject to a re-inspection by MTD approximately 12-18 months following the accreditation close-out. The re-inspection will focus on the portions of the District Accreditation Report which resulted in the rating of 3. MTD will continue to re-inspect the district annually until a minimum rating of 2 is achieved.

Please contact (Quality Assurance Staff) at MTD with any questions.

**CC:** (Director of District Operations)  
(Director of Engineering & Safety Operations)  
(Deputy District Engineer)  
(MTD Deputy Director)

**Rating of 3**

## Appendix G

### District Accreditation Re-Inspection Results Memo Example



# MEMO

(Date)

**To:** [TxDOT District Engineer]

**From:** [MTD Director]

**Subject:** District QAP Accreditation Re-Inspection

---

The Materials and Tests Division (MTD) has completed a re-inspection of the [District], in accordance with the TxDOT Quality Assurance Program for Construction. The purpose of the re-inspection was to evaluate the continuity of corrective actions implemented to address deficiencies noted in the [Month, Year] District Accreditation Report, which resulted in a rating level of 3.

**Rating of 2**

The re-inspection found that corrective actions implemented to address previous [technician/equipment/quality management system/CE&I project] deficiencies are operating effectively to ensure continued compliance with the TxDOT Quality Assurance Program for Construction. The records reviewed were substantially complete and accurate.

As a result, the district has been issued a **re-inspection rating of 2**, indicating significant improvement from the previous inspection. This concludes the laboratory re-inspection process, and the district will return to the standard cyclical accreditation schedule.

**Rating of 3**

The re-inspection found that corrective actions implemented to address previous [technician/equipment/quality management system/CE&I project] deficiencies were insufficient or were not sustained to ensure continued compliance with the TxDOT Quality Assurance Program for Construction. As a result, the district has been issued a **re-inspection rating of 3**, indicating a continued level of negligence was found programmatically violating compliance requirements. Deficiencies identified during the re-inspection are listed in the attached document.

The district must provide MTD with a formal written response describing the corrective actions taken to address the deficiencies, as well as sufficient documentation to substantiate the corrective actions by [Date].

The district will also be subject to a re-inspection annually until a minimum re-inspection rating of 2 is achieved.

Please contact [Quality Assurance Staff] at MTD with any questions.

**CC:** [Director of District Operations]  
 [Director of Engineering & Safety Operations]  
 [Deputy District Engineer]  
 [District Director of Construction]  
 [District Laboratory Supervisor]  
 [MTD Deputy Director]  
 [MTD Quality Assurance Staff]



## Appendix H District Quality Assurance SOP Requirements

### District Quality Assurance Standard Operating Procedure Requirements

1. **Quality Assurance Standard Operating Procedures (SOP).** Develop an SOP that is district-specific and developed in accordance with the Quality Assurance Program (QAP) for Design-Bid-Build (DBB) Projects. Update the written SOP annually by April 1<sup>st</sup>, and document approval by the District Engineer. Provide a copy of the SOP to Materials and Tests Division (MTD) via email at [MTD\\_QAP@txdot.gov](mailto:MTD_QAP@txdot.gov). Include the following procedures and items in the SOP:
  - 1.1 **Quality Assurance Roles-** Identify designated individuals responsible for the following quality assurance roles, as defined in the QAP. Designated individuals may further delegate tasks associated with their role; however, the individual will be responsible for the overall function of the role.
    - Area Office (AO) Coordinator for each AO within the district to serve as the primary point of contact between the AO, district laboratory, and Construction Engineering and Inspection (CEI) firms; and
    - Material Quality Champion to serve as the primary point of contact between the district and MTD regarding material quality.
  - 1.2 **Sampling and Testing Qualifications-** Define a process to ensure that all technicians performing sampling and/or testing for TxDOT projects are appropriately qualified for any test methods performed. Identify the following:
    - A designated person responsible for managing technician qualifications and corresponding records retention;
    - Procedures to ensure that required technician certification documentation is completed and retained within the Construction Contract Management System (CCMS), including Form 2687, when required;
    - Procedures to qualify technicians by authorized district personnel;
    - A designated person responsible for obtaining ACI qualification to certify district personnel for concrete test methods;
    - Procedures to ensure that technicians participate and perform proficiency samples independently; and
    - How the district will monitor for expiring technician qualifications.
  - 1.3 **Equipment Requirements-** Define a process to ensure that equipment used for acceptance testing is calibrated, standardized, checked, or verified as required by applicable procedures. Identify the following:
    - A designated person responsible for managing equipment requirements and corresponding records retention;
    - Procedures to calibrate, standardize, check, or verify district equipment within required frequency intervals, including equipment for all AOs and field laboratories;
    - Procedures to enter and update equipment inventory in the CCMS;
    - Procedures to complete and store equipment records within the required location;
    - How the district will ensure that equipment is shared with the contractor only when allowed by specifications.
  - 1.4 **CEI Firm and Commercial Laboratory Qualification-** Define a process to ensure that CEI firms and commercial laboratories are qualified for the performance of required sampling and testing procedures. Identify the following:
    - A designated person responsible for managing CEI firm and commercial laboratory qualification inspections and corresponding records retention;
    - Procedures to conduct qualification inspections, including:
      - How the district will ensure that required inspection documentation, including supporting technician and equipment records, is complete and stored within the required location;
      - How the district will ensure that required qualification documents are completed and submitted to MTD when required; and
      - How the district will ensure that CEI firm and commercial laboratory qualification inspections are completed before the expiration of the prior laboratory qualification certificate;
    - Procedures to notify the district laboratory of ongoing CEI firm and commercial lab technician qualification needs; and
    - Procedures to conduct the annual audit of CEI firms and commercial laboratories to ensure continual compliance with technician records and equipment intervals, including:

- Who is responsible for performing the reviews,
- How the district will conduct and document the reviews, and
- How the district will ensure that updated technician certification and equipment records are complete and stored within the required location.

**1.5 District Oversight and Monitoring-** Define a process to monitor for continual quality program compliance. Identify the following:

- Procedures to adjust sampling and testing requirements in the CCMS, including:
  - Who is responsible for making changes in the system,
  - Who has authority to approve the changes, and
  - How the district will ensure that the reason for the change is documented;
- Procedures to ensure the completeness and accuracy of sample information and material test results entered in the CCMS, including items completed by CEI firms or commercial laboratories;
- Procedures to ensure that material samples are authorized within 30 days or justification for delayed authorization is documented;
- Procedures to complete Material Certification Letters at project-close out, including:
  - Who is responsible for completing and signing the letter,
  - How the district will identify material exceptions to be included in the letter, and
  - How the district will document and compile justifications for material exceptions identified; and
- Procedures to conduct an internal audit of the district, including:
  - The frequency of the reviews (at a minimum annually),
  - Who is responsible for performing the reviews,
  - How the district will monitor for expiring technician certifications and equipment intervals,
  - How the district will ensure that required equipment records are complete, accurate, and stored within the required location,
  - How the district will monitor the material samples dashboards for completeness, accuracy, and timely authorization of material samples,
  - How the district will document the reviews, and
  - The process for addressing the items identified during the reviews.



## Appendix I

### CEI Quality Control Plan Requirements

#### Quality Control Plan

**1.1 Quality Control Plan (QCP).** Develop a QCP that is project specific and developed in accordance with the DBB QAP. Submit the written QCP within 10 days after execution of the CE&I contract and before the mandatory kick-off meeting. Receive written approval from the AO on the QCP before beginning inspection, sampling and testing and for any addendums. Include the following procedures and items in the QCP:

**1.1.1 Project and Personnel-** For the CE&I project and personnel include:

- CSJ#, District, County, AE, Highway;
- a dedicated person responsible for quality with their current contact information (cell phone and email address) that will ensure that all CE&I and Contractor technician certifications and equipment calibrations are current, including updates to test methods, and proficiencies performed in time and independently;
- a list of the subcontractor firms and a defined scope of responsibility maintained by the principal firm to comply with the DBB QAP; names of individuals and their sampling and testing responsibilities;
- current electronic copies of certification documents for individuals performing specified sampling and testing functions;
- procedure for ensuring technicians participate and perform proficiency samples independently and how technicians will not share results; and
- handling accusations of misconduct covering: neglect, abuse, or breach of trust.

**1.1.2 Laboratory-** For CE&I laboratory equipment and calibration, include:

- current electronic copies of most recent equipment calibration checks where applicable and in accordance with:
  - Tex-198-E, "Minimum Standards for Acceptance of a Laboratory for Soils and Flexible Base Testing,"
  - Tex-237-F, "Minimum Standards for Acceptance of a Laboratory for Hot Mix Testing,"
  - Tex-498-A, "Minimum Standards for Acceptance of a Laboratory for Concrete and Aggregate Testing,"and
- Tex-900-K Series, procedures for calibrating, verifying, and certifying equipment and devices.
- include only equipment required for testing on this project and the support equipment such as calipers and weights;
- annual equipment calibration schedule with date(s) due;
- maintenance and repair plan for laboratory equipment;
- electronic copies of all standards used for calibrating or verifications; and
- procedures for ensuring quality is attained through laboratory testing equipment beyond the normal calibration cycle.

**1.1.3 Quality-** For the CE&I firm to achieve quality through inspection, sampling, and testing, include:

- a designated person responsible for the CE&I firm's adherence to the QCP;
- how QCP information will be communicated to all members of the CE&I team;
- how the firm will ensure that employees receive a copy and understand the construction Contractor's quality control plan/paving plan for each material;
- all reference document resources available to technicians;
- in-house equipment available to technicians for equipment calibration and repair;
- instructions for how laboratory equipment shall be cared for;
- procedures for establishing which equipment can be shared between the CE&I firm and the construction Contractor and the corresponding approval process;
- procedures and time limits for reporting test results to the Engineer and Contractor;
- timely review of QA test results for reasonableness and comparison of QC and QA data; and
- how the firm will protect the integrity of quality assurance data, to include:
  - do not provide the construction Contractor with the random numbers for material sampling in advance;
  - separation of review and authorization functions in SiteManager;
  - how test results will be documented in SiteManager when the tester does not directly enter the results; and
  - how the firm will ensure the correct QC and QA data is saved in SiteManager.

**APPENDIX B**  
**GUIDE SCHEDULE OF SAMPLING AND TESTING**



# GUIDE SCHEDULE OF SAMPLING & TESTING FOR DESIGN BID-BUILD (DBB) PROJECTS - (DBB Guide Schedule)

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JUNE 28, 2019



## Using the Guide Schedule

Research of sampling and testing rates, listed for project tests in the following Guide Schedule, show that the Department's and the Contractor's risk of either rejecting "good" material or accepting "bad" material range from 20% to 40%.

To reduce this risk, we recommend that the sampling rate be increased during initial production. A four-fold increase in testing frequency will generally reduce risk to approximately 5%. The intent of increasing testing, at the start of production, is to insure the Contractor's processes are in control and to establish acceptability requirements early.

There is a need to increase the frequency of testing for high-variability materials and when testing results do not meet specifications. The Engineer may require the Contractor to reimburse the Department for costs resulting from failing test results, in accordance with the specifications.

Materials incorporated in TxDOT projects are subjected to various quality assurance procedures such as testing (as outlined in this document), certification, quality monitoring, approved lists, etc. The Engineer and testing staff should familiarize themselves with materials to be used before work begins by reviewing the specifications and this document. Discuss material testing requirements with the Contractor.

Other testing required by the specifications, but not shown in the DBB Guide Schedule, should be performed at a frequency necessary to provide adequate confidence that materials meet specifications.

NOTE—The TxDOT District Area Engineer or Director of Construction must submit a "Materials Certification Letter" at final acceptance of the project. The intent of this letter is to ensure that the quality of all materials incorporated into the project is in conformance with the plans and specifications, thus ensuring a service life equivalent to the design life. Any material represented by an acceptance test, that does not meet the criteria contained in the plans and specifications, is considered an exception. Exceptions must be listed in the materials certification letter. For projects with federal oversight, submit the materials certification letter (See Appendix D of DBB QAP) to the FHWA division administrator, with a copy to **the Materials and Tests Division (MTD)**. For non-federal oversight projects, submit the material certification letter (Appendix E of DBB QAP) to the TxDOT District Engineer, with a copy to **MTD**. Refer to section 4.1 of the "Quality Assurance Program for Design-Bid-Build Projects" (DBB QAP).

Assuring the quality of the product and proper incorporation of materials into the project begins with proper sampling practices. Sampling, testing, and construction inspection must be performed collaboratively to assure the specific attributes of the finished product reflect quality workmanship. Sampling guidance for hot-mix asphalt is contained in Tex-225-F, "Random Selection of Bituminous Mixture Samples," and the respective specification for that material. All remaining materials are covered by method and materials specifications, to which the following applies.

For acceptance testing, especially that which directly determines payment for the Contractor, sampling personnel should provide randomness in sampling by avoiding patterned sampling routines. Examples of such sampling practices are as follows:

- Soils/flexible base: Vary sampling between stockpiling operations, completed stockpile, windrow, and project site. Vary the time of day sampling is performed.
- Aggregates: Sample aggregates nearest the point of incorporation into the work. Vary sampling between stockpiling operations, completed stockpile, belt sampling, and if deemed necessary, railroad cars/trucks. Vary the time of day sampling is performed.
- Concrete (structural and miscellaneous): Always sample as near as practicable to the point of placement. For strength testing, vary the time of day or the number of truck from which the concrete is sampled. Tests for slump, air, and temperature should be done often to ensure the consistent control of the concrete production (not applicable to miscellaneous concrete).

*This Guide Schedule is applicable to all contracts associated with the 2014 Standard Specifications.*

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE I – EMBANKMENTS, SUBGRADES, BACKFILL, AND BASE COURSES**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	REMARKS
EMBANKMENT (CUTS & FILLS)	Liquid Limit (A)	Tex-104-E	During stockpiling operations, from completed stockpile, or project site (B)	Materials with PI ≤ 15: 10,000 CY	For Type A embankment or when required by the plans. This test may be waived for embankment cuts <b>as directed by the Engineer</b> . Determine a new liquid limit and plasticity index for each different material or notable change in material. Sample in accordance with Tex-100-E.
	Plasticity Index (A)	Tex-106-E		Materials with PI > 15: 5,000 CY	
	Gradation	Tex-110-E		Each 10,000 CY	When shown on plans. This test may be waived for embankment cuts, as directed by the Engineer. Sample in accordance with Tex-100-E.
	Moisture/Density	Tex-114-E		As directed by the Engineer	Not required for ordinary compaction. Determine a new optimum moisture and maximum density for each different material or notable change in material. Sample in accordance with Tex-100-E.
	In-place Density (A)	Tex-115-E	<b>As directed by the Engineer</b>	Fill: each 5,000 CY min. 1 per lift.	Not required for ordinary compaction. Determine a new optimum moisture and maximum density according to Tex-114-E for each different material or notable change in material.
				Cut: each 6,000 LF	Correct the moisture contents measured by nuclear density gauge in Tex-115-E with the moisture contents determined in accordance with Tex-103-E, as necessary for control, for each different material or notable change in material and adjust the density accordingly. Materials such as RAP, gypsum, lime, cement, and iron ore tend to bias the counts for nuclear density gauges.
RETAINING WALL (NON-SELECT BACKFILL)	As shown above for Embankment (Cuts and Fills)		As shown above for Embankment (Cuts and Fills)	As shown above for Embankment (Cuts and Fills)	Sample in accordance with Tex-100-E.
RETAINING WALL (SELECT BACKFILL)	Plasticity Index (A)	Tex-106-E	During stockpiling operations, from completed stockpile, or project site (B)	Each 5,000 CY	<b>Required only for Type CS backfill</b> . Test the fraction of material finer than the No. 200 sieve. Sample in accordance with Tex-400-E.
	Gradation	Tex-110-E	During stockpiling operations, from completed stockpile, or project site (B)	Each 5,000 CY	Required only for Drainage Aggregate. Sample in accordance with Tex-400-A.
		Tex-401-A			Required only for Select Backfill. Sample in accordance with Tex-400-A.
	Resistivity (A)	Tex-129-E	During stockpiling operations, from completed stockpile, or project site (B)	Each 5,000 CY	For material with resistivity between 1,500 and 3,000 ohm-cm, determine chloride and sulfate content, as specified in Item 423. Sample in accordance with Tex-400-A.

This is a guide for minimum sampling and testing.  
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**TABLE I – EMBANKMENTS, SUBGRADES, BACKFILL, AND BASE COURSES**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	REMARKS
RETAINING WALL (SELECT BACKFILL) (continued)	pH (A)	Tex-128-E	During stockpiling operations, from completed stockpile, or project site (B)	Each 5,000 CY	Sample in accordance with Tex-400-A.
	Magnesium Soundness	Tex-411-A	During stockpiling operations, or from completed stockpile	1 per source, per project	Test when backfill sources appear to contain particles such as shale, caliche, or other soft, poor-durability particles. Sample in accordance with Tex-400-A.
	Micro-Deval	Tex-461-A	During stockpiling operations, or from completed stockpile	1 per source, per project	May be used as an alternate to the magnesium soundness only when the % loss from the micro-deval is not greater than 20%. When the % loss from the micro-deval is greater than 20%, the magnesium soundness governs aggregate verification. Sample in accordance with Tex-400-A.
	In-place Density (A)	Tex-115-E	As directed by the Engineer.	1 per backfill lift, per wall	Not required for rock backfill. For walls greater than 500 ft. in length, perform one test per lift for every 500 ft. in length. (F) Correct the moisture contents measured by nuclear density gauge in Tex-115-E with the moisture contents determined in accordance with Tex-103-E for each different material or notable change in material and adjust the density accordingly.
UNTREATED BASE COURSES	Liquid Limit (A)	Tex-104-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	Sample in accordance with Tex-400-A.
	Plasticity Index (A)	Tex-106-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	
	Gradation (A)	Tex-110-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	Sample in accordance with Tex-400-A.
	Moisture/Density	Tex-113-E	From completed stockpile at the source (E)	Each 20,000 CY	Not required for ordinary compaction. Sample in accordance with Tex-400-A.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE I – EMBANKMENTS, SUBGRADES, BACKFILL, AND BASE COURSES						
			PROJECT TESTS			
MATERIAL OR PRODUCT		TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	REMARKS
UNTREATED BASE COURSES (Continued)		Wet Ball Mill (A)	Tex-116-E	From completed stockpile at the source (E)	Each 20,000 CY	Required for Grades 1–2 and 5, and as shown on the plans for Grade 4. Sample in accordance with Tex-400-A.
		Strength (A)	Tex-117-E	From completed stockpile at the source (E)	Each 20,000 CY	Required for Grades 1–2 and 5, and as shown on the plans for Grade 4. When base material is from a source where the District has a record of satisfactory triaxial results, the frequency of testing may be reduced to one per 30,000 CY.  If any one test falls below the minimum value required, the frequency of testing will return to the original frequency of 20,000 CY.  Sample in accordance with Tex-400-A.
		In-place Density (A)	Tex-115-E	As directed by the Engineer	Each 3,000 CY, min. 1 per lift	Correct the moisture contents measured by nuclear density gauge in Tex-115-E with the moisture contents determined in accordance with Tex-103-E, as necessary for control, for each different material or notable change in material and adjust the density accordingly.  Materials such as RAP, gypsum, lime, cement, and iron ore tend to bias the counts for nuclear density gauges.
		Thickness (A)	Tex-140-E	As directed by the Engineer	Each 3,000 CY	Not required where survey grade control documents are compliant.
		Ride Quality (A)	Tex-1001-S Surface Test, Type B	Final riding surface of travel lanes		This applies to the final travel lanes that receive a 1- or 2-course surface treatment for the final surface, unless otherwise shown on the plans.
TREATED SUBGRADE AND BASE COURSES	SUBGRADE BEFORE TREATMENT	Organic Content	Tex-148-E	As directed by the Engineer	1 per project, per source or as directed by the Engineer	Required for existing subgrade material and material imported from a borrow source. Soil survey and geologic maps may be used to determine sampling locations.  Sample in accordance with Tex-100-E.
		Sulfate Content	Tex-145-E	As directed by the Engineer	1 per 500 feet or 5,000 CY	Required for existing subgrade material and material imported from a borrow source. Soil survey and geologic maps may be used to determine sampling locations.  Sample in accordance with Tex-100-E.
	NEW BASE MATERIAL	Liquid Limit (A)	Tex-104-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	When central mix site or plant is used, windrow sampling may be waived.  Sample in accordance with Tex-400-A.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE I – EMBANKMENTS, SUBGRADES, BACKFILL, AND BASE COURSES						
			PROJECT TESTS			
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	REMARKS	
TREATED SUBGRADE AND BASE COURSES (Continued)	NEW BASE MATERIAL (Continued)	Plasticity Index (A)	Tex-106-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	
		Gradation (A)	Tex-110-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	Sample in accordance with Tex-400-A.
		Wet Ball Mill (A)	Tex-116-E	From completed stockpile at the source (E)	Each 20,000 CY	Required for Grades 1–2 and 5, and as shown on the plans for Grade 4. Sample in accordance with Tex-400-A.
		Strength (A)	Tex-117-E	From completed stockpile at the source (E)	Each 20,000 CY	Required for Grades 1–2 and 5, and as shown on the plans for Grade 4. When base material is from a source where the District has a record of satisfactory triaxial results, the frequency of testing may be reduced to one per 30,000 CY. If any one test falls below the minimum value required, the frequency of testing will return to the original frequency of 20,000 CY.
	LIME	Compliance with DMS-6350	Tex-600-J	During delivery to project	Commercial Lime Slurry: each 200 tons of lime Carbide Lime Slurry: each 100 tons of lime	Sample in accordance with Tex-600-J. Verify the source is listed on the current Material Producer List for <b>Lime</b> . Only materials appearing on the Material Producer List will be accepted. Sample frequency for Carbide Lime Slurry may be increased as directed by the Engineer.  For Hydrated Lime and Quick Lime, project testing is not required but it is encouraged to sample and test the material at a rate of 1 per project as a best practice.
	CEMENT	Compliance with DMS-4600		Railroad car, truck, or cement bins		Verify the source is listed on the current Material Producer List for Cement. If not, sample and test in accordance with DMS-4600. (C)
	FLY ASH MATERIAL	Compliance with DMS-4615		Project samples at location <b>directed by the Engineer</b>		Verify the source is listed on the current Material Producer List for <b>Fly Ash</b> . Only materials from <b>MTD</b> approved sources appearing on the Material Producer List for Fly Ash will be accepted. Project testing is not required but it is encouraged to sample and test the material at a rate of 1 per project as a best practice. (C)

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE I – EMBANKMENTS, SUBGRADES, BACKFILL, AND BASE COURSES						
			PROJECT TESTS			
MATERIAL OR PRODUCT		TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	REMARKS
TREATED SUBGRADE AND BASE COURSES (Continued)	COMPLETE MIXTURE	Pulverization Gradation	Tex-101-E, Part III	Roadway, after pulverization and mixing	As necessary for control	At the beginning of the project, one test must be made for each 4,500 CY or 6,000 tons until the Engineer is satisfied that acceptable pulverization results are being obtained. Sample in accordance with Tex-100-E.
		Moisture/Density Curve and Strength	Tex-120-E, Part II, or Tex-121-E, Part II	From roadway windrow after treatment (E)	Each 20,000 CY	Not required for ordinary compaction. Determine a new moisture/density curve for each different or notable change in material. Perform Tex-120-E, Part II, for Cement Treated Material, and Tex-121-E, Part II, for Lime, Lime-Fly Ash, or Fly Ash Treated Material. If Tex-120-E, Part I, Tex-121-E, Part I, or Tex-127-E is performed before the project, this test may be waived. Sample in accordance with Tex-100-E.
		Moisture/Density Curve and Strength	Tex-120-E, Part I, Tex-121-E, Part I, or Tex-127-E	From roadway before treatment	As necessary for control	Perform Tex-120-E, Part I, on cement treated material, and Tex-121-E, Part I, for lime-fly ash or fly ash treated material. Verifies the field strength by comparing results from the mix design. Performed at the direction of the Engineer and when notable change in material, as described above for Part II of the test procedures. Sample in accordance with Tex-100-E.
		In-place Density (A)	Tex-115-E	As directed by the Engineer	Each 3,000 CY, min 1 per lift	Determine the appropriate moisture/density curve for each different material or notable change in material. Correct the moisture contents measured by nuclear density gauge in Tex-115-E with the moisture contents determined in accordance with Tex-103-E, as necessary for control, for each different material or notable change in material and adjust the density accordingly. Stabilizers and materials such as RAP, gypsum, and iron ore tend to bias the counts for nuclear density gauges.
		Thickness (A)	Tex-140-E	As directed by the Engineer	Each 3,000 CY	Not required where survey grade control documents are used for compliance.



This is a guide for minimum sampling and testing.  
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TABLE I – EMBANKMENTS, SUBGRADES, BACKFILL, AND BASE COURSES					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	REMARKS
RECLAIMED ASPHALT PAVEMENT (RAP), CRUSHED CONCRETE, and RECYCLED MATERIALS	Sulfate Content	Tex-145-E	During stockpiling operations, from completed stockpile, or windrow	Each 5,000 CY	Required only for contractor furnished recycled material, including crushed concrete. Not required for RAP. Sample in accordance with Tex-400-A.
	Deleterious Material	Tex-413-A		Each 5,000 CY	Required only for contractor furnished recycled material, including crushed concrete. Sample in accordance with Tex-400-A.
	Decantation	Tex-406-A	During stockpiling operations, from completed stockpile, or windrow	Each 5,000 CY	Required only for contractor furnished RAP. Sample in accordance with Tex-400-A.

TABLE I – FOOTNOTES	
<b>A</b>	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager (SM), in the remarks field, and on the end of the Project Materials Certification Letter.
<b>B</b>	Engineer will select any of these locations or any combinations thereof with the provision that the initial sample will be obtained from the completed stockpile at the source and at least one out of ten consecutive samples will be taken at the project site (from the windrow for treated and untreated bases and embankments when possible).
<b>C</b>	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
<b>D</b>	For acceptance testing, especially that which directly determines payment for the Contractor, sampling personnel should provide randomness in sampling by avoiding patterned sampling routines. Examples of such sampling practices are as follows: <ul style="list-style-type: none"> <li>• Soils/Flexible Base: For gradation, liquid limit, and plastic limit, vary sampling between stockpiling operations, completed stockpile, windrow, and project site. Vary the time of day sampling is performed.</li> <li>• Aggregates: Sample aggregates nearest the point of incorporation into the work. Vary sampling between stockpiling operations, completed stockpile, belt sampling, and if deemed necessary, railroad cars/trucks. Vary the time of day sampling is performed.</li> </ul>
<b>E</b>	The Engineer will sample from the completed stockpile at the source and test <b>before</b> placement.
<b>F</b>	Each test performed that is based on a quantity of material is considered “or fraction thereof” for calculating number of tests.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE IA – ASPHALT TREATED BASE (Plant Mix)**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	REMARKS
AGGREGATE	Liquid Limit (A)	Tex-104-E	During stockpiling operations, from completed stockpile, or before mixing	Each 5,000 CY	Sample in accordance with Tex-400-A.
	Plasticity Index (A)	Tex-106-E	During stockpiling operations, from completed stockpile, or before mixing	Each 5,000 CY	
	Wet Ball Mill (A)	Tex-116-E	During stockpiling operations, from completed stockpile, or before mixing	1 per project, per source	Sample in accordance with Tex-400-A. (B)
LIME	Compliance with DMS-6350		During delivery to the project	Hydrated Lime: 1 per project Commercial Lime Slurry: each 200 tons of lime (D) Carbide Lime Slurry: each 100 tons of lime (D) Quick Lime: 1 per project	On projects requiring less than 50 tons, material from MTD approved sources may be accepted on the basis of Producer's Certification without sampling.
RECLAIMED ASPHALT PAVEMENT (RAP), and RECYCLED AGGREGATE	Decantation	Tex-406-A, Part I	During stockpiling operations, from completed stockpile, or before mixing	Each 10,000 CY	Sample in accordance with Tex-400-A.
RECYCLED ASPHALT SHINGLES (RAS)	Decantation	Tex-217-F, Part III	During stockpiling operations, from completed stockpile, or before mixing	Each 10,000 CY	Sample in accordance with Tex-400-A.
ASPHALT BINDER	Compliance with Item 300		Sampling port nearest the storage tank	1 per project, per grade, per source	Test a minimum of one sample taken from the project. Sample binder in accordance with Tex-500-C, Part II.  Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SiteManager (SM) Assistant.  The Engineer must associate one QM sample per project in SM.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE IA – ASPHALT TREATED BASE (Plant Mix)**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	REMARKS
TACK COAT	Compliance with Item 300		Distributor	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample tack coat in accordance with Tex-500-C, Part III.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample per project in SM.</p>
COMPLETE MIXTURE	Gradation (A)	Tex-200-F, Part I	Plant Mix (C)	20,000 CY (25,000 tons)	<p>Sample in accordance with Tex-222-F.</p> <p>Determine the gradation of the aggregate from the complete mixture tested in accordance with Tex-236-F.</p>
	Laboratory Density (A)	Tex-126-E	Plant Mix (C)	20,000 CY (25,000 tons)	Sample in accordance with Tex-222-F.
	Percent Asphalt (A)	Tex-236-F	Plant Mix (C)	Each 1,500 CY (2,000 tons) or days production	Determine an asphalt content correction factor for ignition oven at a minimum of one per project. Sample in accordance with Tex-222-F.
	Indirect Tensile Strength – Dry	Tex-226-F	Plant Mix	1 per project, per design	Sample in accordance with Tex-222-F.
	Moisture Susceptibility	Tex-530-C	As directed by the Engineer	1 per project, per design	This test may be waived, when shown on the plans. Sample in accordance with Tex-222-F.
ROADWAY	In-Place Air Voids (A)	Tex-207-F	Roadway cores, as directed by the Engineer (C, D)	Each 3,000 CY, min 1 per lift	<p>Not required for ordinary compaction or when air void requirements are waived.</p> <p>Sample in accordance with Tex-222-F.</p>
	Ride Quality	Tex-1001-S Surface Test, Type A	On Finished Surface		Unless otherwise shown on the plans.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE IA – FOOTNOTES	
A	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager (SM), in the remarks field, and on the end of the Project Materials Certification Letter.
B	Engineer will select any of these locations or any combinations thereof with the provision that at least one out of ten consecutive samples will be taken at the project site (from the windrow for treated and untreated bases and embankments when possible).
C	<p>For acceptance testing, especially that which directly determines payment for the Contractor, sampling personnel should provide randomness in sampling by avoiding patterned sampling routines. Examples of such sampling practices are as follows:</p> <ul style="list-style-type: none"><li>• Soils/Flexible Base: Vary sampling between stockpiling operations, completed stockpile, windrow, and project site. Vary the time of day sampling is performed.</li><li>• Aggregates: Sample aggregates nearest the point of incorporation into the work. Vary sampling between stockpiling operations, completed stockpile, belt sampling, and if deemed necessary, railroad cars/trucks. Vary the time of day sampling is performed.</li></ul>
D	Each test performed, that is based on a quantity of material, is considered “or fraction thereof” for calculating number of tests.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE II – SEAL COAT					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	REMARKS
AGGREGATE	Gradation (A)	Tex-200-F, Part I	Stockpile (At source or at point of delivery)	Each 1,000 CY	Rate may be reduced to each 2,000 CY if the Engineer approves a contractor quality control plan. Sample in accordance with Tex-221-F.
	L. A. Abrasion (A)	Tex-410-A	Stockpile	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer List for <b>BRSQC</b> , meets the project specifications. If not, sample and test at 1 per 20,000 CY <b>before</b> use. Sample in accordance with Tex-221-F. (B)
	Magnesium Soundness (A)	Tex-411-A	Stockpile	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer List for <b>BRSQC</b> , meets the project specifications. If not, sample and test at 1 per 20,000 CY <b>before</b> use. Sample in accordance with Tex-221-F. (B)
	Surface Aggregate Classification (A)	Tex-612-J, Tex-411-A	Stockpile	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer List for <b>BRSQC</b> , meets the project specifications. If not, sample and test at 1 per 20,000 CY <b>before</b> use. Sample in accordance with Tex-221-F. (B)
	Pressure Slake (A)	Tex-431-A	Stockpile	1 per 20,000 CY	Same as above. Required only for lightweight aggregate. Sample in accordance with Tex-221-F.
	Freeze Thaw (A)	Tex-432-A	Stockpile	1 per 20,000 CY	Same as above. Required only for lightweight aggregate. Sample in accordance with Tex-221-F.
	Unit Weight	Tex-404-A	Stockpile	1 per 20,000 CY	Same as above. Required only for lightweight aggregate. Sample in accordance with Tex-221-F.
	24 hr. Water Absorption (A)	Tex-433-A	Stockpile	1 per 20,000 CY	Same as above. Required only for lightweight aggregate. Sample in accordance with Tex-221-F.
	Crushed Face Count	Tex-460-A, Part I	Stockpile	1 per 20,000 CY	Only required for crushed gravel. Sample in accordance with Tex-221-F.
	Deleterious Material (A)	Tex-217-F, Part I	Stockpile	1 per 10,000 CY	Not required for lightweight aggregate. Sample in accordance with Tex-221-F.
	Decantation (A)	Tex-406-A	Stockpile	1 per 10,000 CY	Sample in accordance with Tex-221-F.
	Flakiness Index	Tex-224-F	Stockpile	Frequency as directed by the Engineer	Sample in accordance with Tex-221-F.

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Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE II – SEAL COAT					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	REMARKS
AGGREGATE (Continued)	Micro Deval	Tex-461-A	Stockpile	1 per project or as necessary for control	Compare result to published value listed on the current Material Producer List for <b>BRSQC</b> . Submit sample to <b>MTD</b> for Soundness and L.A. Abrasion testing when results differ by more than 3% points, unless otherwise <b>directed by the Engineer</b> . Sample in accordance with Tex-221-F.
	White Rock Count	Tex-220-F	Stockpile		Required only for Limestone Rock Asphalt. Not required when <b>MTD</b> provides inspection at the plant. Sample in accordance with Tex-221-F.
	Naturally Impregnated Bitumen Content	Tex-236-F	Stockpile		Required only for Limestone Rock Asphalt. Not required when <b>MTD</b> provides inspection at the plant. Sample in accordance with Tex-221-F.
PRECOATED AGGREGATE	Asphalt Content	Tex-210-F	Stockpile	Frequency as <b>directed by the Engineer</b> when a target value is specified	Sample in accordance with Tex-221-F.
<b>ASPHALT BINDER</b>	<b>Compliance with Item 300</b>		<b>Distributor</b>	<b>1 per project, per grade, per source</b>	Test a minimum of one sample taken from the project. Sample asphalt binder in accordance with Tex-500-C, Part III. Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant. The Engineer must associate one QM sample per project in SM.

TABLE II – FOOTNOTES	
<b>A</b>	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
<b>B</b>	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
<b>C</b>	For acceptance testing, especially that which directly determines payment for the Contractor, sampling personnel should provide randomness in sampling by avoiding patterned sampling routines. Examples of such sampling practices are as follows: <ul style="list-style-type: none"> <li>Aggregates: Sample aggregates nearest the point of incorporation into the work. Vary sampling between stockpiling operations, completed stockpile, belt sampling, and if deemed necessary, railroad cars/trucks. Vary the time of day sampling is performed.</li> </ul>
<b>D</b>	Each test performed, that is based on a quantity of material, is considered “or fraction thereof” for calculating number of tests.

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TABLE III – HYDRAULIC CEMENT CONCRETE – STRUCTURAL (Classes: C, F, H, S, CO, K, LMC, or SS)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (E)	REMARKS
MINERAL AGGREGATE	COARSE AGGREGATE	Decantation (B)	From stockpile at concrete plant	Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		Sieve Analysis (A) (B)		Each 1,000 CY of concrete (each source)	Test combined aggregate when used. Sample in accordance with Tex-400-A.
		Deleterious Materials (B)		1 per project or as necessary for control	Sample in accordance with Tex-400-A.
		Los Angeles Abrasion (A) (B)		One, each source	Verify the value of the source, as listed on the current Material Producer list for <b>CRSQC</b> , meets the project specifications. If not, sample and submit to <b>MTD</b> for testing <b>before</b> use in accordance with Tex-499-A. Sample in accordance with Tex-400-A. (C)
		Magnesium Soundness (A) (B)		One, each source	Verify the value of the source, as listed on the current <b>CRSQC</b> , meets the project specifications. (C)
	FINE AGGREGATE	Sand Equivalent (B)	From stockpile at concrete plant	1 per project or as necessary for control	Test combined aggregate when used. Sample in accordance with Tex-400-A.
		Organic Impurities (B)		1 per project, per source	Sample in accordance with Tex-400-A.
		Sieve Analysis (A) (B)		Each 1,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		Fineness Modulus (B)		1 per project or as necessary for control	Test combined aggregate when used. Test to confirm material variability when strength values are in question. Sample in accordance with Tex-400-A.
		Deleterious Material (B)		1 per project or as necessary for control	Test to confirm material variability when strength values are in question. Sample in accordance with Tex-400-A.

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TABLE III – HYDRAULIC CEMENT CONCRETE – STRUCTURAL (Classes: C, F, H, S, CO, K, LMC, or SS)						
			PROJECT TESTS			
MATERIAL OR PRODUCT		TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (E)	REMARKS
MINERAL AGGREGATE (Continued)	FINE AGGREGATE (Continued)	Acid Insoluble Residue (A) (B)	Tex-612-J		Two, each source	Only for concrete subject to direct traffic. Verify the value of the source, as listed on the current CRSQC, meets the project specifications. If not, sample and submit to MTD for testing before use in accordance with Tex-499-A.  Sample in accordance with Tex-400-A. (C)
SILICA FUME		Compliance with DMS-4630 (A)		Railroad car, truck, bags or silos	1 per project, per class of concrete (For each type and brand)	Provide MTD with one 4 x 8 concrete sample for silica fume dispersion verification. Verify the source is listed on the Material Producer List for Silica Fume. Sample in accordance with Tex-300-D.
METAKAOLIN		Compliance with DMS-4635 (A)		Railroad car, truck or silos	1 per project, per class of concrete (For each type and brand)	Sample in accordance with Tex-300-D.
MIX DESIGN		Compliance with Standard Specification Item 421.4.A		At source (if not approved)	Min. 1 design per class, per source	Verify if cement, fly ash, slag cement, and chemical admixture sources are listed on the Material Producer Lists. If not, sample and submit to MTD for testing. Water testing is contracted by the concrete supplier (commercial lab report to be reviewed by TxDOT).  Sample in accordance with Tex-300-D for cement and in accordance with Tex-733-I for fly ash.
JOINT MATERIAL		Compliance with DMS-6300				Verify the source is listed on the Material Producer List for Joint Sealers. If not, sample and test before use in accordance with DMS-6310. (C)  Sample in accordance with Tex-500-C.
CURING COMPOUND		Compliance with DMS-4650		Sampled at jobsite; tested by MTD. See remarks.	When requested by MTD	Only products listed on the Material Producer List for Concrete Curing Compounds will be allowed. When sample is requested by MTD, sample in accordance with Tex-718-I. Ensure container has been agitated and mixed before sampling. (C)
EVAPORATION RETARDANTS		Compliance with DMS-4650				Only products listed on the Material Producer list for Evaporation Retardants will be allowed. (C)
REINFORCING STEEL		Compliance with the Std. Specifications & Spec. Provisions	As Specified			Only materials from MTD approved sources listed on the Material Producer Lists for Reinforcing Steel Mills and Seven Wire Steel Strand will be allowed. (C)



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TABLE III – HYDRAULIC CEMENT CONCRETE – STRUCTURAL (Classes: C, F, H, S, CO, K, LMC, or SS)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (E)	REMARKS
MECHANICAL COUPLERS	Compliance with DMS-4510	Tex-743-I	Sampled at jobsite; Tested by <b>MTD</b>	3 couplers per lot (500 couplers) for each type, model, bar size, and grade	Only materials from <b>MTD</b> approved sources listed on the Material Producer List for <b>Mechanical Couplers</b> will be allowed. <b>(C)</b>
LATEX	Compliance with DMS-4640 for concrete chemical admixtures				Verify the Latex is listed on the Material Producer List for Chemical Admixtures.
EPOXY	Compliance with DMS-6100, unless otherwise specified		Sampled at jobsite if not pre-approved by <b>MTD</b> .	1 per batch or shipment	Verify the source is listed on the Material Producer List for <b>Epoxies and Adhesives</b> . If not, sample and test <b>before</b> use in accordance with DMS-6100. Sample in accordance with Tex-734-I. <b>(C)</b>
CONCRETE	Compressive Strength <b>(A)</b>	Tex-418-A	At point of concrete placement	4 cylinders for each 60 CY per class, per day (For bridge railing and traffic railing, testing may be reduced to 4 cylinders per 180 CY per class regardless of days)	Sampling must be in accordance with Tex-407-A. Making additional cylinders for 56 day testing should be considered when slow strength gain mixtures are being used, or when the approved mix design has a history of failing to meet design strength at 28 days. Test two cylinders at 7 days, and if the average value is below the design strength, as defined in Item 421, Table 8, test the remaining 2 cylinders at 28 days, or 56 days if additional cylinder were not made. If the average value of the 2 cylinders tested at 7 days meets the minimum design strength, listed in Item 421, Table 8, the remaining cylinders are not required to be tested. If the average value of the 7 and 28 day cylinders are below the design strengths, and 56 day cylinders were made, test the remaining set at 56 days.
	Slump	Tex-415-A		1 test, per 4 strength specimens	Sample in accordance with Tex-407-A. Perform slump and temperature tests on the same load from which strength test specimens are made. Perform entrained air test only when entrained air concrete is specified on the plans. Check temperature of every load for bridge slabs and mass concrete placements.
	Entrained Air <b>(A)</b>	Tex-416-A or Tex-414-A			Contractor's required testing will be in accordance with specification requirements for the appropriate specification Item #.
	Temperature of Concrete <b>(A)</b>	Tex-422-A			

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TABLE III – HYDRAULIC CEMENT CONCRETE – STRUCTURAL (Classes: C, F, H, S, CO, K, LMC, or SS)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (E)	REMARKS
CONCRETE (Continued)	Bridge Deck or Culvert Top Slab Thickness and Depth of Reinforcement	Tex-423-A, Part II	During dry run and during concrete placement (Bridge decks and direct traffic culverts)	1 per span	Min 6–Max 18 locations per span.

TABLE III – FOOTNOTES	
<b>A</b>	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
<b>B</b>	These Project Tests may be used for one or more projects being furnished concrete from the same plant during the same period.
<b>C</b>	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
<b>D</b>	For acceptance testing, especially that which directly determines payment for the Contractor, sampling personnel should provide randomness in sampling by avoiding patterned sampling routines. Examples of such sampling practices are as follows: <ul style="list-style-type: none"> <li>Aggregates: Sample aggregates nearest the point of incorporation into the work. Vary sampling between stockpiling operations, completed stockpile, and if deemed necessary, railroad cars/trucks. Vary the time of day sampling is performed.</li> <li>Concrete (structural): Always sample as near as practicable to the point of placement. For strength testing, vary the time of day or the number of truck from which the concrete is sampled. Test often for slump, air, and temperature to ensure the consistent control of the concrete production.</li> </ul>
<b>E</b>	Each test performed, that is based on a quantity of material, is considered “or fraction thereof” for calculating number of tests.

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TABLE IV – HYDRAULIC CEMENT CONCRETE – NON-STRUCTURAL CONCRETE (Classes: A, B, or E)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (B)	FREQUENCY OF SAMPLING (C)	REMARKS
CONCRETE	Compressive Strength (A)	Tex-418-A	At point of concrete placement	2 cylinders per 180 CY, per class	Sampling must be in accordance with Tex-407-A. Strength will be determined by 7-day specimens.
MIX DESIGN	Compliance with the Standard Specification		At source if not approved	Min. 1 design per class, per source	Verify if cement, fly ash, slag cement, and chemical admixture sources are listed on the Material Producer Lists. If not, sample and submit to MTD for testing. Sample in accordance with Tex-300-D for cement and in accordance with Tex-733-I for fly ash. Water testing is contracted by the concrete supplier (commercial lab report to be reviewed by TxDOT).
SILICA FUME	Compliance with DMS-4630		Railroad car, truck, bags, or silos	1 test per project, per class (for each type and brand)	Sample in accordance with Tex-300-D. Provide MTD with one 4 x 8 concrete sample for silica fume dispersion verification. Verify the source is listed on the Material Producer List for Silica Fume.
METAKAOLIN	Compliance with DMS-4635		Railroad car, truck, or silos	1 test per project, per class (for each type and brand)	Sample in accordance with Tex-300-D.

TABLE IV – FOOTNOTES	
A	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
B	For acceptance testing, especially that which directly determines payment for the Contractor, sampling personnel should provide randomness in sampling by avoiding patterned sampling routines. Examples of such sampling practices are as follows: <ul style="list-style-type: none"> <li>Concrete (miscellaneous): Always sample as near as practicable to the point of placement. For strength testing, vary the time of day or the number of truck from which the concrete is sampled.</li> </ul>
C	Each test performed, that is based on a quantity of material, is considered “or fraction thereof” for calculating number of tests.

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TABLE V – HYDRAULIC CEMENT CONCRETE PAVEMENT (Classes: P or HES)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING	FREQUENCY OF SAMPLING (D)	REMARKS
MINERAL AGGREGATE	COARSE AGGREGATE	Decantation	From stockpile at concrete plant	Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		Sieve Analysis (A)		As necessary for control	Sample in accordance with Tex-400-A. Test combined aggregate when used.
		Deleterious Materials		Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		L.A. Abrasion (A)		One, each source	Verify the value of the source, as listed on the current CRSQC, meets the project specifications. If not, sample and submit to MTD for testing before use in accordance with Tex-499-A.
		Magnesium Soundness (A)			Sample in accordance with Tex-400-A. (C)
	FINE AGGREGATE	Sand Equivalent	From stockpile at concrete plant	Each 3,000 CY of concrete (Each source or combination of sources)	Sample in accordance with Tex-400-A. Test combined aggregate when used. At least one per week's production.
		Organic Impurities		1 per project, per source	Sample in accordance with Tex-400-A.
		Sieve Analysis (A)		As necessary for control	Sample in accordance with Tex-400-A. Test combined aggregate when used.
		Fineness Modulus (B)			
		Deleterious Material (B)		Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		Acid Insoluble (A)		1 per project, per source	Verify the value of the source, as listed on the current CRSQC, meets the project specifications. If not, sample and submit to MTD for testing before use in accordance with Tex-499-A. Sample in accordance with Tex-400-A. (C)
MIX DESIGN	Compliance with the Standard Specifications Item 421.4.A		At source, if not approved	Min. 1 design, per class, per source	Verify if cement, fly ash, ground granulated blast furnace slag, and admixture sources are listed on the Material Producer List. If not, sample and submit to MTD for testing. Sample in accordance with Tex-300-D for cement and in accordance with Tex-733-I for fly ash. Water testing is contracted by the concrete supplier (commercial lab report to be reviewed by TxDOT).
SILICA FUME	Compliance with DMS-4630		Railroad car, truck, bags, or silos	1 per project, per class of concrete (For each type and brand)	Sample in accordance with Tex-300-D. Provide MTD with one 4 x 8 concrete sample for silica fume dispersion verification. Verify the source is listed on the Material Producer List for Silica Fume.

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TABLE V – HYDRAULIC CEMENT CONCRETE PAVEMENT (Classes: P or HES)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING	FREQUENCY OF SAMPLING (D)	REMARKS
METAKAOLIN	Compliance with DMS-4635		Railroad car, truck, or silos	1 per project, per class of concrete (For each type and brand)	Sample in accordance with Tex-300-D.
JOINT MATERIAL	Compliance with DMS-6310		Sampled at jobsite if not sampled at source by <b>MTD</b> ; tested by <b>MTD</b> . See remarks.	1 per batch or shipment	Sample in accordance with Tex-500-C. Sampling may be waived when the source is listed on the Material Producer List for <b>Joint Sealers</b> . <b>(C)</b>
CURING COMPOUND	Compliance with DMS-4650		Sampled at jobsite; tested by <b>MTD</b> . See remarks.	When requested by <b>MTD</b>	Only products listed on the Material Producer List for <b>Concrete Curing Compounds</b> will be allowed. When sample is requested by <b>MTD</b> , sample in accordance with Tex-718-I. Ensure container has been agitated and mixed <b>before</b> sampling. <b>(C)</b>
EVAPORATION RETARDANTS	Compliance with DMS-4650				Only products listed on the Material Producer List for <b>Evaporation Retardants</b> will be allowed. <b>(C)</b>
REINFORCING STEEL	Compliance with the Std. Specifications & Spec. Provisions	As Specified			Only materials from <b>MTD</b> approved sources listed on the Material Producer List for <b>Reinforcing Steel Mills</b> and <b>Seven Wire Steel Strand</b> will be accepted. <b>(C)</b>
MULTIPLE PIECE TIE BARS	Compliance with DMS-4515	Tex-712-I	Sampled at jobsite if not sampled at source by <b>MTD</b> ; tested by <b>MTD</b> . See remarks.	Refer to Tex-711-I for sampling rates	Only materials from <b>MTD</b> approved sources listed on the Material Producer List for <b>Multiple Piece Tie-bars for Concrete Pavements</b> will be allowed. Sample in accordance with Tex-711-I.
EPOXY	Compliance with DMS-6100		Sampled at jobsite if not pre-approved by <b>MTD</b> . See remarks.	1 batch per shipment	Verify the source is listed on the Material Producer List for <b>Epoxies and Adhesives</b> . If not, sample and test <b>before</b> use in accordance with DMS-6100. Sample in accordance with Tex-734-I. <b>(C)</b>
CONCRETE	Strength <b>(A) (B)</b>	Tex-448-A or Tex-418-A	At point of concrete placement	2 cylinders for every 10 contractor job control tests	Sample in accordance with Tex-407-A. When the contract requires the project testing to be by the Engineer, the frequency and job control testing will be in accordance with the item of work. Split sample verification testing used when contractor performs job control testing. When job control testing by the contractor is waived by the plans, the frequency of sampling will be one test (2 specimens) for each 3,000 SY of concrete or fraction thereof or per day and split sample verification testing will be waived. Contractor's required testing will be in accordance with specification requirements for the appropriate specification item #.

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TABLE V – HYDRAULIC CEMENT CONCRETE PAVEMENT (Classes: P or HES)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING	FREQUENCY OF SAMPLING (D)	REMARKS
CONCRETE (Continued)	Slump	Tex-415-A	At time and location strength specimens are made	1 test for every 10 contractor job control tests.	Sample in accordance with Tex-407-A. Slump is not required for slip-formed pavement. Perform slump and temperature tests on the same load from which the strength specimens are made. Perform entrained air test only when entrained air concrete is specified on the plans. Contractor's required testing will be in accordance with specification requirements for the appropriate specification Item #.
	Entrained Air (A)	Tex-416-A or Tex-414-A			
	Temperature	Tex-422-A			
	Pavement Texture	Tex-436-A	Final Riding Surface of travel lanes	1 per day, per driving lane	Perform when carpet drag is the only surface texture required on the plans.
	Thickness	Tex-423-A, Part I	Center of paving machine	Every 500 feet	Methods other than Tex-423-A may be shown on the plans.
	Ride Quality (A)	Tex-1001-S Surface Test, Type B	Final riding surface of travel lanes		Engineer may verify contractor's results for surface test Type B. For traditional design-bid-build TxDOT projects, MTD has contracted with TTI to perform random ride verification at 10% frequency. Results from surface test Type A are not required to be reported.

TABLE V – FOOTNOTES	
A	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
B	When a project test does not meet the specified strength requirements and a reduced pay factor is assigned, document the analysis on the Letter of Certification of Materials Used.
C	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
D	Each test performed, that is based on a quantity of material, is considered "or fraction thereof" for calculating number of tests.

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TABLE VI – HOT-MIX ASPHALT PAVEMENT (Items 341, 342, 344, 346, 347 and 348) (All testing as noted in Table VI may be waived for exempt production as defined by specification.)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION (Per Design)	FREQUENCY OF SAMPLING (E)	REMARKS
COARSE AGGREGATE	L. A. Abrasion (A)	Tex-410-A	Stockpile (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer list for <b>BRSQC</b> , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to <b>MTD</b> for testing <b>before</b> use in accordance with Tex-499-A. (C)
	Magnesium Soundness (A)	Tex-411-A		1 per project, per source	
	Surface Aggregate Classification (A)	Tex-499-A		1 per project, per source	Not required when the Rated Source Soundness Magnesium loss is 15 or less as listed on the current published <b>BRSQC</b> . If testing is required, sample in accordance with Tex-221-F.
	Micro Deval	Tex-461-A		1 per project, per aggregate source	
COMBINED AGGREGATE	Sand Equivalent	Tex-203-F	Stockpiles, hot bins, or feeder belts	1 per project, per source, per design	Does not apply to Item 342. Sample in accordance with Tex-221-F. The timing of when the test is performed is at the discretion of the Engineer.
ASPHALT BINDER	Compliance with Item 300 (A)		Sampling port nearest the storage tank	1 per project, per grade, per source	Test a minimum of one sample taken from the project. Sample binder at hot- mix plant in accordance with Tex-500-C, Part II.  Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.  The Engineer must associate one QM sample, per project in SM.
TACK COAT	Compliance with Item 300 (A)		Distributor	1 per project, per grade, per source	Test a minimum of one sample taken from the project. Sample tack coat in accordance with Tex-500-C, Part III.  Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.  The Engineer must associate one QM sample, per project in SM.



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TABLE VI – HOT-MIX ASPHALT PAVEMENT (Items 341, 342, 344, 346, 347 and 348) (All testing as noted in Table VI may be waived for exempt production as defined by specification.)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION (Per Design)	FREQUENCY OF SAMPLING (E)	REMARKS
MIX DESIGN	Compliance with applicable specification	Tex-204-F	At source (if not approved)	Min 1 design, per Mix Type and Asphalt Grade	Verify that aggregates, recycled asphalt pavement, recycled asphalt shingles, mineral filler, asphalt binder, anti-stripping additives, and warm mix systems are on the Material Producer List where applicable and that they meet project specification requirements. Project sampling and testing may be conducted on individual materials, as necessary, for control.
COMPLETE MIXTURE	Asphalt Content (A)	Tex-236-F	Engineer Truck Sample (D)	Minimum 1 per Lot	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project. When Tex-236-F does not yield reliable results, use alternative methods for determining asphalt content, such as, Tex-210-F (ASTM D2172/AASHTO T164) and Tex-228-F (ASTM D4125/AASHTO T287).
	Voids in Mineral Aggregates (VMA)	Tex-204-F	Truck Sample Plant Produced (D)	1 per Sublot	Sample in accordance with Tex-222-F. Contractor's required testing will be in accordance with specification requirements for the appropriate specification Item #. Does not apply to Items 342 and 348.
	Gradation (A)	Tex-200-F	Engineer Truck Sample (D)	Minimum 1, per 12 Sublots (E)	Sample in accordance with Tex-222-F. Determine correction factors for ignition oven using Tex-236-F at a minimum of one per project.
	Moisture Susceptibility	Tex-530-C	Truck Sample	1 per project	Sample in accordance with Tex-222-F, unless waived by the Engineer.
	Indirect Tensile Strength – Dry	Tex-226-F			Sample in accordance with Tex-222-F, unless waived by the Engineer. Does not apply to Items 342, 346, 347, and 348.
	Moisture Content	Tex-212-F, Part II	Engineer Truck Sample		Sample in accordance with Tex-222-F.
	Lab Molded Density (A)	Tex-207-F, Part I, VI, VIII	Truck Sample (D)	1 per Sublot 1 per Lot for Item 347	Sample in accordance with Tex-222-F. Contractor's required testing will be in accordance with specification requirements for the appropriate specification Item #.
	Drain Down Test (A)	Tex-235-F	Engineer Truck Sample	1 per 12 Sublots	Sample in accordance with Tex-222-F. Not required for Items 341, 344, and 347.
	Hamburg Wheel Test (A)	Tex-242-F	Engineer Truck Sample	1 per project	Sample in accordance with Tex-222-F. Sample during production. Does not apply to Item 348 PFC-C, PFCR-C, and Thin Bonded Wearing Course –All Types.



This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VI – HOT-MIX ASPHALT PAVEMENT (Items 341, 342, 344, 346, 347 and 348) (All testing as noted in Table VI may be waived for exempt production as defined by specification.)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION (Per Design)	FREQUENCY OF SAMPLING (E)	REMARKS
COMPLETE MIXTURE (Continued)	Cantabro Loss (A)	Tex-245-F	Engineer Truck Sample	1 per project	Sample in accordance with Tex-222-F. Sample during production. Does not apply to items 341, 344, 346, and 347.
	Overlay Test (A)	Tex-248-F	Engineer Truck Sample	1 per project	Sample in accordance with Tex-222-F. Does not apply to Items 341, 344, and 348 PFC-C, PFCR-C, and Thin Bonded Wearing Course –All Types.
ROADWAY	In-Place Air Voids (A)	Tex-207-F, Part I, VI, VIII	Roadway (D)	2 cores per Sublot	Two cores taken per Sublot and averaged. Sample in accordance with Tex-222-F. Does not apply to Items 342, 347, and 348.
	Segregation Profile (A)	Tex-207-F, Part V	Roadway	1 per project	Not required when Contractor uses thermal imaging system. Does not apply to Items 342, 347, and 348.
	Joint Density (A)	Tex-207-F, Part VII	Roadway	1 per project	
	Thermal Profile	Tex-244-F	Immediately behind paver	1 per project	Not required when Contractor uses thermal imaging system.
	Ride Quality Test Type B (A)	Tex-1001-S	Final riding surface of travel lanes	1 per project	Engineer may verify Contractor's results for surface test Type B. For traditional design-bid-build TxDOT projects, MTD has contracted with TTI to perform random ride verification at 10% frequency. Results for surface test Type A are not required to be reported.
	Permeability	Tex-246-F	Roadway	1 per project	Permeability is encouraged to use with items 342 and 348. Only applies to Item 347.
FABRIC UNDERSEAL	Compliance with DMS-6220		Sampled, tested, and approved by MTD		Sampling must be in accordance with Tex-735-I. Verify the source is listed on the current Material Producer List for Silt Fence, Filter Fabric, and Fabric Underseals. If not, sample and test before use in accordance with DMS-6220.

TABLE VI – FOOTNOTES	
A	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
B	Sampling may be performed at the plant, quarry, or both. Aggregate properties may be re-tested at any time during the project. These project tests may be used for one or more projects furnishing hot mix with the same aggregate source.
C	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
D	Perform random sampling as specified in Tex-225-F, "Random Selection of Bituminous Mixture Samples."
E	Each test performed, that is based on a quantity of material, is considered "or fraction thereof" for calculating number of tests.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VII – HOT-MIX ASPHALT PAVEMENT (Items 334) (Refer to DMS-9210, “Limestone Rock Asphalt (LRA),” for testing requirements for Item 330.)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION	FREQUENCY (Per Design) (F)	REMARKS
COARSE AGGREGATE	L. A. Abrasion (A)	Tex-410-A	Stockpile (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer List for <b>BRSQC</b> , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to <b>MTD</b> for testing <b>before</b> use in accordance with Tex-499-A. (D)
	Magnesium Soundness (A)	Tex-411-A			Sample in accordance with Tex-221-F. Testing frequency may be reduced or eliminated based on a satisfactory test history.
	Micro Deval	Tex-461-A			
	Surface Aggregate Classification (A)	Tex-499-A	Stockpile (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer List for <b>BRSQC</b> , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to <b>MTD</b> for testing <b>before</b> use in accordance with Tex-499-A. SiteManager Quality Monitoring test documentation is accomplished by attaching an approved mix design.
COMBINED AGGREGATE	Sand Equivalent	Tex-203-F	Stockpiles, hot bins, or feeder belts	1 per project, per source	Sample in accordance with Tex-221-F. The timing of when the test is performed is at the discretion of the Engineer.
ASPHALT BINDER	Compliance with Item 300 (A)		Sampling port nearest the storage tank	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample binder in accordance with Tex-500-C, Part II.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample, per project in SM.</p>
TACK COAT	Compliance with Item 300 (A) (C)		Distributor	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample tack coat in accordance with Tex-500-C, Part III.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample, per project in SM.</p>

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VII – HOT-MIX ASPHALT PAVEMENT (Items 334) (Refer to DMS-9210, “Limestone Rock Asphalt (LRA),” for testing requirements for Item 330.)					
			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION	FREQUENCY (Per Design) (F)	REMARKS
MIX DESIGN	Compliance with applicable specification	Tex-204-F	At source (if not approved)	Min 1 design per Mix Type and Asphalt Grade	Verify that aggregates, recycled asphalt pavement, recycled asphalt shingles, mineral filler, asphalt binder, anti-stripping additives, and warm mix systems are on the Material Producer List where applicable and that they meet project specification requirements. Project sampling and testing may be conducted in individual materials as necessary for control.
COMPLETE MIXTURE	Asphalt Content (A)	Tex-236-F	Engineer Truck Sample (E)	Minimum of 1 per 5,000 tons	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project.
	Voids in Mineral Aggregates (VMA)	Tex-204-F	Truck Sample Plant Produced (E)	1 per 5,000 tons	Sample in accordance with Tex-222-F.
	Gradation (A)	Tex-236-F	Truck Sample	Minimum 1 per 5,000 tons	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project.
	Boil Test	Tex-530-C		1 per project	Sample in accordance with Tex-222-F. The timing of when the test is performed is at the discretion of the Engineer.
	Moisture Content	Tex-212-F, Part II	Truck Sample	1 per 5,000 tons	Sample in accordance with Tex-222-F. Performed by MTD at the point of production for payment calculations.
	Hydrocarbon-Volatile Content	Tex-213-F		1 per 5,000 tons	Sample in accordance with Tex-222-F. The timing of when the test is performed is at the discretion of the Engineer.
	Lab Molded Density (A)	Tex-207-F		1 per 5,000 tons	Sample in accordance with Tex-222-F.
	Hveem Stability (A)	Tex-208-F		1 per 5,000 tons	Sample in accordance with Tex-222-F. The timing of when the test is performed is at the discretion of the Engineer.
ROADWAY	Ride Quality Test Type B (A)	Tex-1001-S	Final riding surface of travel lanes		Engineer may verify Contractor’s results for surface test Type B. For traditional design-bid-build TxDOT projects, MTD has contracted with TTI to perform random ride verification at 10% frequency. Results from surface test Type A are not required to be reported.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VII – FOOTNOTES	
A	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
B	Sampling may be performed at the plant, quarry, or both. Aggregate properties may be re-tested at any time during the project.
C	Or as called for in the Specifications.
D	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
E	Perform random sampling as specified in Tex-225-F, “Random Selection of Bituminous Mixture Samples.”
F	Each test performed, that is based on a quantity of material, is considered “or fraction thereof” for calculating number of tests.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE VIII – HOT-MIX ASPHALT PAVEMENT (Item 340)**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION	FREQUENCY	REMARKS
COARSE AGGREGATE	L. A. Abrasion (A)	Tex-410-A	Stockpile (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer List for <b>BRSQC</b> , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to <b>MTD</b> for testing <b>before</b> use in accordance with Tex-499-A. (C)
	Magnesium Soundness (A)	Tex-411-A			
	Micro Deval	Tex-461-A	Stockpile (B)	1 per project, per source	Sample in accordance with Tex-221-F. Testing frequency may be reduced or eliminated based on a satisfactory test history.
	Surface Aggregate Classification (A)	Tex-499-A	Stockpile (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer list for <b>BRSQC</b> , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to <b>MTD</b> for testing <b>before</b> use in accordance with Tex-499-A. (C)
COMBINED AGGREGATE	Sand Equivalent	Tex-203-F	Stockpiles, hot bins, or feeder belts	1 per project, per design	Sample in accordance with Tex-221-F.
ASPHALT BINDER	Compliance with Item 300 (A)		Sampling port nearest the storage tank	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample binder in accordance with Tex-500-C, Part II.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample, per project in SM.</p>
TACK COAT	Compliance with Item 300 (A)		Distributor	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample tack coat in accordance with Tex-500-C, Part III.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample, per project in SM.</p>
MIX DESIGN	Compliance with applicable specification	Tex-204-F	At source (if not approved)	Min. 1 design per Mix Type and Asphalt Grade	Verify that aggregates, recycled asphalt pavement, recycled asphalt shingles, mineral filler, asphalt binder, anti-stripping additives, and warm mix systems are on the Material Producer List where applicable and that they meet project specification requirements. Project sampling and testing may be conducted in individual materials as necessary for control.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE VIII – HOT-MIX ASPHALT PAVEMENT (Item 340)**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION	FREQUENCY	REMARKS
COMPLETE MIXTURE	Asphalt Content	Tex-236-F	Truck Sample (D)	Minimum of 1 per day	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project.
	Voids in Mineral Aggregates (VMA)	Tex-204-F	Truck Sample Plant Produced (D)	1 per day	Sample in accordance with Tex-222-F.
	Gradation (A)	Tex-236-F	Truck Sample	Minimum 1 per day	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project.
	Boil Test	Tex-530-C		1 per project	Sample in accordance with Tex-222-F, unless waived by the Engineer.
	Indirect Tensile Strength – Dry	Tex-226-F		1 per project, per design	Sample in accordance with Tex-222-F, unless waived by the Engineer.
	Lab Molded Density (A)	Tex-207-F	Truck Sample	1 per day	Sample in accordance with Tex-222-F.
	Hamburg Wheel Tracker (A)	Tex-242-F		1 per project	Sample in accordance with Tex-222-F. Sample during production.
ROADWAY	Air Voids (A)	Tex-207-F	Selected by the Engineer (D)	1 per day (2 Cores)	Sample in accordance with Tex-222-F.
	Ride Quality Test Type B (A)	Tex-1001-S	Final riding surface of travel lanes		Engineer may verify Contractor's results for surface test Type B. For traditional design-bid-build TxDOT projects, MTD has contracted with TTI to perform random ride verification at 10% frequency. Results from surface test Type A are not required to be reported.
FABRIC UNDERSEAL	Compliance with DMS-6220		Sampled, tested, and approved by MTD		Sample in accordance with Tex-735-I. Verify the source is listed on the current Material Producer List for Silt Fence, Filter Fabric, and Fabric Underseals. If not, sample and submit to MTD for testing before use in accordance with DMS-6220.

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VIII – FOOTNOTES	
A	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
B	Sampling may be performed at the plant, quarry, or both. Aggregate properties may be re-tested at any time during the project. These project tests may be used for one or more projects furnishing hot mix with the same aggregate source.
C	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
D	Perform random sampling as specified in Tex-225-F, “Random Selection of Bituminous Mixture Samples.”

This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE IX – MICROSURFACING (Item 350)**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OF SAMPLING	FREQUENCY (Per Design)	REMARKS
AGGREGATE	Magnesium Soundness (A)	Tex-411-A	Stockpile (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer list for BRSQC meets the project specifications. If not, sample in accordance with Tex-221-F and submit to MTD for testing at 1 per project, per source. (C)
	Gradation	Tex-200-F, Part II		1 per project, per source	Sample in accordance with Tex-221-F.
	Crushed Face Count	Tex-460-A		1 per project, per source	Sample in accordance with Tex-221-F.
	Acid Insoluble (A)	Tex-612-J		1 per project, per source	Verify the value of the source, as listed on the current BRSQC, meets the project specifications. If not, sample and submit to MTD for testing before use in accordance with Tex-499-A. Sample in accordance with Tex-221-F. (C)
	Surface Aggregate Classification	Tex-499-A	Stockpile, or BRSQC (B)	1 per project, per source	Verify the published value of the source, as listed on the current Material Producer list for BRSQC meets the project specifications. If not, sample in accordance with Tex-221-F and submit to MTD for testing at 1 per project, per source. (C)
COMBINED BLEND	Sand Equivalent	Tex-203-F	Stockpile (B)	1 per project, per source	Sample in accordance with Tex-221-F.
ASPHALT BINDER	Compliance with Item 300 (A)		Sampling port nearest the storage tank	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample binder in accordance with Tex-500-C, Part II.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample, per project in SM.</p>
TACK COAT	Compliance with Item 300 (A)		Distributor	1 per project, per grade, per source	<p>Test a minimum of one sample taken from the project. Sample tack coat in accordance with Tex-500-C, Part III.</p> <p>Verify that the binder is from a preapproved source when it arrives on the project, and that the lab number on the shipping ticket is within the valid dates shown on the MTD QM test report or in the SM Assistant.</p> <p>The Engineer must associate one QM sample, per project in SM.</p>



This is a guide for minimum sampling and testing.  
Testing frequency may need to be increased for high material variability or when test results approach specification limits.

**TABLE IX – MICROSURFACING (Item 350)**

			PROJECT TESTS		
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OF SAMPLING	FREQUENCY (Per Design)	REMARKS
MIX DESIGN	Compliance with applicable specification	Tex-204-F	At source (if not approved)	Min. 1 design per project	Submit to MTD for approval.
CEMENT	Compliance with DMS-4600				Verify the source is listed on the current Material Producer List for Cement. If not, sample and submit to MTD for testing before use in accordance with DMS-4600.
COMPLETE MIX	Asphalt Content	Tex-236-F	During production	1 per day	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project.
	Gradation	Tex-200-F, Part II Tex-236-F			Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven use at a minimum of one per project.

**TABLE IX – FOOTNOTES**

<b>A</b>	When this project acceptance test fails, but the product is accepted, document the reasons for acceptance in SiteManager, in the remarks field, and on the end of the Project Materials Certification Letter.
<b>B</b>	Sampling may be performed at the plant, quarry, or both. Aggregate properties may be re-tested at any time during the project. These project tests may be used for one or more projects furnishing hot mix with the same aggregate source.
<b>C</b>	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
<b>D</b>	Each test performed, that is based on a quantity of material, is considered “or fraction thereof” for calculating number of tests.

**APPENDIX C**  
**AASHTO ACCREDITED LABORATORIES**

## **AASHTO Accredited CMT Laboratories in Texas**

\* Directory of accredited laboratories and scope of testing is maintained on the AASHTO Materials Reference Laboratory website at: <http://www.amrl.net>. Laboratory must be accredited for each specific test performed.



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Daphne Tenorio

Sponsor:

Judge Becerra

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### Agenda Item

Approve specifications for RFP 202-P02 Bank Depository and authorize Purchasing to solicit for proposals and advertise.  
**BECERRA/TENORIO**

### Summary

Hays County (County) is seeking proposal from any banking corporation, association, or individual bankers to serve as the Hays County Depository Bank(s). The depository will be chosen in compliance with the Texas Local Government Code Chapter 262, Texas Local Government Code Chapters 116 and 117, Government Code 2256, Government Code 2257, and the County's Investment Policy.

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### Attachments

RFP 2023-P02 Bank Depository  
Attachment A - Depository Application



## SOLICITATION, OFFER AND AWARD

Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

**Solicitation No.:**  
RFP 2023-P02 Bank Depository

**Date Issued: July 13, 2023**

### SOLICITATION

Vendors must submit proposals as listed: One (1) original and one (1) digital copy on a thumb drive at the Hays County Purchasing Office at the address shown above or Electronically through BidNet Direct and one (1) hard copy at the Hays County Purchasing Office at the address shown above until:

**11:00 a.m. local time August 10, 2023.**

**Proposals received after the time and date set for submission will be returned unopened.**

For information please email:  
[purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)

Questions concerning this RFP must be received in writing no later than 5:00 on July 21, 2023.

Phone No.: (512) 393-2283

### OFFER (Must be fully completed by Respondent)

In compliance with the above, the undersigned offers and agrees to furnish all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein. Award shall include all solicitation documents and attachments.

**MANUALLY SIGN ALL COPIES SUBMITTED. SIGNATURE IS MANDATORY.**

#### Respondent

Entity Name:  
Mailing Address:

#### Respondent's Authorized Representative

Name:  
Title:  
Email Address:  
Phone No.:

Signature:

Date:

Name, Email Address and Phone No. of person authorized to conduct negotiations on behalf of Respondent:

### NOTICE OF AWARD (To be completed by County)

Funding Source:

Awarded as to item(s):

Contract Amount:

Vendor:

Term of Contract:

This contract issued pursuant to award made by Commissioners Court on:

Date:

Agenda Item:

**Important: Award notice may be made on this form or by other Authorized official written notice.**

\_\_\_\_\_  
Hays County Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hays County Clerk

\_\_\_\_\_  
Date

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## I. RFP Submittal Checklist

This checklist is provided for the Vendor's convenience and identifies documents that **MUST** be submitted for the bid/proposal/SOQ to be considered responsive, as well as the required forms requested by Hays County.

### **A COMPLETE SOLICITATION RESPONSE PACKAGE INCLUDES:**

**The following forms MUST be returned for the bid/proposal/SOQ to be considered responsive:**

- \_\_\_ 1. Solicitation, Offer and Award Form completed and signed, and Proposal
- \_\_\_ 2. Attachment A: Investment Policy
- \_\_\_ 3. Attachment B: Depository Application
- \_\_\_ 4. Vendor Reference Form
- \_\_\_ 5. Certified Check

### **Required Forms by Hays County:**

- \_\_\_ 1. Conflict of Interest Questionnaire completed and signed
- \_\_\_ 2. Code of Ethics signed
- \_\_\_ 3. HUB Practices signed
- \_\_\_ 4. House Bill 89 Verification signed and notarized
- \_\_\_ 5. Senate Bill 252 Certification
- \_\_\_ 6. Debarment & Licensing Certification signed and notarized
- \_\_\_ 7. Vendor/Bidder's Affirmation completed and signed
- \_\_\_ 8. Federal Affirmations and Solicitation Acceptance
- \_\_\_ 9. Related Party Disclosure Form
- \_\_\_ 10. System for Award Management ([www.SAM.gov](http://www.SAM.gov)) Entity Registration Page
- \_\_\_ 11. Any addenda applicable to this solicitation

**Hays County will accept bids/proposals/SOQ, by the stated due date by one of the following methods:**

- \_\_\_ 1. Electronic Submission of Bid Packet through BidNet Direct and one (1) hard copy delivered in a sealed envelope with the Solicitation Number and Vendor's name on the outermost envelope addressed to within 24 hours of proposal due date:  
Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666

OR

- \_\_\_ 2. One (1) original bid packet and one (1) digital copy on a thumb drive in a sealed envelope with the Solicitation Number and Vendor's Name on the outermost envelope, addressed to:  
Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666

## II. Summary

1. **Type of Solicitation:** Request for Proposal (RFP)
2. **Solicitation Number:** RFP 2023-P03  
Bank Depository
3. **Issuing Office:** Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666
4. **Responses to Solicitation:** Sealed proposals marked with Solicitation Number and Vendor Name on the outermost envelope  
Manual: One (1) Original and one (1) digital copy on a thumb drive, or  
Electronic: Proposals can be submitted through BidNet Direct and one (1) hard copy is required to be received within 24 hours of proposal due date.
5. **Deadline for Responses:** In issuing office no later than:  
**August 10, 2023; 11:00 a.m. Central Time (CT)**
6. **Initial Contract Term:** October 2023 – September 2024
7. **Optional Contract Terms:** Four (4), one (1) year renewal options
8. **Designated Contact:** Hays County Purchasing  
Email: [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)
9. **Questions & Answers:** Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than July 21, 2023; 5:00 p.m. CT. Telephone inquiries will not be accepted. Questions may be submitted by email to the address above. Answers to questions will be provided in the form of an addendum posted after the question deadline on the CivicPlus, BidNet Direct, and ESBD websites for the benefit of all potential respondents. The County reserves the right to contact the person submitting a question to clarify the question received, if necessary. Each clarification, supplement, or addenda to this IFB, if any, will be posted on the CivicPlus, BidNet Direct and ESBD websites. All potential or actual respondents are responsible for monitoring the websites for such materials. Respondents are deemed to have notice of, and are required to comply with, any such material posted in accordance with this paragraph. Respondents should not rely upon any other sources of written or oral responses to inquiries.

10. **Addenda** Any interpretations, corrections or changes to this RFP and



specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Hays County Purchasing Office. It is the Vendor's responsibility to acknowledge receipt of all addenda with proposal submission.

**11. Contact with County Staff:**

Upon issuance of this solicitation, employees and representatives of Hays County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Vendor or its representatives. Failure of a Vendor or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

July 13, 2023	Issuance of RFP
July 21, 2023	Deadline for Submission of Questions (5:00 PM CT)
August 10, 2023	Deadline for Submission of Proposals (11:00 AM CT) <b>Late proposals will not be accepted.</b>
October 2023	Anticipated contract award date

### III. Specifications

#### A. Introduction

Hays County (County) is seeking proposal from any banking corporation, association, or individual bankers to serve as the Hays County Depository Bank(s). The depository will be chosen in compliance with the Texas Local Government Code Chapter 262, Texas Local Government Code Chapters 116 and 117, Government Code 2256, Government Code 2257, and the County's Investment Policy.

It is the intent of the County to contract with a bank or banks that fulfill the requirements of the statutes and that desire to be designated as the Hays County Depository Bank. The Contract will include deposits of Hays County Public Monies; including but not limited to, direct deposits from State agencies, the Funds held by the Hays County Clerk, the Registry Funds, held by the Hays County District Clerk, the Funds held by the Hays County Sheriff's Department, Justices of the Peace, Constables, Tax Assessor-Collector, and any other funds instructed by statute to be deposited with the County Treasurer or deposited to the County Depository as established in Chapter 116 and 117 of the Local Government Code.

#### B. Background

Hays County currently maintains approximately 115 checking accounts, 125 interest bearing bank accounts along with approximately 50 certificates of deposits. The average daily balance of all county accounts from March – September is approximately \$50 million currently. During October – February the average balance may reach \$58 million or more.

Hays County is not currently on an account analysis but can offer the following internal approximate estimations of service breakdowns:

- Hays County receives approximately 6,000 ACH deposits per year.
- Hays County initiates approximately 25,000 individual ACH transactions annually in approximately 700 separate ACH Files.
- Hays County issues approximately 30,000 checks annually.
- Hays County makes approximately 8,000 separate physical deposits (cash, check, money order) per year. The exact number of articles is not available. The level of international currency, and transactions is extremely small and insignificant.
- The County has approximately 1100 employees and the payroll is paid bi-weekly with 97% of County Employees paid by direct deposit. There are approximately 25 employees who are issued a physical payroll check. The Payroll Account is funded by transfers from the General Account that are initiated by the Treasurer's Office and approved by the Auditor's Office.

The County Treasurer will be responsible with respect to day-to-day banking activities, including deposits and withdrawals, ACH transactions, maintenance of account balances, daily reporting, etc. All accounts require dual signatures, and as such ACH and Wire transactions will require dual approvals. The County Treasurer handles all receivables, and investment activities. The Treasurer handles all reconciliation on the accounts, with the County Auditor performing monthly review. All bank account signers should have the capability to obtain either paper statements or electronic statements. One set of paper statements should be provided without any charge monthly to the Treasurer's Office.

The County Tax Assessor-Collector maintains nine separate bank accounts and will be responsible with respect to the day-to-day activities for said accounts, including deposits and withdrawals, ACH transactions, maintenance of account balances, daily reporting, etc. Any reference to the County Treasurer in the document should also assume the same for the County Tax Assessor-Collector in reference to the accounts that office is liable for.

A list of County personnel authorized to deal directly with the bank and authorized on each account will be provided following award of contract. The bank shall provide the County with a similar list of authorized personnel.

The County wants to automate banking services as much as possible for efficiency and cost effectiveness. This proposal should address automation of services where possible and cost effective. Any or all County funds may be maintained and invested by the County outside this contract. The County will be under no obligation to maintain funds in the bank except under a compensating balance situation.

### **C. Scope of Work**

Hays County is seeking a Bank Depository with the following minimum qualifications and requirements:

#### **Bank Personnel:**

- An institution submitting a proposal must assign and identify a senior level management person as liaison with the Hays County Treasurer, should the proposal be accepted.
- An institution submitting a proposal will specify an officer of the bank at the local branch who will be responsible for attending to inquiries, request for services, and daily activities regarding the managing of Hays County accounts, should the proposal be accepted.
- The selected institution must also provide the County Treasurer with a list of contact personnel within the bank who are qualified to provide information and assistance in the following areas:
  - General Information
  - Safekeeping and Securities Clearance
  - Posting and Deposit Discrepancies
  - Stop Payments
  - Balance Adjustments
  - Collateral Adequacy / Transactions
  - Internal Transfers
  - Wire Transfers
  - Online / Bank Software Service
  - Investments
  - Check/Supply orders
  - Check Clearing and encoding errors
  - Outgoing ACH transfers
  - Incoming ACH deposits
  - Account set up and account updates
  - Positive Pay
  - Lock Box Services

#### **Hays County Policies:**

- Must read and sign the Hays County Investment Policy (Attachment A).
- The selected institution shall continue, during the term of the depository contract, to furnish the Hays County Treasurer with updated issues of each annual financial statement.
- For determining cash overdrafts, the daily cash balance in all County accounts will be added together and if a negative balance occurs, the County's account is considered over-drafted. An applicable insufficient funds fee can then be charged. The proposal should include any bank policy regarding daylight overdraft charges, procedures, or handling.
- The County reserves the right to make investments outside the Depository Bank in

accordance with the Laws of the State of Texas, as a result of a court order, and the Investment Policy of the County. All investment purchases shall be made on a delivery versus payment basis.

**Bank Account Structure:**

The County's Bank accounts will be structured as follows (numbers and dollar amounts are subject to change).

- Non-Interest-Bearing Checking Accounts: Approximately 85 accounts with average yearly balances of ~ \$70,000.00
- Interest Bearing Checking and/or Money Market Savings Accounts: Approximately 0 accounts with average yearly balances of ~ \$0.00
- Sweep Accounts
- Trust Funds – Separate Individual Savings Accounts: These savings accounts will house the District and County Clerk's Trust/Registry funds mandated by the court. The accounts will be in the Clerk's name for the benefit of the beneficiary and will be registered with the beneficiary's Social Security Number. There are occasions when the trust funds will not be deposited in the Depository Bank by order of the court. The County request an RFP for the interest rate on these accounts as a whole, (see Attachment B: Depository Application). The County also requests that when compensating balances for services rendered are calculated, these accounts are considered. Total balance for all such trust fund accounts as of June 15, 2023, is approximately ~ \$9,000,000.00
- Certificates of Deposit: For District and County Clerk's Trust/Registry Funds, as ordered by court to be invested in a CD. These will be renewed as current CD's Mature.

**Depository Application Requirements:**

**Section I: Authorized Collateral and Collateral Procedures**

**1. Collateral of County Funds**

- a. A current balance of all accounts listed under Hays County's Tax ID must be available to the Hays County Treasurer or her assignee no less than daily. Internet availability is acceptable.
- b. Collateral will be valued at the current market value as determined by nonbiased third party. New pledges are valued based on the previous day's closing market quote. All securities held are revalued no less than once a week.
- c. Within fifteen (15) days after the selection of the depository the selected Bank shall qualify as provided by law. Hays County will accept Surety Bonds and/or a Securities Pledge Contract provided for under Texas Local Gov't Code Chapter 116, as the method of securing the funds of the County. The bank selected as depository will execute within the time prescribed by law a security pledge contract accompanied by securities as hereinafter specified, and/or a bond issued and executed by a solvent surety company or companies authorized to do business in the State of Texas or both such securities pledge contract and bond.
- d. The bank must be the true and legal owner of all securities, which will be pledged to the County. The securities must be free and clear of all liens, claims, or pledged for other purposes. The County will not accept any security acquired by the bank under a repurchase agreement. The securities will be deposited with a non-affiliated third-party institution without expense to the County under an appropriate contract to be drawn to the provisions of Texas Local Gov't Code Chapter 116 and amendments in accordance with the application, if approved.
- e. Hays County funds shall be collateralized, consistent with Federal and State law and the County Investment Policy without exception, in one or more of the following manners:

- U.S. Treasury Notes
- U.S. Treasury Bills
- Government National Mortgage Association Certificates
- Federal Farm Credit Banks Notes and Bonds
- Federal Home Loan Banks Notes and Bonds
- Federal National Mortgage Association Notes and Bonds
- Federal Home Loan Mortgage Corporation Notes and Bonds
- State of Texas Bonds
- Federal Home Loan Bank Irrevocable Standby Letter of Credit with Hays County listed as sole beneficiary
- Federal Deposit Insurance Corporation (FDIC-maximum amount).
- Federal Savings and Loan Insurance Corporation (FSLIC-required amount)

Adjustable-rate mortgages (ARMs) and Collateralized Mortgage Obligations (CMOs) will not be acceptable.

## 2. **Level of Collateral**

The Hays County Collateral Security Agreement (Attachment C) must be approved by the institutions board of directors and that approval must be reflected in the minutes of the board. The total of the face value of the surety bonds and/or the market value of the investment security securing the deposit of public funds shall be in an amount at least equal to 110% of amount of the deposits of public funds increased by the amount of any accrued interest and reduced to the extent that the deposits are insured by an agency or instrumentality of the United States Government under the following conditions for a "perfected security investment". At the time of the execution of the depository contract this amount is expected to fall between \$17,000,000.00 and \$90,000,000.00. These securities are to cover funds belonging to the county and funds deposited by the Hays County Tax Assessor Collector for other taxing entities that Hays County is currently collecting property taxes for.

- The pledge for collateral must be in writing
- The pledge must be executed contemporaneously with acquisition of the asset by the depository institution.
- The pledge must be an official record of the depository institution since it was executed.

## 3. **Substitution of Collateral**

The county will require one business days' notice with a perfected security interest in a new pledged security as previously described before release of currently pledged security may be obtained. The collateral must have the Hays County Treasurer's or her assignee's signature to release.

## 4. **Possession of Collateral**

All securities or surety bonds pledged to secure deposits of the County funds shall be held at the appropriate Holding Bank. The pledge must be established as Hays County. The value of the entire security must be pledged to Hays County. The security may not be pledged to multiple entities for small amounts to total the entire security. Hays County must be the only pledge on the security. The Holding Bank shall immediately provide a receipt of the securities and/or surety bond to Treasurer on behalf of the Commissioners' Court evidencing the deposit of said securities and/or surety bonds. When the pledged securities and/or surety bonds held by the Holding Bank are deposited, the permitted institution may apply book entry procedures to the securities. The records of the permitted institution shall

always reflect the name of the custodian depositing the pledged securities. The trust receipts that the Holding Bank issues to Hays County through the County Treasurer shall indicate that the custodian has deposited with permitted institution the pledged securities and/or surety bonds held in trust for the Depository pledging the securities.

If a successor financial institution succeeds to the interest of the financial institution, or if the financial institution is a judged bankrupt or insolvent, or a receiver, liquidator, or conservator of the financial institution, or of its property, is appointed, or if any public officer takes control of the financial institution, or its property, then the successor financial institution, recover, liquidator, conservator, or public officer shall, without any further act, be bound and vested with all rights, powers, duties and obligations of the financial institution, including all collateral obligations of the financial institution, including all collateral obligations, under this agreement.

**Section II. Account Information**

- 1. Hays County currently has approximately one hundred fifteen (115) separate accounts.
- 2. If detailed information per account is required, please submit requests via the purchasing email at [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us) by the question deadline, Jul 21, 2023 @ 5:00 PM (CST)
- 3. Hays County requests that payment for services and supplies provided be as follows:  
Settlement for service charges will occur every Calendar Quarter. If the earnings credit exceeds the total service charges for the three months, there is no service charge payment due. If the earnings credit is less than the total service charges for the three-month period, an invoice for the net deficiency will be presented to the County Treasurer. Any charges for services should be at least partially offset by an earnings credit on monthly account balances. Please specify the calculation of earnings credit allowed by the Bank.

**EXAMPLE**

Collected Bank Balance	\$1,000,000
(Less Reserve Requirement@ 10%)	<u>(\$100,000)</u>
	\$900,000
Times Earnings Allowance (Assume 91-day T-Bill Rate)	<u>x5.0%</u>
Annual Earnings Credit	\$45,000
Divided by	<u>12</u>
Total Monthly Earnings Credit	\$3,750

Please specify Bank’s calculation in your proposal including how the amount of funds required for services will be determined.

**Section III. Safekeeping Functions**

The selected depository institution shall be the County's custodial agent in charge of safekeeping its investment securities. This agent shall control the securities through the bank's own safekeeping department, through any corresponding bank with which deals regularly, or through Federal Reserve Banking System. All proposals should identify where the safekeeping facilities will be located and identify the usage of a correspondent institution. Proposals shall clearly specify services to be performed and the cost on a monthly basis.

**Section IV. Automated Clearing House Services**

The selected depository institution shall have the ability to provide automated clearing house services. The charges for this service shall be provided as optional cost to the County. The

County wishes to be notified by no later than 10:00 a.m. the next business day on any ACH deposit.

#### **Section V. Wire Transfer**

The financial institution shall maintain a transfer facility to the Federal Reserve Bank for investment purchase or sales and other transfers with commercial banks. The County wishes to be notified by no later than 10:00 a.m. the next business day on any wire deposits.

#### **Section VI. Deposit Services**

The financial institution shall provide detail clearing schedule as to the timing of available funds (i.e. items to be collected, wire transfers, ACH deposits cash, and items on other local institutions). The above schedule shall be the maximum clearing schedule.

The bank will guarantee immediate credit on all wire transfers, ACH transactions and government checks upon receipt and all other checks based on the bank's availability schedule. All deposits received before the bank's established deadline will be credited daily.

#### **Section VII. Access to Records and Cooperation**

The financial institution shall, upon authorization from the Treasurer's Office, allow reasonable access to their records by the County's Financial Officers, the County's Independent Auditor, and where state or federal assistance is involved, to state and federal auditors to examine records relating to use of funds. The institution shall also cooperate in any prosecution for misuse of checks and misappropriation of funds.

#### **Section VIII. Printing**

The County will provide some checks and the financial institution will provide all deposit slips and some checks. Deposit slips shall be duplicated slips.

#### **Section IX. Monthly Statements**

Monthly statements for all accounts must be delivered within five (5) business days after the last calendar day of each month and must include transfer slips and debit and credit memos, processed for all accounts. The daily ledger balances, average daily collected balances, number of debits, number of credits, and other items on which charges are based, should also be included in each monthly statement. The County would prefer images of checks; however, images must be of front and back of checks. If images are not available, canceled checks shall be sorted in numerical order by account number.

#### **Section X. Required Signatures**

The County requires that two signatures be authorized to execute, authenticate, certify or endorse with a facsimile signature in lieu of the manual signature for instruments of payments drawn on any County accounts unless otherwise noted.

#### **Section XI. Check Services**

The bank will be required to process stop payments on verbal instructions from the County Treasurer or her assignee with follow up written confirmation. Internet stop payment processing is acceptable.

The bank will agree not to honor stale dated checks on Hays County accounts, which are not endorsed by the County as acceptable after the 90-day limit without verbal consent from the Hays County Treasurer or her assignee.

Disbursing services for all accounts are required to include the payment of all County checks upon presentation.

#### **Section XII. Electronic Computer/Internet Services**

Applicant banks must offer a secure on-line cash management service. The Hays County Treasurer's office will be the Hays County liaison for all online/electronic computer banking services. Permissions and user access will be done through the County Treasurer or her assignee. The county prefers to perform balance inquiries, wire transfers, stop payments, ACH transfers and interfund transfers through the internet if available. Any Hays County account current or added should be included for internet viewing by the County Treasurer or her assignee. Please attach product descriptions, pricing, and sample reports for any computer software or internet services available.

#### **Section XIII. Credit Cards**

Hays County may request issue of Visa/Master Card, at the discretion of the County Auditor, with approval by Commissioners' Court.

- Credit Cards will only be issued with Approval of Commissioners Court, as presented by the County Auditor.
- The bank shall receive authorization notification of approved requests from the County Treasurer.
- Any Credit Card issued without proper authorization shall be the liability of the bank, including charges using said credit card.
- The bank shall send credit cards to the County Auditor for distribution.
- In addition, an updated report listing all credit cards, names, numbers, etc. will be sent to the County Auditor on a monthly basis and as additional cards are issued.
- An itemized statement shall be sent to the County Auditor for payment.
- Balances will be paid within 30 days of Closing Date without any service, interest, or late charges.
- Hays County reserves the right to withhold payment of any charge pending validation.
- Proposals for the issuance of a credit card initiated by the Depository bank shall be delivered to the County Treasurer. Basic charges should be included in the proposal.

#### **Section XIV. Credit Card Collection Services**

Hays County may request credit card collection services at the discretion of various Hays County elected officials with the approval of Commissioner's Court. The bank shall negotiate such services for various elected officials through the County Treasurer.

- All credit card payments shall be credited to a Hays County bank account specified by the County Treasurer or her assignee.
- Some credit card collection services may be provided though online service and some with swipe machines.
- Detailed credit card reports shall be provided to the County Treasurer or her assignee on a per deposit basis.
- Proposals for the collections of credit card payments initiated by the Depository bank shall be delivered to the County Treasurer. Basic charges should be included in this proposal.

#### **Section XV. Other Services**



As described on the Proposal Application, the Bank will acknowledge services provided and attendant fees for such. Also, indicate charges for the following:

- Locked or Sealable bags
- Laser Checks
- Checks (in individual books or binders)
- EZ Fold Pressure Seal Checks
- Deposit Slips
- Endorsement Stamps
- Coin Wrappers
- Currency Straps

Other services and/or costs not specified in this document should be listed and attached, along with a description and unit pricing.

#### **D. Certified Check**

Each application must be accompanied by a certified check in the amount of \$1,124,579.19 which represents one-half (1/2) of one (1) percent of the County's revenue for the preceding fiscal year 2021-2022.

After selecting one or more county depositories, Hays County shall immediately return the certified checks of the rejected applicants. Hays County shall return the check of the successful applicant when the applicant executes and files a depository bond. If a bank is selected as a depository and does not provide the bond, the county shall retain the amount of the check as liquidated damages, and the county shall re-advertise for applications, if necessary, to obtain a depository for the County.

#### **E. Qualifications**

Hays County is seeking Bank Depository with the following minimum qualifications and **MUST** be able to perform **ALL** required services outlined in this RFP:

- Must be a member of the Federal Reserve System and the Federal Deposit Insurance Corporation.
- An Offeror must be either a Federal or Texas chartered bank doing business in and having a full-service facility within Hays County, Texas
- Banks who operate under the State of Texas bank charter may submit an RFP without membership in the Federal Reserve System. State chartered banks that are submitting an RFP **MUST** be a member of the Federal Deposit Insurance Corporation (FDIC).
- Shall qualify as a depository in compliance with T.T.C.S., local Government Code Chapter 116 and 117, and Government Code Chapters 2256 and 2257.
- Must be an Equal Opportunity employer and lender and should furnish evidence of such with the proposal.
- Understands the Revised Civil Statutes of Texas that pertain to the managing and safekeeping of County Funds and will comply with these statutes.
  - Article 2544, et seq., of the Revised Civil Statutes of Texas, as revised by Local Government Code, Chapter 116.000 through 116.155 as passed by the 70<sup>th</sup> Leg. 1987 and amended by Acts 1991, 72<sup>nd</sup> Leg., and Acts 1996, 74<sup>th</sup> Leg.; and Article 2547 a,b,c.
- Understands the Revised Civil Statutes of Texas that pertain to depositories, certain trust funds and court registry funds held in trust by the County and will comply with these statutes.
  - Article 2558a, et seq., of the Revised Civil Statutes of Texas, as revised by the Local Government Code, Chapter 117.000 through 117.124 as passed by the 70<sup>th</sup> Leg. 1987 and amended by Acts 1989, 71<sup>st</sup> Leg., Acts 1991, 72<sup>nd</sup> Leg., Acts 1993, 73<sup>rd</sup> Leg.,

and Acts 1995, 74th Leg.

- Must have adequate organization, facilities, equipment and personnel to provide prompt and efficient services to the County as proposed.
- Must certify compliance with Texas Unclaimed Property Laws, Texas Property Code, Sec. 72.001, et. seq. and with all rules and regulations promulgated pursuant to that law.
- Must include as part of the proposal:
  - The Bank's last three quarterly Uniform Bank Performance Reports
  - The Bank's last three Call Reports
  - The Bank's last two Annual Financial Reports
  - The awarded vendor shall continue, during the term of the depository contract, to furnish the County Treasurer updated issues of (a) each quarterly call report and (b) annual financial reports.

**REFERENCES:** Hays County requires respondent to supply with the statement of qualifications, a list of at least three (3) references where like services have been supplied by their company. Include name of company, address, telephone number and name of representative.

**RESPONSIBILITY:** A prospective respondent must affirmatively demonstrate respondent's responsibility. A prospective respondent must meet the following requirements:

- Have adequate financial resources, or the above ability to obtain such resources as required
- Be able to comply with required or proposed delivery schedule
- Have a satisfactory record of performance
- Be otherwise qualified and eligible to receive an award

**TIME OF PERFORMANCE:** It is imperative that the prospective respondent respond to County requests in a timely manner and comply with required or proposed delivery schedules. Please describe how you intend to respond to and track County requests.

**SYSTEM FOR AWARD MANAGEMENT:** Respondent and its Principals may not be debarred or suspended nor otherwise on the Excluded Parties List System (EPLS) in the System for Award Management (SAM). Include verification that the company as well as the company's principals are not listed (are not debarred) through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). Enclose a printout of the Entity Registration page that shows your firm is in active status and is not expired.

#### **F. Depository Application (Attachment B)**

Each proposal must include a completed Attachment B, listing all charges applicable to the services outlines in this proposal. The Association for Financial Professionals (AFP) number and basis of the charge (per item or per account/month) should be clearly noted for analysis purposes. If services or unbundled charges needed to provide this service are not currently listed on Attachment B, add same by name and number, including applicable fees. Clearly stipulate how reporting, imaging, and account maintenance charges are to be charged.

If proposal is accepted the awarded vendor agrees to furnish any and all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the Request for Proposal. Banking services to support required services but not detailed on the worksheet will be provided at no cost. New services will be provided at no more than the then published cost. All specified fees are to be firm for the life of the contract. Interest rates are subject to the renegotiation clause, Local Government Code 116.021(b)

#### **G. Evaluation Criteria**

The Evaluating Committee will evaluate each respondent's proposal based on a comprehensive set of criteria. Proposals received shall be evaluated and ranked by the County according to the following criteria: **(Maximum Point Total 100)**

1. **Banking Services cost and earnings potential** **30 points**  
The lowest/best price will not be used as the sole basis for entering into this contract; rather, an award will be made to the organization providing the best value, cost and other factors considered. i.e. cost of services, net rate of return on County funds
2. **Capacity to Perform** **30 points**  
Proposed methodology of delivering goods or services, the extent to which the methodology meets the County's needs, quality of goods and services proposed, and Bank's ability to provide the goods and/or services requirements
3. **Creditworthiness and stability of the bank** **15 points**  
Bank's financial position, and ability to pledge adequate securities against County funds
4. **Experience of the Organization** **15 points**  
Bank's experience in providing depository services requested in proposal to similar accounts. Company history with biographies and/or resumes for principal contacts, and company certifications. References and recommendations from current or former clients.

**Interview (optional)**

**Ranking**

At the County's discretion, submitting entities may be requested by the Evaluating Committee to conduct interviews as part of the evaluation process, prior to making recommendations to Commissioners Court regarding award.

It is the practice of Hays County to encourage local participation and to promote and encourage contracting and subcontracting opportunities for locally owned businesses and labor in all contracts.

The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Hays County is an Affirmative Action/Equal Opportunity Employer and strives to attain goals for Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

**H. Proposal Requirements**

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to meet the requirements of this RFP. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and the understanding of the County's Needs.

Proposals shall not exceed thirty (30) pages (15 sheets front and back) in length, but not including:

- **Front and Rear Covers**
- **Letter of Transmittal:** RFP Subject Line, name of Vendor, address, telephone number, name of contact person, and signed by the individual authorized to negotiate for and contractually bind the company.
- **Table of Contents**
- **Appendix materials (any required forms, see RFP Submittal Checklist, and addenda from Hays County)**

Items that count towards the 30-page limit

- **Profile/Experience of the Organization**
  - Company information shall include: Company legal name of the Bidder, principal place of business, number of years in business, and description of company organization including identification of number of staff dedicated to the project.
  - Experience of the Company and prior work performance on three (3) projects of similar size and scope that have been completed in the last five (5) years.
  - List of any criminal charges, civil lawsuits, or dispute resolutions to which the Company is a part in the past five (5) years and the nature of the issue. Indicating if and how it was resolved.
- **Key Personnel**
  - Provide resumes of all employees who may be assigned to provide services if your company is selected.
  - Provide an organizational chart containing the names, telephone numbers and email address of the prime providers and any sub-providers that would be proposed for the team and their contract responsibilities by work category.
- **Capacity to Perform**
  - Describe the capacity to perform the Scope of Work activities.
  - Provide a description of your proposed approach/strategy to provide and perform the objectives, specific elements, and tasks associated with services.
  - Quality Assurance Plan
  - Implementation Schedule
- **Creditworthiness and stability of the bank**
  - Bank's financial position, and ability to pledge adequate securities against County funds
- **Signed Hays County Investment Policy: Attachment A**
- **Depository Application: Attachment B**
- **Appendix materials (any required forms, see RFP Submittal Checklist, and addenda from Hays County)**

Sheet size is limited to 8½" x 11" sheets only, using 12-point font. The organizational chart is permissible to use an 11" x 17" sheet (one-sided) and a font smaller than 12-point for the organizational chart, provided text is clearly legible. It is permissible to use a font smaller than 12-point for graphics, provided text is clearly legible.

The proposal must be submitted with a continuous binding (e.g. – spiral, GBC, etc.) along the left edge; no other binding will be accepted and should not exceed fifteen (15) pages front and back, not including the appendix materials.

#### **I. Submittal Requirements**

Respondent must deliver their proposal to the Hays County Purchasing Department by one of the following methods by the specified deadline:

Mailed or Dropped off Proposals:

- One (1) original proposal with required forms manually signed by the respondent with original signatures, and
- One (1) digital copy of the full proposal with all required forms on a thumb drive

Electronic Proposals:

- Upload proposal with required forms manually signed by the respondent. (through BidNet Direct), and

- One (1) original proposal with required forms manually signed by the respondent, delivered to the Hays County Purchasing Office, within 24 hours of the proposal due date and time. Either the original or Electronic Proposal (through BidNet Direct) MUST be received by the due date and time to be considered responsive

Certified check in the amount of \$1,124,579.19 which represents one-half (1/2) of one (1) percent of the County's revenue for the preceding fiscal year 2021-2022.

**LATE SUBMITTALS WILL NOT BE ACCEPTED.**

ALTERING PROPOSALS: Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the proposal, guaranteeing authenticity.

WITHDRAWING OF PROPOSAL: A proposal may be withdrawn at any time prior to the official opening. After the official opening, proposals may not be amended, altered or withdrawn without the recommendation of the County Purchasing Manager and the approval of Commissioners Court.

ADDENDA: Any interpretations, corrections or changes to this RFP and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in Hays County Purchasing Manager. It is the Respondent's responsibility to acknowledge receipt of all addenda with proposal submission.

FORMS: All proposals must be submitted on the forms provided in this solicitation document. Changes to solicitation forms made by bidders shall disqualify the proposal.

REFERENCES: Hays County requires respondent to supply a list of at least three (3) references (See Section V for Vendor Reference Form) where like services have been supplied by their company. Include name of company, address, telephone number and name of representative.

RESPONDENT'S ACCEPTANCE: by submitting a response to this RFP, the respondent certifies that it has fully read and understands the terms, conditions and statements of this Request for Qualifications and has knowledge of the scope of the quality of services to be furnished and intends to adhere to the provisions described herein.

**J. Award of Contract**

BASIS OF AWARD: The County reserves the right to award a contract for named project to an organization on the basis of "best value". Best value will be determined based on cost, experience, qualifications, references, proposed methodology/technical proposal, and overall responsiveness, clarity, and organization of the solicitation response.

COMPANY AGREES, if this proposal is accepted, to furnish any and all services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of the proposal will be one hundred eighty (180) calendar days from the submission date.

The awarded company expressly warrants that all services specified in the RFP will be performed with care and diligence and in accordance with all specifications of the RFP. The awarded company agrees to correct any deficiencies in its performance of services upon notification by the County and without additional expense to the County.

ACCEPT OR REJECT: It is understood that Hays County reserves the right to accept or reject any and all submittals as it shall deem to be in the best interest of Hays County. The prospective entities are fully

responsible for all costs incurred in the preparation and/or presentation of the RFP submittals. All received RFP submittals will become the property of the County. The RFP does not commit the County to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFP. Proposals may be held for one hundred twenty (120) calendar days after opening without taking action.

**COMMISSIONERS COURT APPROVAL REQUIRED:** The Hays County Commissioners Court must approve the contractors selected to provide the services requested in this RFP. The County reserves the right to authorize contract negotiations to begin without further discussion with contractors submitting a response. Therefore, each proposal should be submitted as completely and accurately as possible. The County reserves the right to request additional data, oral discussions, or presentations in support of the written proposal. If the proposal is accepted and approved by Commissioners Court, this document shall be made part of the contract.

**Respondent's Obligation Regarding Evaluation**

- a. **SUBMISSION OF INFORMATION.** Submitters are cautioned that it is each contractor and or individual's sole responsibility to submit information related to the evaluation categories, and the County is under no obligation to solicit such information if it is not included with the proposal. Failure of a contractor or individual to submit such information may cause an adverse impact on the evaluation of the specific proposal.
- b. **SUBMITTER REVIEW OF RFP.** Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFP and their responses. Failure to do so will be at the contractor and/or individual's risk and will not be a determinative factor when awarding the contract for services.

**ORAL NON-BINDING:** Any non-written representations, explanations, or instructions given by County staff or County agents are not binding and do not form a part of, or alter in any way, the RFP, a written agreement pertinent to the RFP, or the awarding of the contract.

**RESERVATIONS BY COUNTY:** The Commissioners Court has the right to accept, reject, or cancel any and all submissions. In addition, the County expressly reserves the following:

1. waive any defect, irregularity, or informality in any submission or RFP procedure;
2. extend the RFP closing time and date;
3. reissue this RFP in a different form or context;
4. procure any item by other allowable means;
5. revise and modify, at any time before the RFP submittal due date, the factors and/or weights of factors the County will consider in evaluating RFP submittals and to otherwise revise or expand its evaluation methodology as set forth herein;
6. investigate the qualifications of any contractor under consideration and require confirmation of information furnished by a contractor;
7. require additional information from a contractor concerning contents of its RFP submittal and/or require additional evidence of qualifications;
8. waive minor deviations from specifications, conditions, terms, or provisions of the RFP, if it is determined that waiver of the minor deviations improves or enhances the County's business interests under the RFP;
9. extend any contract when most advantageous to the County, as set forth in this RFP.
10. appoint an evaluation committee to review RFP submittals or responses, make recommendations and seek the assistance of outside technical experts in RFP submittal evaluation;

11. hold interviews and conduct discussions and correspondence with one or more of the contractors responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.
12. disclose information contained in an RFP submittal to the public as required under the Texas Public Information Act; AND/OR
13. exercise any other right reserved or afforded to Hays County under this RFP. The County reserves the right to modify the process, in its sole discretion, to address applicable law and/or the best interest of the County.

The County shall not, under any circumstances, be bound by or be liable for any obligations with respect to any construction project until such time (if at all) a contract has been awarded and all approvals obtained in form and substance satisfactory to the County have been executed and authorized by the County, and then only to the extent of such agreements.

**K. Warranty of Performance**

The successful respondent expressly warrants that all services specified in the RFP will be performed with care and diligence and in accordance with all specifications of the RFP. The successful bidder agrees to correct any deficiencies in performance of services upon notification by the County and without additional expense to the County.

CONTINUING NON-PERFORMANCE of the bidder, in terms of specifications, shall be basis for the termination of the contract by the County. The County shall not pay for merchandise/services that are unsatisfactory. Failure to perform any provision will constitute a default of contract, in which case, corrective action shall take place within ten (10) days from the date of written notice citing the nature of breach. Failure to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed ten (10) days will authorize the County to terminate this agreement by written notice.

COMPLIANCE WITH LAWS: The successful Respondents shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of the duties under the solicitation. Any contract executed as a result of this RFP shall be governed by the laws of the State of Texas.

## IV. General Terms and Conditions for Solicitations

### Applicable To: Request for Proposals (RFP)

#### 1. GENERAL DEFINITIONS:

- a. "Auditor" means the Hays County Auditor or his/her designee.
- b. "Commissioners Court" means Hays County Commissioners Court.
- c. "Contract" means the contract awarded pursuant to the RFP.
- d. "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- e. "County" means Hays County, Texas, a political subdivision of the State of Texas.
- f. "County Building" means any County owned buildings and does not include buildings leased by County.
- g. "Is doing business" and "has done business" mean:
  - i. Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
  - ii. Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - iii. But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- h. "Key Contracting Person" means any person or business listed in Exhibit A to Affidavit.
- i. "Purchasing Manager" means the Hays County Purchasing Manager.
- j. "Sub-contractor" means a person or firm doing business with a Contractor.

2. **FUNDING:** Funds for payment on this Contract have been provided through the County budget approved by Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of Hays County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Contract. However, County cannot guarantee the availability of funds, and enters into this Contract only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. **FUNDING OUT:** Despite anything to the contrary in this Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this Contract after giving Contractor thirty (30) calendar days written notice that this Contract is terminated due to the failure to fund it.

#### 4. INVOICING/PAYMENTS:

- a. Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- b. As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in this Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- c. Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:  
County Auditor



712 S Stagecoach Trail, Suite 1071

San Marcos, Texas 78666

- d. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.
  - e. Accrual and payment of interest on overdue payments shall be governed by Tex. Gov't Code Ann., ch. 2251.
5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
7. FOB POINT: Delivery of all products under this contract, if any, shall be made Free on Board to final destination, at the address shown in this contract or as indicated on each Purchase Order placed against this contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at the F.O.B. point.
8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.
9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.
10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:
  - a. Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
  - b. Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] if Contractor were an entity bound to comply with these laws.

12. CHANGES:

- a. This Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF THIS CONTRACT OR OTHERWISE AMEND THIS CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.
- b. Contractor shall submit all requests for changes to this Contract or any attachment(s) to it to the Purchasing Manager. The Purchasing Manager shall present Contractor's requests to Commissioners Court for consideration.

13. REPRESENTATIONS:

- a. Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- b. The Contractor's delivery time includes weekends and holidays.
- c. Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.
- d. Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of this contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.
- e. The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.
- f. Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Manager. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

14. SUBCONTRACTS:

- a. Contractor shall not enter into any subcontracts for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.
- b. If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this Contract. Contractor must obtain County approval of all proposed HUB subcontractors through the Purchasing

Manager. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Contract and may result in termination of this Contract.

15. ASSIGNMENT:

- a. The parties to this Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this Contract unless that specific authority is expressly granted by Commissioners Court.
- b. The terms, provisions, covenants, obligations and conditions of this Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Contract if the assignment or transfer is made in compliance with the provisions of this Contract.
- c. Contractor remains responsible for the performance of this Contract when there is a change of name or change of ownership. If a change of name is required, the Purchasing Manager shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Manager acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Manager or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Manager, or other authorized County person, the Contractor must submit a written notice to the Purchasing Manager within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Manager, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE: If the performance by either party of any of its obligations under this Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

- a. No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. No official, agent, employee or representative of County may waive any breach of any term or condition of this Contract unless expressly granted that specific authority by the Commissioners Court.
- b. All rights of County under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. **TERMINATION FOR DEFAULT:** Failure by either County or Contractor to perform any provisions of this Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why this Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Manager or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Manager or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Manager or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of this Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this Contract.
21. **TERMINATION FOR CONVENIENCE:** County reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with this Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Manager. County shall not be liable for loss of any profits anticipated under this Contract.
22. **GRATUITIES:** Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Contract. County may terminate this Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect of this contract. If this Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.
23. **COVENANT AGAINST CONTINGENT FEES:** Contractor represents and warrants that no persons or selling agency has been retained to solicit this Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate this Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
24. **COUNTY ACCESS:** Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of this Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which

reimbursement is claimed under this Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.

**25. FORFEITURE OF CONTRACT:**

- a. The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
- b. The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
- c. The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.

**26. CONTRACTOR CLAIMS NOTIFICATION:**

- a. If any claim, or other action, that relates to Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:
  - i. The existence of the claim, or other action;
  - ii. The name and address of the person, firm, corporation or their entity that made a claim or that instituted any type of action or proceeding;
  - iii. The alleged basis of the claim, action or proceeding;
  - iv. The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
  - v. The name or names of any person against whom this claim is being made.
- b. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

**27. CERTIFICATION OF ELIGIBILITY:** This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/respondent certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/respondent will notify the Hays County Purchasing Manager. Failure to do so may result in terminating this Contract for default.

**28. CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION:** Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

**29. CONSTRUCTION OF CONTRACT:**

- a. This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas.

- b. If any portion of this Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- c. Headings and titles at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing this Contract.
- d. When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Hays County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in this Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- e. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- f. Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

### 30. ADDITIONAL GENERAL PROVISIONS:

- a. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract.
- b. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- c. Contractor must pay all taxes and license fees imposed by the Federal and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.
- d. Despite anything to the contrary in this Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under this Contract equal to the amount Contractor is delinquent in property tax payments to the Hays County Tax Assessor-Collector for the payment of the delinquent taxes.
- e. In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

### 31. INTERPRETATION OF CONTRACT:

- a. This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Manager. No official, representative, employee, or agent of the County has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court.
- b. If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:
  - i. The Schedule of Items/Services
  - ii. Terms and Conditions of Request for Proposals;
  - iii. General Provisions;
  - iv. Other provisions, whether incorporated by reference or otherwise; and
  - v. The specifications.
- c. If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and this contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.
- d. This contract shall be governed by the laws of Texas and all obligations are performable in Hays County, Texas.

- e. If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.
- f. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.
- g. The headings in this contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.
- h. Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to this contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

**32. MODIFICATIONS:**

- a. The County Purchasing Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:
  - i. Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
  - ii. Method of shipment or packing.
  - iii. Place of deliveries.
  - iv. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
  - v. Description of items to be provided.
  - vi. Time of performance (i.e. hours of day, days of week, etc)
- b. If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Manager decides that the facts justify it, the County Purchasing Manager may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**33. PRICE CHANGES:** The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Hays County substantiating the changes to the bid prices. Any price changes must be approved by Hays County.

- 34. INSURANCE AND LIABILITY:** During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall;
- a. Name County as additional insured as its interests may appear.
  - b. Provide County a waiver of subrogation.
  - c. Provide County with a thirty (30) calendar day advance written notice of cancellation or material change to said insurance.
  - d. Provide the County Purchasing Manager at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. Also, please assure your certificate contains the contract number as indicated on the Contract Award form when issued by Hays County.
  - e. Submit an original certificate of insurance reflecting coverage as follows:

Business Automobile Liability:
Bodily Injury (Each person)   \$250,000.00

Bodily Injury (Each accident)	\$500,000.00
Property Damage	\$1,000,000.00
<b>Commercial General Liability (Including Contractual Liability):</b>	
Bodily Injury (Each accident)	\$1,000,000.00
Property Damage	\$ 100,000.00
Medical Expenses	\$ 10,000.00
Personal & Advertising Injury	\$1,000,000.00
General Aggregate	\$2,000,000.00
Products – Completed Operations Aggregate	\$2,000,000.00
<b>Excess Liability:</b>	
Umbrella Form	Not Required
<b>Labor Liability:</b>	
Worker's Compensation	Meeting Statutory Requirements, and the following
Employers Liability – Each Accident	\$1,000,000.00
Employers Liability – Each Employee	\$1,000,000.00
Employers Liability – Policy Limit	\$1,000,000.00



## V. Vendor Reference Form

Please list three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

REFERENCE ONE
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE TWO
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE THREE
-----------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

## VI. Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Hays County purchases, a vendor or other person who is awarded a contract or purchase approved by Hays County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Hays County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

If you do not have access to the link provided above or have any questions, please contact Purchasing at 512-393-2283.

## VII. Conflict of Interest Questionnaire

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> <b>For vendor doing business with local governmental entity</b>		<b>FORM CIQ</b>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>  <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>	
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p> <div style="border: 1px solid black; height: 30px; margin-top: 5px;"></div>	<div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>	
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>		
<p><b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b></p> <div style="border: 1px solid black; height: 200px; margin-top: 10px;"></div>		
<p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <span><input type="checkbox"/> Yes</span> <span><input type="checkbox"/> No</span> </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <span><input type="checkbox"/> Yes</span> <span><input type="checkbox"/> No</span> </div>		
<p><b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b></p> <div style="border: 1px solid black; height: 100px; margin-top: 10px;"></div>		
<p><b>6</b> <input type="checkbox"/> <b>Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</b></p>		
<p><b>7</b></p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>_____ Signature of vendor doing business with the governmental entity</p> </div> <div style="width: 45%;"> <p>_____ Date</p> </div> </div>		

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## VIII. CODE OF ETHICS FOR HAYS COUNTY

Public employment is a public trust. It is the policy of Hays County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Hays County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Hays County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Hays County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation, therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## IX. Hays County Practices Related to Historically Underutilized Businesses

### 1. STATEMENT OF PRACTICES

Hays County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Hays County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

### 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Hays County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

### 3. GUIDELINES

- a. Hays County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL). Hays County will solicit bids from certified HUB's for state purchasing and public works contracts.

4. Hays County will actively seek and encourage HUBs to participate in all facets of the procurement process by:

- a. Continuing to increase and monitor a database of certified HUB vendors, professionals and contractors. The database will be expanded to include products, areas of expertise and capabilities of each HUB firm.
  - b. Continuing to seek new communication links with HUB vendors, professionals and contractors to involve them in the procurement process.
  - c. Continuing to advertise bids on the County's website and in the newspapers including newspapers that target socially and economically disadvantaged communities.
5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms in the procurement process by:
  - a. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements.
  - b. Where feasible, assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work.
  - c. Specifications of reasonable, realistic delivery schedules consistent with the County's actual requirements.
  - d. Specifications, terms and conditions reflecting the County's actual requirements are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. A HUB practice statement shall be included in all specifications. The County will consider the bidder's responsiveness to the HUB Practices in the evaluation of bids and proposals. Failure to demonstrate a good faith effort to comply with the County's HUB practices may result in a bid or proposal being considered non-responsive to specifications.
7. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Please sign for acknowledgement of the Hays County HUB Practices:

---

Signature

---

Date

X. Hays County House Bill 89 Verification

I, \_\_\_\_\_ (Person name), the undersigned representative of  
\_\_\_\_\_(Company or Business name, hereafter referred to as Company) being an adult  
over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and  
verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter  
2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

*Pursuant to Section 2270.001, Texas Government Code:*

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Date

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, the  
above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

\_\_\_\_\_  
Notary Public in and for the State of Texas

(if other than Texas, Write state in here \_\_\_\_\_)

\_\_\_\_\_  
Date



## XI. Hays County Purchasing Department Senate Bill 252 Certification

Pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named below is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the Hays County Purchasing Department.

---

Company Name

---

Print Name of Company Representative

---

Signature of Company Representative

---

Date

### CERTIFICATION CHECK PERFORMED BY HAYS COUNTY PURCHASING:

On this day; the Purchasing Representative for Hays County in San Marcos, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253 and I have ascertained that the above-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

---

Print Name of Hays County Purchasing Representative

---

Signature of Hays County Purchasing Representative

---

Date

---

IFB/RFP/RFQ Number

## XII. Debarment and Licensing Certification

STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §

I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Firm named herein below and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- d. Have not within a three-year period preceding this application/proposal had one or more public (federal, state or local) transactions terminated for cause or default;
- e. Are registered and licensed in the State of Texas to perform the professional services which are necessary for the project; and
- f. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

Where the Firm is unable to certify to any of the statements in this certification, such Firm shall attach an explanation to this certification.

SUBSCRIBED and sworn to before me the undersigned authority by \_\_\_\_\_ on this the day of \_\_\_\_\_, 20\_\_\_\_, on behalf of said Firm.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
(if other than Texas, Write state in here \_\_\_\_\_)

My commission expires: \_\_\_\_\_

### XIII. Vendor/Bidder's Affirmation

- Vendor/Bidder affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
- Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
- Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County

\_\_\_\_\_  
Name of Contracting Company

If taxable property is owned in Hays County, list property ID numbers:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

## XIV. FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

### 1. **Debarment and Suspension (2 CFR 180.220)**

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Order 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

### 2. **Americans with Disabilities Act**

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

### 3. **Discrimination**

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j. The requirements of any other nondiscrimination statute(s) that may apply to the application.

### 4. **Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246

Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**5. Wages**

Under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5 (40 U.S.C. 3141-3148), as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**7.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**8.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

**9. Lobbying**

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in Section 1352, Title 31 of the U.S. Code, which are implemented in 15 CFR Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**10. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**11. Minority and Women’s Businesses**

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women’s business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

**12. Environmental Standards**

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- b. Notification of violating facilities pursuant to EO 11738;
- c. Protection of wetlands pursuant to EO 11990;
- d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- i. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- j. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- k. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded
  - \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**13. Historic Properties**

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

**14. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_ Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

## XV. Related Party Disclosure Form

Hays County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Hays County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Hays County employee (including elected or appointed official) (Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package that does not include this completed form will be considered non-responsive and will not be eligible for an award.

### Section A: Current Hays County Employee

Employee Name	Title
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### Section B: Former Hays County Employee

Employee Name	Title	Date of Separation from County
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### Section C: Person Related to Current or Former Hays County Employee

Hays Employee/Former Hays Employee Name	Title
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Name of Person Related	Title	Relationship
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### Section D: No Known Relationships

If no relationships in accordance with the above exist or are known to exist, you may provide a written explanation below:

Attach additional pages if necessary.



I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
	1st Degree	2nd Degree	3rd Degree*	4th Degree*
<b>Person</b>	child or parent	grandchild, sister, brother or grandparent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great-grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great-great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
	1st Degree	2nd Degree
<b>Person</b>	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Hays County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a sharehold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.

**RFP 2023-P02 Bank Depository**  
**Attachment B: Depository Application**

**A. General Information**

Honorable Commissioners' Court  
Hays County, Texas

The banking institution submitting this proposal is duly incorporated under the laws of the State of Texas, with its domicile and principle place of business located in the City of \_\_\_\_\_, and County of \_\_\_\_\_, Texas or as allowed pursuant to Section 131.901, Texas Local Government Code, the banking institution submitting this proposal has a branch office located in the City of \_\_\_\_\_ and County of \_\_\_\_\_ Texas to be designated as a branch office of such institution by the Commissioners' Court upon acceptance of this proposal.

**Bank Information:**

Bank transit routing number: \_\_\_\_\_

Financial Institution Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

President/CEO: \_\_\_\_\_

Texas Contact: \_\_\_\_\_ Phone#: \_\_\_\_\_

Texas CRA Rating: \_\_\_\_\_ Tax ID #: \_\_\_\_\_

The amount of paid-up capital stock of said bank is \$ \_\_\_\_\_  
\_\_\_\_\_ dollars, and  
the amount of permanent surplus is \$ \_\_\_\_\_ dollars

A statement showing the financial condition of bank on date of this application is attached and made part hereof.

Applicant bank offers the following terms and conditions for transaction/processing activities including deposits and checks. Such fees should include both hard charges paid by invoice and soft charges paid through account analysis. Hays County does not allow debiting bank accounts for any fees. Banking fees and services not detailed on this proposal application will be provided at no cost. If fees are assessed on an account analysis, a sample account analysis report must be provided as part of the proposal. The county will provide an estimated summary of volume for reference upon request. Such requests should be directed to the Hays County Treasurer.

**B. Account Fees (all fees must be included – additional pages may be attached)**

DESCRIPTION	COST PER ITEM	COST PER ACCOUNT
ACCOUNT MAINTENANCE FEES		
ACH FRAUD FILTER		
ACH MONTHLY FEES		
ACH TRANSMISSION CHARGE		
CHECKS RETURNED W/STATEMENT		
SERIAL SORT MONTHLY BASE		
SERIAL SORT PER ITEM		
CASH DEPOSITED >IM/\$1-BRANCH/STORE		
ONLINE CASH MANAGEMENT SERVICE FEES		
CREDITS POSTED		
CHECKS PAID		
DEPOSITED CHECKS - LOCAL		
DEPOSITED CHECKS -ON US		
DEPOSITED CHECKS - REGIONAL		
DEPOSITED CHECKS -TRANSIT		
DEPOSITED CHECKS - AFFILIATES		
ELECTRONIC CREDITS POSTED		
ELECTRONIC DEBITS POSTED		
POSTIVE PAY MONTHLY FEE		
POSITIVE PAY ISSUE ITEM		
RETURN ITEM – CHARGEBACK		
RETURN ITEM - REDEPOSITED		
RETURN ITEM SPECIAL INST MTHLY BASE		
ROLLED COIN ORDERED - BRANCH/STORE		
WIRE TRANSFERS - BOOK TRANSFER		
WIRE SERVICE MONTHLY FEE (ONLINE)		
WIRE IN DOMESTIC		
WIRE OUT DOMESTIC/DRAW		
ZERO BALANCE MONTHLY BASE		
DEPOSIT SLIPS/DEPOSIT BOOKS		
NIGHT DEPOSITORY SERV. W/ BAGS/KEYS		
ACCOUNT OVERDRAFT CHARGE		
INVESTMENT SAFEKEEPING		

COLLATERAL SAFEKEEPING		
AUDIT RESPONSE LETTERS		
STOP PAYMENT ISSUANCE		
DUAL SIGNATURE WATCH		
SIGNATURE EXAMINATION		
ENDORSEMENT EXAMINATION		
ENDORSEMENT STAMPS		
LOCK/SEAL BAGS		
RESEARCH ON ACCOUNT		
MONTHLY STATEMENT IMAGES ON CD		
TEMPORARY CHECKS		
CONTINUOUS FORM CHECKS		
LASER CHECKS		
CHECKBOOKS		
COIN WRAPPERS		
CURRENCY STRAPS		
CASHIERS CHECKS		
LETTERS OF CREDIT		
COURIER SERVICES		
INTERFUND TRANSFERS		
SAFE DEPOSIT BOXES		
SECURITY TRANSFERS		
REMOTE CAPTURE MONTHLY FEES		

**INCLUDE ALL FEES NOT INCLUDED ABOVE INCLUDING ONE TIME ACTIVATION FEES:**

[illegible]

### C. Questionnaire

1. Will Hays County employees be charged for cashing their paychecks? If so, what will they be charged?
2. Will the bank notify the County before a deposit is changed? If so, how will the County be notified?
3. Will the bank notify the County before a County check is rejected? If so, how will the County be notified?
4. What format is needed for ACH, Wire or Interfund origination and what is the deadline for submission?
5. Will the bank or a bank vendor furnish credit cards (Mastercard, Visa)? (Attach fees and specific information)
6. Can bank or a bank vendor provide merchant credit card deposit services? (Attach fees and specific information)
7. How long does Hays County have to correct unauthorized payments, encoding errors and discrepancies?
8. Are there any initial software/internet set up fees? If so, what are they?
9. How long will the county be allowed to dispute a withdrawal on a county account? What procedures must take place for such a dispute? Are there any fees for such a dispute?
10. How long will the county be allowed to report encoding/bank errors on a county account? What procedures must take place for such errors to be corrected?
11. How long will stop payments stay active? Does the county have to resubmit all stop payments after a certain time period?
12. Does the bank require any type of procedures such as internet banking or positive pay? If so, what are the fees associated with this requirement and fees for non-compliance.
13. Does the bank offer remote capture? Is it required?
14. Is there a dollar limit per wire, ACH or internal transfer that is initiated by the county?
15. Does the bank software offer capabilities for the county to administer users and restrictions within each account?
16. Are clearing check endorsements verified by the bank?
17. Are cleared check front and back images provided for the county on every account? Is there a charge? How quickly are images provided?
18. What is the bank policy on daylight overdrafts?
19. Is there a specific time of day that incoming wires are available in the account?
20. Are their local representatives available in San Marcos that are available to assist the Hays County Treasurer?
21. Is there a local branch available to handle deposits, account changes, cash requirements, signatures, and miscellaneous account issues?

Other Comments/Statements:

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#### D. Investments/Borrowing

Applicant bank agrees the following terms and conditions for investment/borrowing functions:

##### Interest Bearing Checking Accounts

	Variable Int Margin*	Fixed Int Rate	Minimum Balance Requirement
Interest Bearing Checking Accounts	_____	_____	_____
Money Market Savings Accounts	_____	_____	_____
Trust Fund Savings	_____	_____	_____
Sweep Accounts	_____	_____	_____

\*Variable Rate = (91 Day UST-Bill Auction Discount Rate published in the Wall Street Journal on the day following the auction) + Margin (based on basis points). Example: If 91-day UST-Bill Auction Discount Rate is 3.3% and basis points are 1.0, then the variable rate is 4.3%.

##### Interest Rates on Bank Certificates of Deposit

##### 91 Day UST-Bill Auction Discount Rate (as determined by latest T-Bill Auction)

	Less than \$100,000	More than \$100,000
Maturity 7-29 Days	+ _____ basis points	+ _____ basis points
Maturity 30-59 Days	+ _____ basis points	+ _____ basis points
Maturity 60-89 Days	+ _____ basis points	+ _____ basis points
Maturity 90-179 Days	+ _____ basis points	+ _____ basis points
Maturity 180 Days – Less than 1 year	+ _____ basis points	+ _____ basis points
Maturity 1 year or more	+ _____ basis points	+ _____ basis points

**Certificates of Deposit – Fixed Interest Rate**

	<b>Less than \$100,000</b>	<b>More Than \$100,000</b>
Maturity 7-29 Days	_____ %	_____ %
Maturity 30-59 Days	_____ %	_____ %
Maturity 60-89 Days	_____ %	_____ %
Maturity 90-179 Days	_____ %	_____ %
Maturity 180 Days – Less than 1 year	_____ %	_____ %
Maturity 1 year or more	_____ %	_____ %

The Bank must complete the information below to validate the proposal for a Hays County Depository Bank.

The undersigned affirms that they are fully authorized to execute this contract by providing Hays County with a Certified and Attested Resolution from a duly authorized meeting of the Board of Directors of the submitting Bank authorizing or empowering the undersigned to execute this contract; that this Bank has not prepared this proposal in collusion with any other vendor; and that the contents of this proposal as to fees, interest rates, terms, or conditions of said proposal have not been communicated by the undersigned, nor by any employee or agent, to any other vendor or to any other persons engaged in this type of business prior to the official opening of this proposal.

All Unsigned Proposals will be disqualified.

Name and Address of the Bank:

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

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

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

Email: \_\_\_\_\_

Phone: \_\_\_\_\_



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Vickie Dorsett, Budget Officer

Sponsor:

Judge Becerra

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### Agenda Item:

Authorize the Hays County Commissioners Court to submit a request for funds to the Texas Comptroller's Office for unclaimed capital credits pursuant to the Texas Property Code, Section 74.602. **BECERRA/DORSETT**

### Summary:

Annually the County receives notification from the Texas Comptroller of Public Accounts regarding possible available funding through the unclaimed capital credits received from electric cooperatives in the area. The County must submit a request for funds and acknowledge the use of funds will comply with provisions outlined in the Texas Local Government Code, Section 381.004.

### Fiscal Impact:

Amount Requested: None

Line Item Number: 001-000-00.4630

### Budget Office:

Source of Funds: N/A

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: TBD

Comments:

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## Attachments

Unclaimed Capital Credits Form



## UNCLAIMED PROPERTY CAPITAL CREDITS FOR COUNTIES

### County Request for Capital Credits

County Name Hays County County FEIN 74-6002241

Authorized by ☐ Judge ☒ Commissioners Court

Name of County Judge Ruben Becerra Approved Date 7/11/2023

#### Send the requested funds to:

Address 111 E. San Antonio St., #300 City San Marcos State TX Zip 78666

**I acknowledge that the purpose of the funds complies with provisions of  
Texas Local Government Code, Section 381.004.**

Name (printed) Ruben Becerra Title County Judge

Signature \_\_\_\_\_ Date 7/11/2023

Email Address judge.becerra@co.hays.tx.us Phone 512-393-2205

Submit signed and completed form by either mail, email or fax by July 31, 2023.

**Mail** Texas Comptroller of Public Accounts  
Unclaimed Property Division  
Holder Education and Reporting section  
P.O. Box 12019  
Austin, Texas 78711-2019

**Email** [up.holder@cpa.texas.gov](mailto:up.holder@cpa.texas.gov)  
**Fax** 512-463-3569

**FOR COMPTROLLER'S USE ONLY:** We are authorized to release \_\_\_\_% of the total amount available to your county. We will send a \$\_\_\_\_\_ payment to the address provided above. By requesting funds, you have certified that they will be used in compliance with the provisions of Texas Local Government Code, Section 381.004.

Comptroller's Representative \_\_\_\_\_ Date \_\_\_\_\_

This publication is intended as a general guide and not as a comprehensive resource on the subjects covered.  
It is not a substitute for legal advice.

In compliance with the Americans with Disabilities Act, this document may be requested in alternative formats by calling **800-252-1382**,  
or by sending a fax to **512-475-0900**.



APRIL 2023

# Unclaimed Property Capital Credits for Counties

**Glenn Hegar**

Texas Comptroller of  
Public Accounts

In conjunction with Local Government Code, Section 381.004, Texas Property Code, Section 74.602 authorizes the Texas Comptroller of Public Accounts (Comptroller's office) to allocate a portion of the unclaimed capital credits received from electric cooperatives back to the counties in the cooperatives' service area.

## What are unclaimed capital credits?

Electric cooperatives that have lost contact with a previous customer sometimes report capital credits to the Comptroller's office as unclaimed property. Texas law allows counties to claim a portion of unclaimed capital credits originating from their county and use them for specific programs.

## How are funds divided among counties?

- Electric cooperatives report unclaimed capital credits and the county of service from which they originated.
- Electric Cooperatives must use the numeric Federal Information Processing Standard (FIPS) county code of the service address. This code must be entered in the country code field of the remittance report.
- A county may or may not receive funds in a given year.

## Who qualifies?

- Any county can request a portion of these funds.
- The county must follow instructions in Local Government Code, Section 381.004 to request funds.
- The commissioners court is the primary governing body and ultimate decision-making authority on the legitimacy of fund requests.

## General uses of capital credits

The county commissioners court may use capital credits to develop and administer a program:\*

- for state or local economic development
- for small or disadvantaged business development
- to stimulate, encourage and develop business location and commercial activity in the county
- to promote or advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors and businesses
- to improve the extent to which women and minority businesses are awarded county contracts
- to support comprehensive literacy programs that benefit county residents
- for the encouragement, promotion, improvement and application of the arts
- to support a children's advocacy center

\*Review Local Government Code, Section 381.004 before starting a program.

## How to request capital credits

The county judge and/or commissioners court must complete and submit the form on the back of this notice.

- The form must be signed by a representative of the commissioners court or the county judge.
- The form must include the complete name, address and federal tax identification number of the commissioners court. Funds will be paid directly to the court.

For more information,  
visit our website at  
[ClaimItTexas.gov](http://ClaimItTexas.gov).

For questions on  
Capital Credits, contact  
our Holder Education and  
Reporting section at  
800-321-2274, option 2 or  
[up.holder@cpa.texas.gov](mailto:up.holder@cpa.texas.gov)

**Hays County Commissioners Court**

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Shell

Co-Sponsor:

Commissioner Ingalsbe

**Agenda Item**

Approve Utility Permits. COHEN/SMITH/BORCHERDING

**Summary**

TRN-2023-5921-UTL	Universal Natural Gas, LLC / Centric Fiber, LLC proposes to install sleeving for gas and fiber utility lines to provide services to Six Creeks Development. (Cold River Run, Five Mile Creek Way, Left Fork Drive, etc.)
TRN-2023-6050-UTL	Universal Natural Gas, LLC / Centric Fiber, LLC proposes to install 8" natural gas line with MAOP of 60psi along Old Bastrop Hwy for approximately 20,110'. Will be 3' off the south ROW line of Old Bastrop Hwy. This line will be joint trenched with fiber optic line. Boring will be done to cross under roads and existing driveways. Where boring is not done, the utilities will be placed in an open trench.
TRN-2023-6173-UTL	Universal Natural Gas, LLC / Centric Fiber, LLC proposes to install 8" natural gas line with MAOP not to exceed 60 psi, in same trench as our fiber conduit line. The utility will run approximately 545' along the north right of way line along Plum Creek Rd (future) on east side of High Road. It is to service the Wayside development. Utility will be placed in an open trench and bored beneath road.
TRN-2023-6222-UTL	CenterPoint Energy proposes to install 1,904' of 6" and 100' of 4" intermediate pressure polyethylene plastic gas main, operated at a pressure less than 60 psig along Redwood Road. All work to be installed by horizontal directional boring.
TRN-2023-6241-UTL	Texas Gas Service is proposing to install approximately 10,500 LF of 6" PE gas main in ROW. The proposed route runs along Nutty Brown Rd, Kit Carson Dr, and Davy Crockett Dr. The pipeline will be installed by both





# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 6/18/2023 .

### Utility Company Information:

Name: CenterPoint Energy  
Address: 2730 S IH 35 New Braunfels TX  
Phone:  
Contact Name: Hugh Fitzwater

### Engineer / Contractor Information:

Name:  
Address: TX  
Phone:  
Contact Name:

### Hays County Information:

Utility Permit Number: TRN-2023-6222-UTL  
Type of Utility Service: Gas Main line  
Project Description:  
Road Name(s): Redwood Rd, Wethersfield Ln, , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☒ Boring ☐ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department  
The above-mentioned permit was approved in Hays County Commissioners Court on .

07/06/2023

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Signature

Title

Date



**RUSH PRIORITY**

PRIORITY 1 ☐

PRIORITY 2 ☐

NORMAL ☒

**GAS STAKING**

JOB NO.: \_\_\_\_\_ BY: \_\_\_\_\_ DATE: \_\_\_\_\_

ESMTS. DED. BY: \_\_\_\_\_ ESMT. DOCUMENTS: \_\_\_\_\_

W/DOCUMENTATION FND: \_\_\_\_\_ PLAT DISTS. CHK-D: \_\_\_\_\_

ESMTS. NEEDED AT: \_\_\_\_\_

NON-STD. STAKING: \_\_\_\_\_ REASON: \_\_\_\_\_

**PERMITS REQUIRED FOR CONSTRUCTION**

☐ NO PERMITS REQUIRED

☐ TXDOT

☐ CITY:

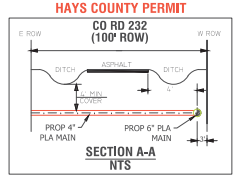
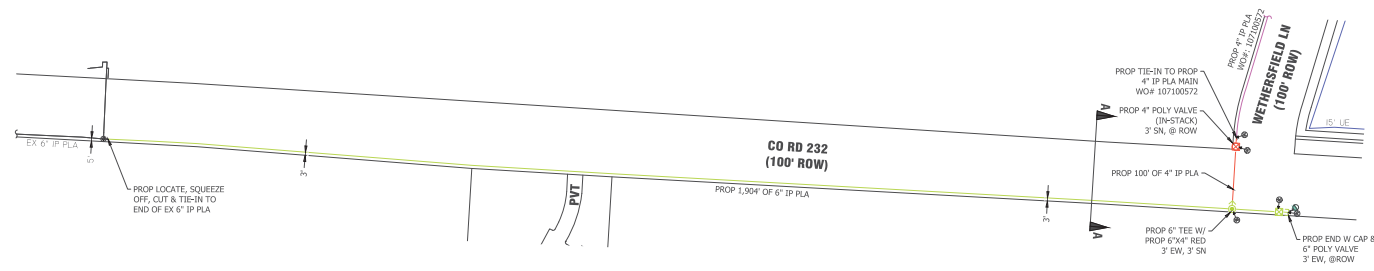
☒ COUNTY: HAYS

☐ FLOOD CONTROL/DRAINAGE

☐ RAILROAD:



VICINITY MAP



- GENERAL NOTES:**
1. FIELD VERIFY & LOCATE ALL EXISTING PIPES, MAINS & SERVICES.
  2. INDICATE A MINIMUM DEPTH OF 3' UNLESS OTHERWISE NOTED.
  3. USE GAGES TO MEASURE & MONITOR PRESSURE & FLOW.
  4. CONTACT DESIGNER (EMERY FITZWATER AT 512-393-8964) WITH ANY NECESSARY FIELD CHANGES.
  5. THIS PROJECT IS SUBJECT TO SENIOR LATERAL INSPECTION TO VERIFY CLEARANCE FOR THE OPERATIONS DURING THE CONSTRUCTION AND SERVICE MANUAL. ENGINEERING WAS UNABLE TO VERIFY THE CLEARANCE WITH MAPS AND RECORDS.
  6. TAKE NECESSARY PRECAUTIONS WHEN CUT, CAP & REMOVING STEEL MATERIAL. ASSURE ALL THE REMOVED PIPE CONTAINS ASBESTOS AND FOLLOW CONSTRUCTION AND SERVICE MANUAL PROCEDURES.
  7. FOR PIPE TEST PRESSURE AT 100 PSI IN ACCORDANCE WITH SECTION C5-A-222 OF THE CONSTRUCTION & SERVICE MANUAL. HP LINE TEST PRESSURE AND DIRECTION ARE AS NOTED.
  8. ALL SERVICE LINES MUST HAVE AN EPV OR CURB VALVE INSTALLED IN ACCORDANCE WITH SECTION C5-A-222 OF THE CONSTRUCTION & SERVICE MANUAL AND EPV SIZING CHART.
  9. COORDINATE EXISTING PROTECTION WITH THE CORROSION DEPARTMENT (SEE FIELDMAN AT 713-867-7311) AND ENSURE CP DEPARTMENT IS ON SITE DURING CONSTRUCTION TO HAVE BONDS.
  10. DISPOSITION ALL TIE-IN LOCATIONS FROM ESTABLISHED RIGHT OF WAYS.
  11. COTTERN TO BE USED FOR TRACER WIRE SELECTION WHEN INSTALLING PLASTIC GAS LINES.
    - A. USE #14 TRACER WIRE FOR ALL RESIDENTIAL SERVICE LINES.
    - B. USE #14 TRACER WIRE FOR SHORT BORES UP TO 300' AND ALL OTHER NONRESIDENTIAL INSTALLATIONS.
    - C. USE #10 TRACER WIRE WITH ALL BORES LONGER THAN 300'.
    - D. USE #8 TRACER WIRE AS MINIMUM FOR LARGE BATCH CHANGING AND OTHER EXTRAORDINARY SITUATIONS AND COMPLEX BORES.
  12. INSPECTOR APPROVAL REQUIRED PRIOR TO WORK.

**LEGEND**

EXISTING MAIN	
PROP 6" IP PLA, SDR 11.5	1.504
PE 3708	
WO# 107100004	
PROP 4" IP PLA, SDR 11.5	100
PE 3708	
WO# 107100004	
PROP 5# ZINC ANODE	
PROP MARKER BALL	
GCP#:	
STAKING REQUEST#:	107100004

DRAFTER: CLS 3/25/23  
CHK: JCL 4/25/23  
ENGR: EHE 3/26/2023

DESIGNED BY: EMERY FITZWATER	512-393-8964
ESTIMATED COST: \$	CONTRIBUTION: \$
RECD DATE:	COMPLETION DATE:
PURPOSE AND NECESSITY: TO SERVE 100'x10' S. 412'x10'x10'	APPROVED BY:

RECOMMENDED BY:  
ABEL ARISPE

DATE: 4/27/2023  
DATE: 5/1/23

EXAMINER: CST/CEERS  
DATE: 06/25/2023  
SCALE: 1"=50'  
SHEET: 1 OF 1

**APPROACH - HIGH BRANCH DEVELOPMENT PHASE 1 SAN MARCOS, TX**

DWG No: **ED3-2301817**



# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 4/26/2023 .

### Utility Company Information:

Name: Centric  
Address: PO Box 133127 Spring TX  
Phone:  
Contact Name: Richard Bard

### Engineer / Contractor Information:

Name: Centric  
Address:  
Phone: 9365815757  
Contact Name: Grant Nelson

### Hays County Information:

Utility Permit Number: TRN-2023-6173-UTL  
Type of Utility Service: natural gas/fiber optic  
Project Description:  
Road Name(s): Plum Creek Rd, , , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☐ Boring ☒ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department  
The above-mentioned permit was approved in Hays County Commissioners Court on .

07/06/2023

---

Signature

Title

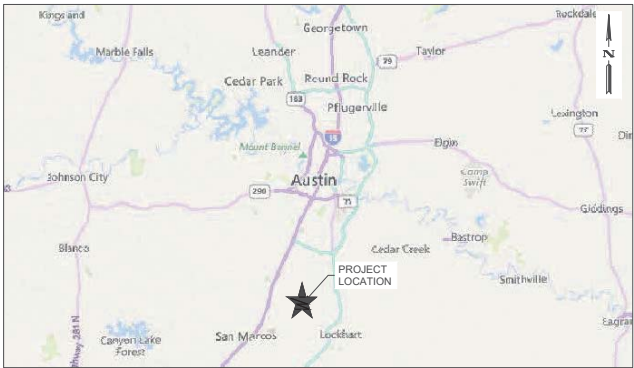
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J:\Projects\AUS\Wayside - Ranch Road (660-008)\02 Design\01 Office\01 Gas\PLUM CREEK\DRWAYSIDE OFFSITE - PLUM CREEK DR.dwg Layout: COVER SHEET Plotted: 4/4/2023 2:56:57 PM ORIGINAL PLOT SIZE: 22 X 34

# UNIVERSAL NATURAL GAS / CENTRIC FIBER WAYSIDE OFFSITE - PLUM CREEK DR

HAYS COUNTY, TEXAS

April 4, 2023



VICINITY MAP

SCALE: N.T.S.



LOCATION MAP

SCALE: N.T.S.

SHEET INDEX	
NO.	TITLE
1	COVER SHEET
2	GENERAL NOTES
3	DETAIL SHEET
4	PLAN VIEW STA 8+58 TO 14+03

REV	DESCRIPTION	DATE	APP



WAYSIDE OFFSITE - PLUM CREEK DR  
COVER SHEET



DATE: April 4, 2023

DESIGN: GN	4/4/2023
CAD: JCM	RWW: GN
PROJECT ID: 660-008	116819
SHEET 1 OF 4	



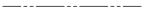





ORIGINAL PLOT SIZE: 22 X 34

J:\Projects\AUS\Wayside - Ranch Road (660-008)\02 Design\01 Office\01 Gas\PLUM CREEK DR\Wayside OFFSITE - PLUM CREEK DR.dwg    Pinned: 4/4/2023 2:58:57 PM    Layout: GENERAL NOTES

GENERAL NOTES:

1. TOTAL DISTANCE = 545 L.F.
2. MAOP = 80 PSI
3. ALL UTILITY WORK WITHIN THE CITY RIGHT OF WAY SHALL BE CONSTRUCTED PER SPECIFICATIONS AND REQUIREMENTS OF THE CITY.
4. ALL UTILITY SYMBOLS SHOWN REPRESENT APPROXIMATE LOCATIONS UNLESS OTHERWISE NOTED. CONTRACTOR SHALL REFER TO THE APPROPRIATE AGENCY'S STANDARD SPECIFICATIONS AND INSTALLATION DETAILS FOR ACTUAL LOCATIONS UNLESS OTHERWISE DIRECTED BY THE ENGINEER.
5. GAS MAIN/SERVICES SHALL HAVE A MINIMUM 2-FOOT VERTICAL CLEARANCE FROM ANY OTHER UTILITY AT ALL CROSSINGS.
6. ALL GAS DISTRIBUTION MAINS SHALL BE INSTALLED PER THE STANDARDS AND SPECIFICATIONS OF THE UTILITY PROVIDER.
7. GAS MAINS SHALL BE CAPPED AT ALL DEAD END LOCATIONS WITH END CAPS PER UTILITY PROVIDER STANDARDS AND SPECIFICATIONS.
8. CONTRACTOR SHALL INSTALL ALL TEES, BENDS, AND OTHER FITTINGS USING BUTTFUSION OR ELECTROFUSION PER THE INTENT OF THE PLANS.
9. ELEVATION AND PARCEL DATA SHOWN ARE DOWNLOADED FROM AVAILABLE GIS DATA AT THE TIME FROM THE COUNTY RECORDS, AND MAY NOT REPRESENT ACTUAL CONDITIONS. CONTRACTOR SHALL NOTIFY ENGINEER AND OWNER WITH ANY DISCREPANCIES.
10. CONTRACTOR SHALL OBTAIN WRITTEN PERMISSION FROM LAND OWNERS TO OPEN CUT DRIVEWAYS AND SHALL MAINTAIN ACCESS ACROSS THE DRIVEWAYS THROUGHOUT CONSTRUCTION.
11. BORE PIT SHALL BE APPROXIMATELY 8'X16'X16" IN DEPTH. CONTRACTOR MAY VARY THE SIZE AND DEPTH AS NECESSARY FOR CONSTRUCTION. SPOILS FROM THE PIT SHALL REMAIN ADJACENT TO THE PIT IT WAS EXCAVATED FROM AND PLACED IN SUCH A MANNER THAT DOES NOT IMPACT THE ROADWAY OR ADJACENT PRIVATE LAND.
12. CONTRACTOR SHALL ADHERE TO TEXAS ADMINISTRATIVE CODE FOR UNDERGROUND UTILITIES, INCLUDING BUT NOT LIMITED TO OBJECT MARKERS.
13. CONTRACTOR SHALL COORDINATE WITH UTILITY PROVIDER FOR OBJECT MARKERS TYPE AND MATERIALS TO BE INSTALLED AT POINTS OF ENTRY TO THE RIGHT OF WAY, AT EVERY CROSSING, AND EVERY 500 L.F. ALONG THE PIPELINE ALIGNMENT PER TAC 21.40.
14. CONTRACTOR SHALL ADHERE TO STANDARDS AND SPECIFICATIONS FOR THE INSTALLATION OF THE GAS MAIN WITH THE RAILROAD COMMISSION, TEXAS ADMINISTRATIVE CODE, AND THE UTILITY PROVIDER.
15. THE UTILITY PROVIDER WILL PLACE CONSTRUCTION STAKING SHOWING THE CONTRACTOR THE LOCATION OF THE EXISTING RIGHT-OF-WAY.
16. CONTRACTOR SHALL CONTACT TEXAS-811 A MINIMUM OF TWO BUSINESS DAYS PRIOR TO BEGINNING WORK. CONTRACTOR IS RESPONSIBLE FOR IDENTIFYING AND PROTECTING ALL EXISTING UTILITIES.
17. WHEN BORING UNDER EXISTING DRIVEWAYS OR ROADS, CONTRACTOR TO BORE GAS AND FIBER UTILITIES SEPARATELY TO ENSURE 12" SEPARATION.
18. HANDHOLE TO BE INSTALLED APPROXIMATELY EVERY 1,000 FEET.
19. OPEN TRENCHES WITHIN 10' OF THE TRAVEL LANE REQUIRE TRAFFIC RATED BARRIERS.
20. NO OPEN TRENCHES ALLOWED DURING NON-WORKING HOURS.
21. CONTRACTOR IS RESPONSIBLE FOR THE DESIGN OF THE PROPOSED HORIZONTAL DIRECTIONAL DRILLING (HDD) CONSTRUCTION METHOD SHOWN IN THE DRAWING. THE PROFILE VIEW OF THE PROPOSED HDD IS INTENDED ONLY TO SHOW AN EXAMPLE BORE PATH FOR PERMITTING PURPOSES.

LEGEND	
TOTAL LF OF INSTALL	545 LF
TOTAL LF OF TRENCH	545 LF
 G/FO	PROPOSED 8" NATURAL GAS & 1.25" FIBER DUCT - 545 LF
	HANDHOLE (1 TOTAL)
	RIGHT-OF-WAY
	PROPERTY LINE
	EXISTING HANDHOLE
	90° BEND (1 TOTAL)



WAYSIDE OFFSITE - PLUM CREEK DR

GENERAL NOTES

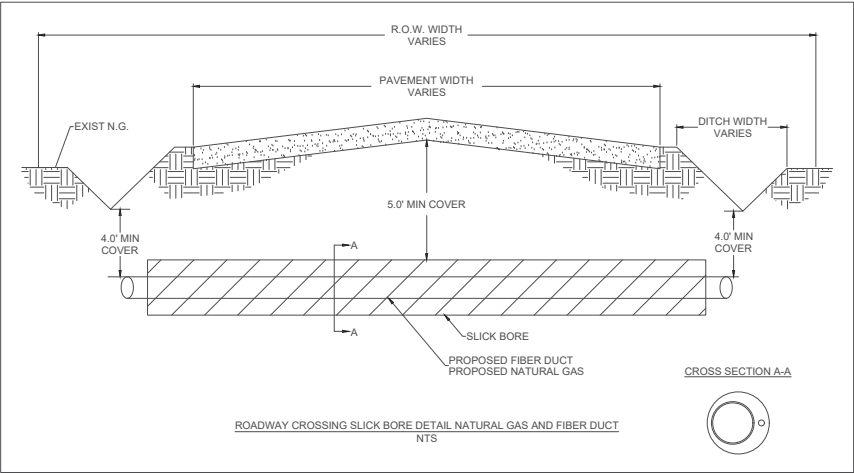


DESIGN: GN  
CAD: JCM    RVW: GN  
PROJECT ID: 660-008  
SHEET 2 OF 4

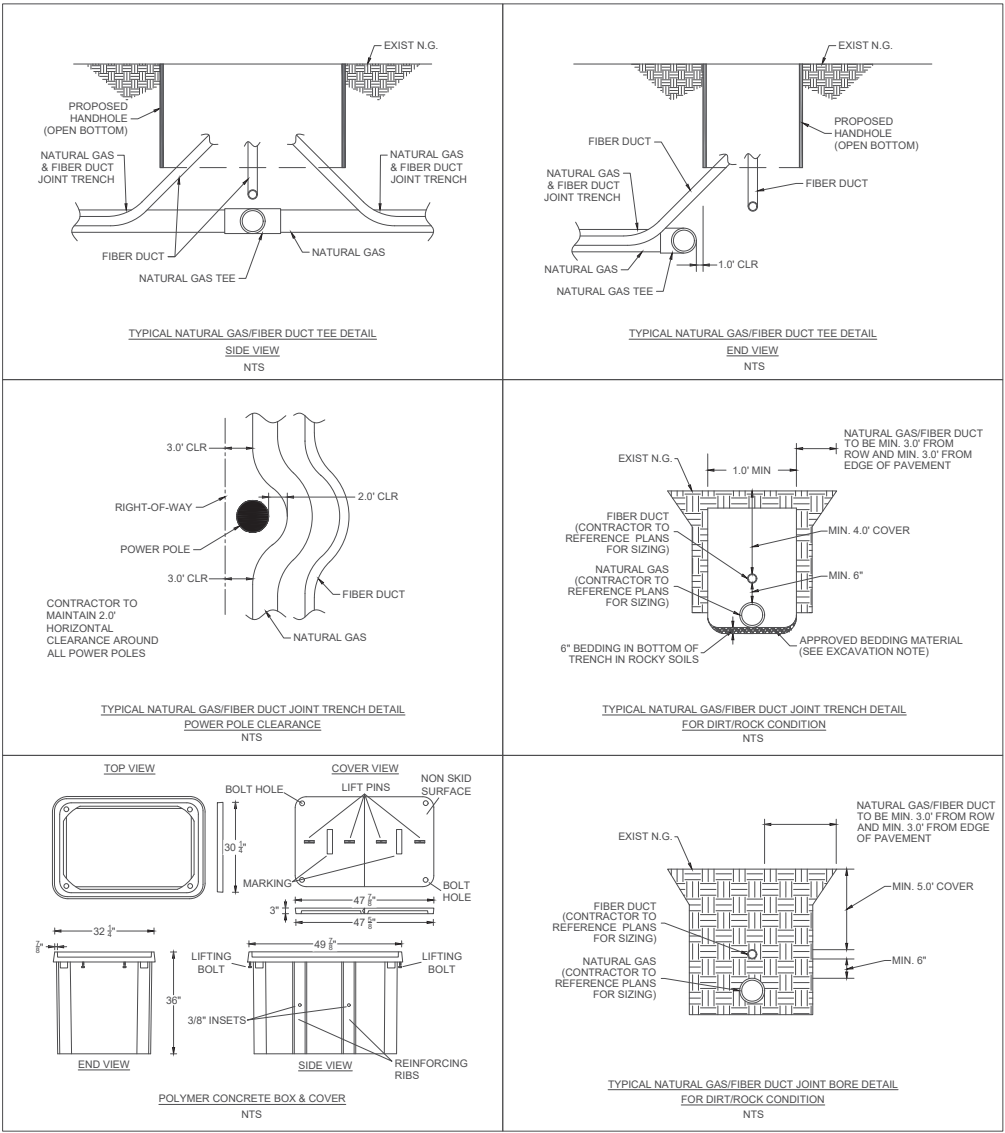
DATE: APR

DESCRIPTION

REV



**EXCAVATION NOTE:**  
ALL EXCAVATIONS SHALL BE OPEN CUT, WITH BANKS KEPT AS NEARLY VERTICAL AS POSSIBLE. THE TRENCH FLOOR SHALL PROVIDE A UNIFORM BEARING FOR EACH FULL LENGTH OF PIPE SECTION. PERFORM ALL EXCAVATIONS OF WHATEVER SUBSTANCE ENCOUNTERED TO THE DEPTHS SHOWN OR INDICATED ON THE DRAWINGS. PIPE SHALL BE BEDDED WITH A MINIMUM OF 6" OF APPROVED MATERIAL ABOVE AND BELOW PIPE. CONTRACTORS ARE RESPONSIBLE FOR ALL SAFETY REQUIREMENTS (OSHA AND ANY OTHER AGENCIES THAT APPLY) ASSOCIATED WITH TRENCH CONSTRUCTION AND SHALL BE REQUIRED TO HAVE A TRENCH SAFETY PLAN PREPARED BY AN APPROVED PROFESSIONAL.



Know what's below.  
Call before you dig.

DATE: April 4, 2023

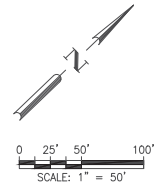
REV	DESCRIPTION	DATE	APP



WAYSIDE OFFSITE - PLUM CREEK DR  
DETAIL SHEET



DESIGN: GN	
CAD: JCM	RWW: GN
PROJECT ID: 660-008	
SHEET 3	OF 4



## PLAN VIEW STA 8+58 TO 14+03

SCALE: 1" = 50'



WAYSIDE OFFSITE - PLUM CREEK DR

PLAN VIEW STA 8+58 TO 14+03



DESIGN: GN	
CAD: JCM	RVW: GN
PROJECT ID: 660-008	
SHEET 4 OF 4	



# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 3/30/2023 .

### Utility Company Information:

Name: Centric Operations  
Address: PO Box 133127 Spring TX  
Phone:  
Contact Name: Richard Bard

### Engineer / Contractor Information:

Name: Centric  
Address: PO Box 133127 Spring 77393  
Phone: 9365815757  
Contact Name: Ryan Dice

### Hays County Information:

Utility Permit Number: TRN-2023-6050-UTL  
Type of Utility Service: natural gas/fiber conduit  
Project Description:  
Road Name(s): Old Bastrop Hwy, Franic Harris Lane, Center Point Rd, , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☒ Boring ☐ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department  
The above-mentioned permit was approved in Hays County Commissioners Court on .

07/06/2023

---

Signature

Title

Date

P:\ACTIVE Projects\Independence Trail\03 Offsite\OLD BASTROP HWY\HAY COUNTY\INDEPENDENCE TRAIL OFFSITE - OLD BASTROP HWY.dwg    Plotted: 3/2/2023 2:03:25 PM    ORIGINAL PLOT SIZE: 22 X 34    Layout: COVER SHEET

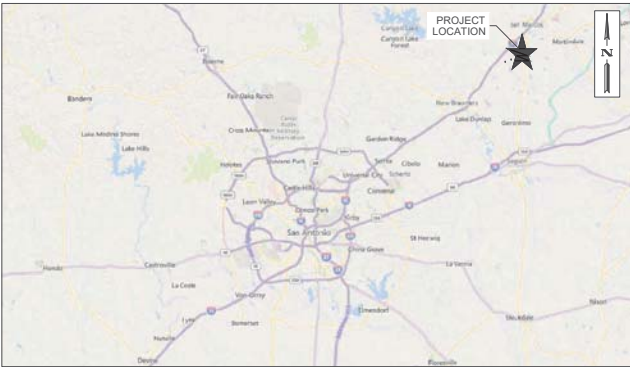
HOOKS GAS PIPELINE / CENTRIC FIBER

INDEPENDENCE TRAIL OFFSITE - OLD BASTROP HWY

HAYS COUNTY PERMIT

HAYS COUNTY, TEXAS

March 2, 2023



VICINITY MAP

SCALE: N.T.S.

SHEET INDEX	
NO.	TITLE
01	COVER SHEET
02	GENERAL NOTES
03	DETAIL SHEET
04	OVERALL MAP
05	PLAN VIEW STA 0+00 TO 25+50
06	PLAN VIEW STA 25+50 TO 47+50
07	PLAN VIEW STA 47+50 TO 68+00
08	PLAN VIEW STA 68+00 TO 94+50
09	PLAN VIEW STA 94+50 TO 121+50
10	PLAN VIEW STA 121+50 TO 143+00
11	PLAN VIEW STA 179+87 TO 199+20
12	PLAN VIEW STA 179+87 TO 199+20
13	PLAN VIEW STA 228+00 TO 249+84
14	TRAFFIC CONTROL PLANS



LOCATION MAP

SCALE: N.T.S.



DESIGNED BY: GMC  
REVIEWED BY: GN  
DRAWN BY: GMC



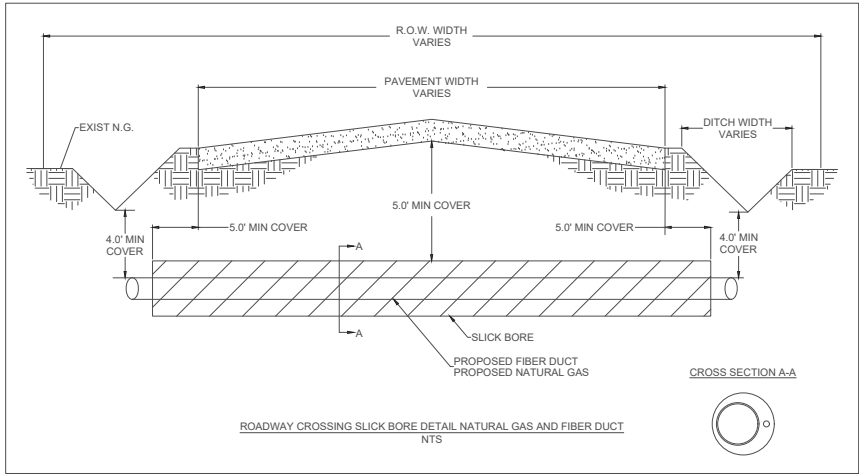
INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY

COVER SHEET

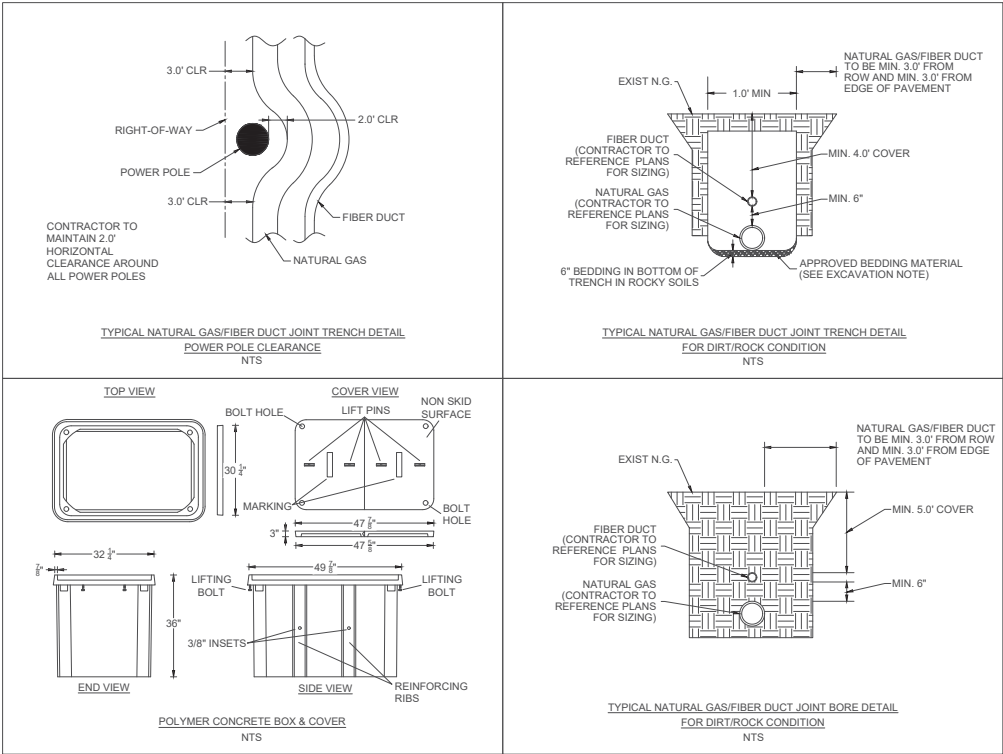




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**EXCAVATION NOTE:**  
ALL EXCAVATIONS SHALL BE OPEN CUT, WITH BANKS KEPT AS NEARLY VERTICAL AS POSSIBLE. THE TRENCH FLOOR SHALL PROVIDE A UNIFORM BEARING FOR EACH FULL LENGTH OF PIPE SECTION. PERFORM ALL EXCAVATIONS OF WHATEVER SUBSTANCE ENCOUNTERED TO THE DEPTHS SHOWN OR INDICATED ON THE DRAWINGS. PIPE SHALL BE BEDDED WITH A MINIMUM OF 6" OF APPROVED MATERIAL ABOVE AND BELOW PIPE. CONTRACTORS ARE RESPONSIBLE FOR ALL SAFETY REQUIREMENTS (OSHA AND ANY OTHER AGENCIES THAT APPLY) ASSOCIATED WITH TRENCH CONSTRUCTION AND SHALL BE REQUIRED TO HAVE A TRENCH SAFETY PLAN PREPARED BY AN APPROVED PROFESSIONAL.



DESIGNED BY: GMC  
REVIEWED BY: GN  
DRAWN BY: GMC



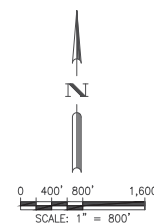
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OFFSITE - OLD BASTROP HWY  
DETAIL SHEET



DATE: March 2, 2023

SHEET 03 OF 14






△	△	△	△	△
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DESIGNED BY: GMC

REVIEWED BY: GN

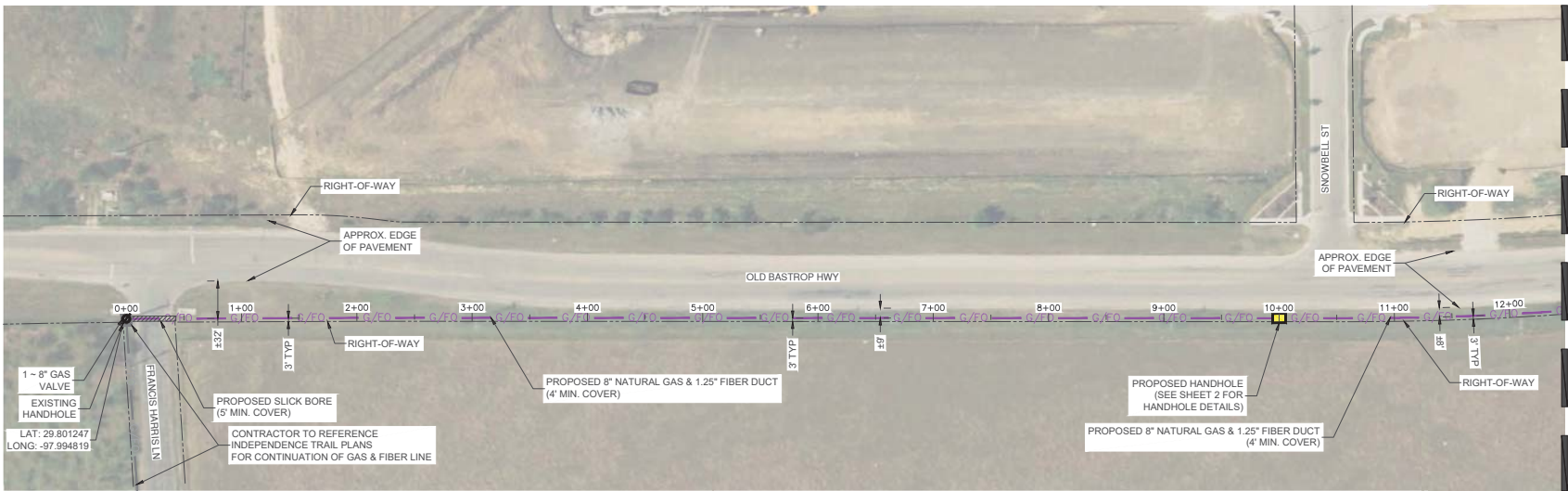


INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY

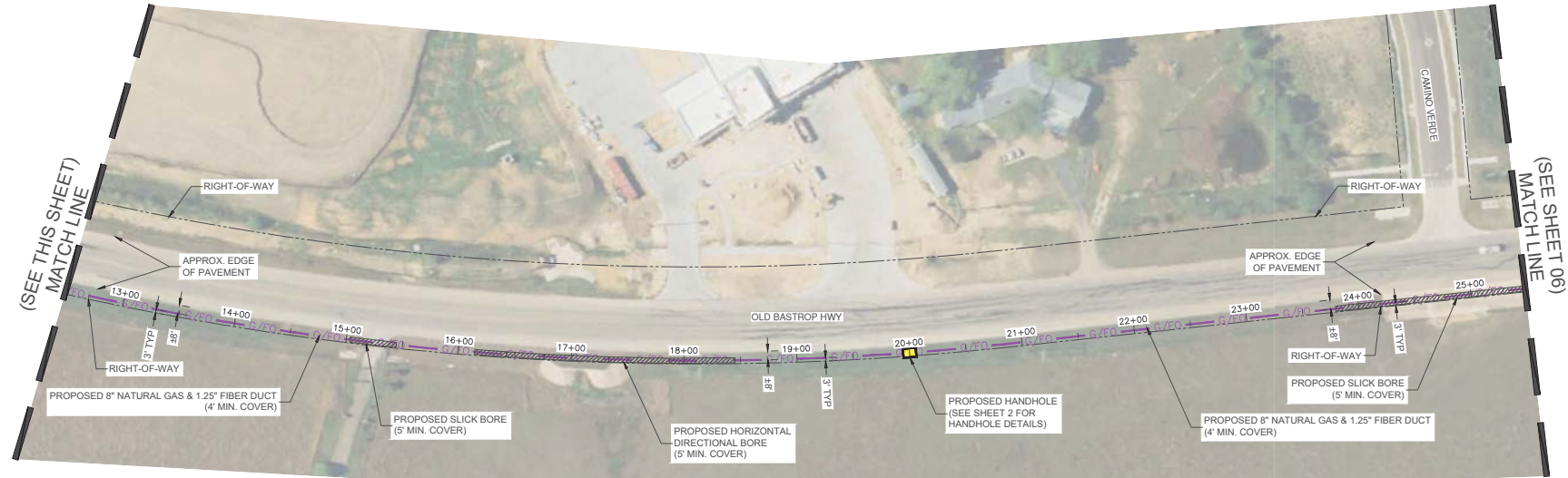




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PLAN VIEW STA 0+00 TO 12+50  
SCALE: 1" = 50'



PLAN VIEW STA 12+50 TO 25+50  
SCALE: 1" = 50'

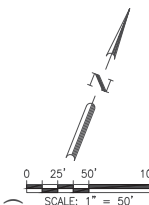


DESIGNED BY: GMC
REVIEWED BY: GN
DRAWN BY: GMC

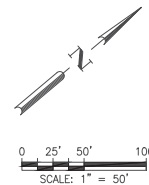


INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY  
PLAN VIEW STA 0+00 TO 25+50





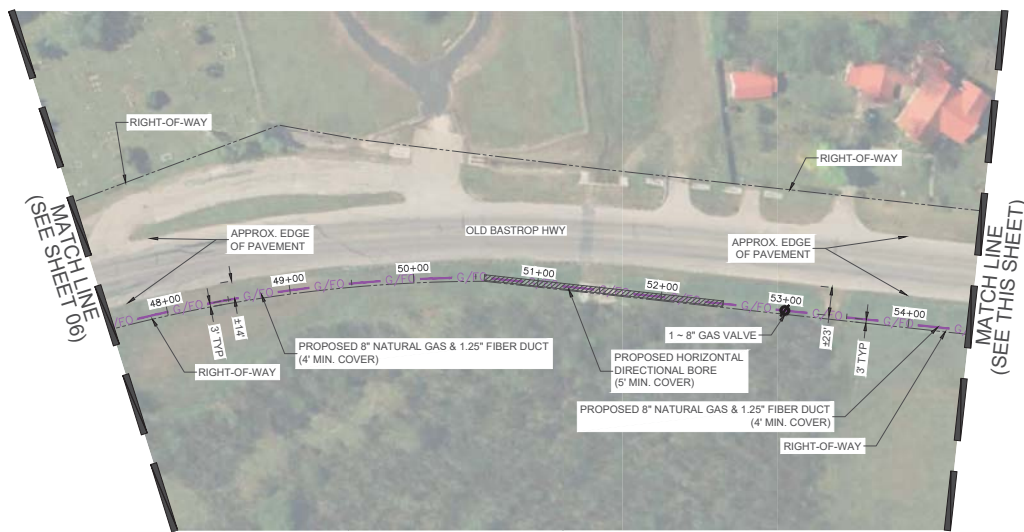
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SCALE: 1" = 50'

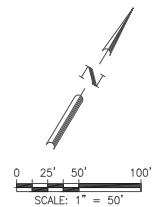


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PLAN VIEW STA 47+50 TO 54+50

SCALE: 1" = 50'



DESIGNED BY: GMC  
REVIEWED BY: GN  
DRAWN BY: GMC



INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY  
PLAN VIEW STA 47+50 TO 68+00



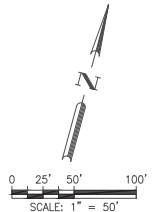
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SHEET 07 OF 14

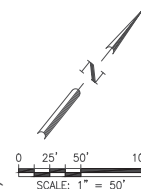


PLAN VIEW STA 54+50 TO 68+00

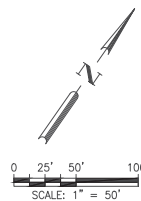
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DATE: March 2, 2023



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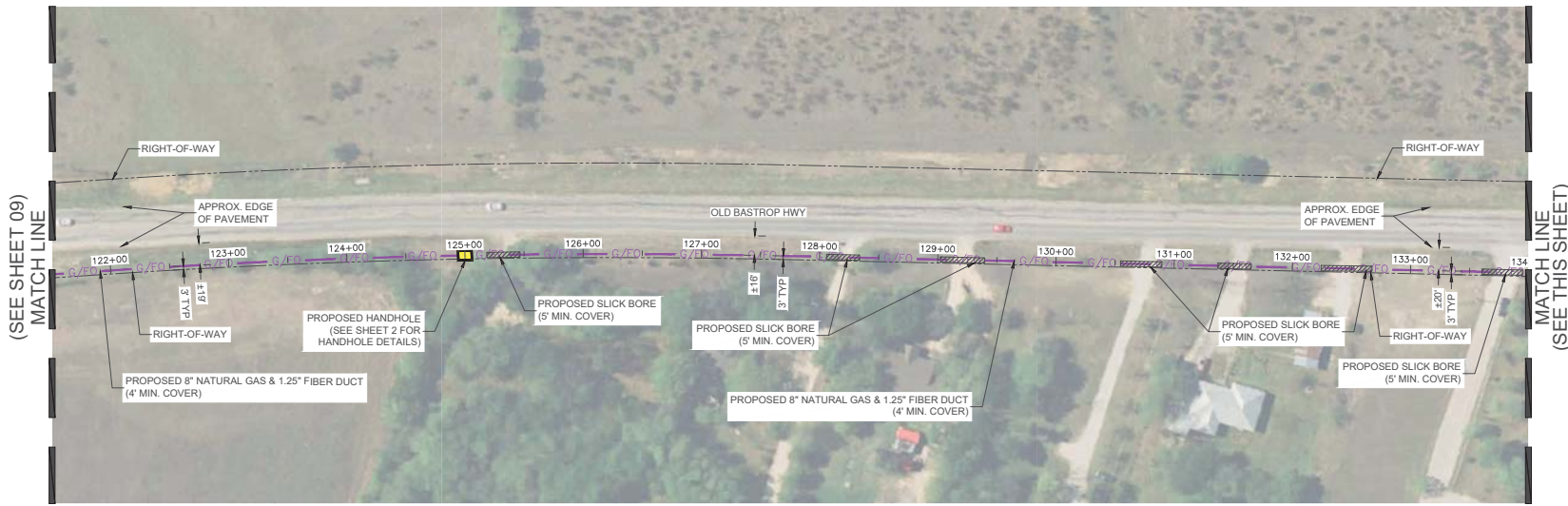


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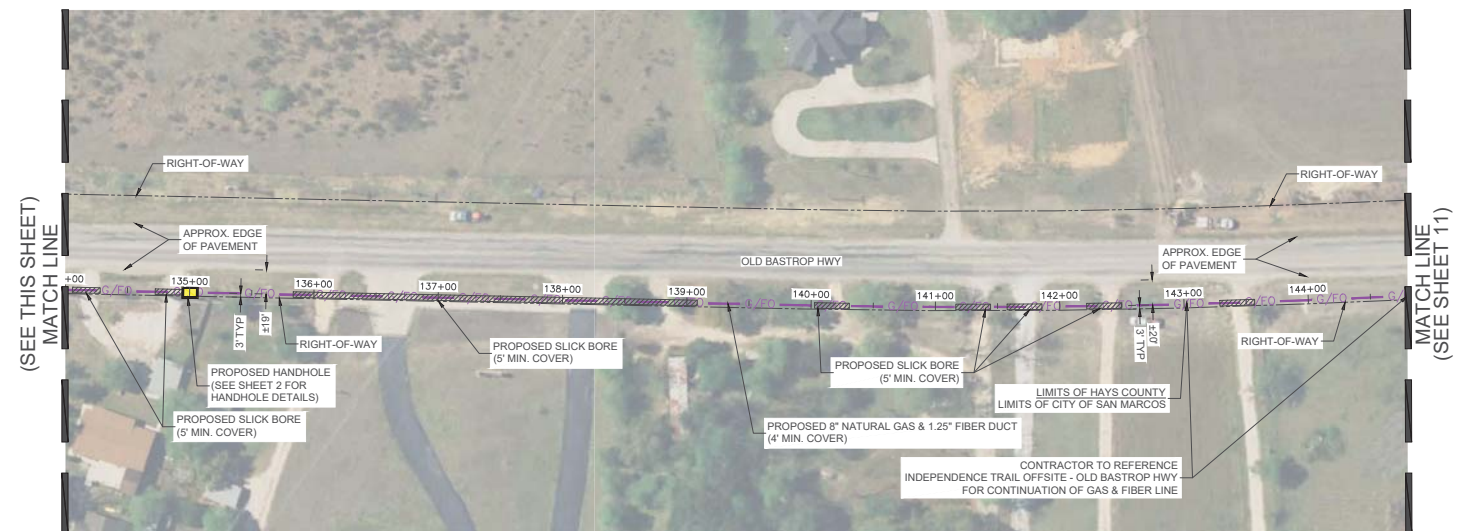


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ORIGINAL PLOT SIZE: 22 X 34



PLAN VIEW STA 121+50 TO 134+00

SCALE: 1" = 50'



PLAN VIEW STA 134+00 TO 143+00

SCALE: 1" = 50'



DESIGNED BY: GMC
REVIEWED BY: GN
DRAWN BY: GMC



INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY  
PLAN VIEW STA 121+50 TO 143+00





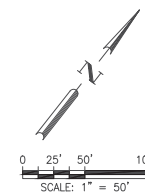
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(SEE SHEET 10)  
MATCH LINE



## PLAN VIEW STA 179+87 TO 191+00

SCALE: 1" = 50'



DESIGNED BY: GMC  
REVIEWED BY: GN  
DRAWN BY: GMC



INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY  
PLAN VIEW STA 179+87 TO 199+20



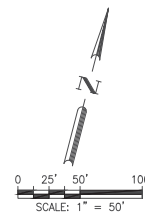
SHEET 11 OF 14

DATE: March 2, 2023

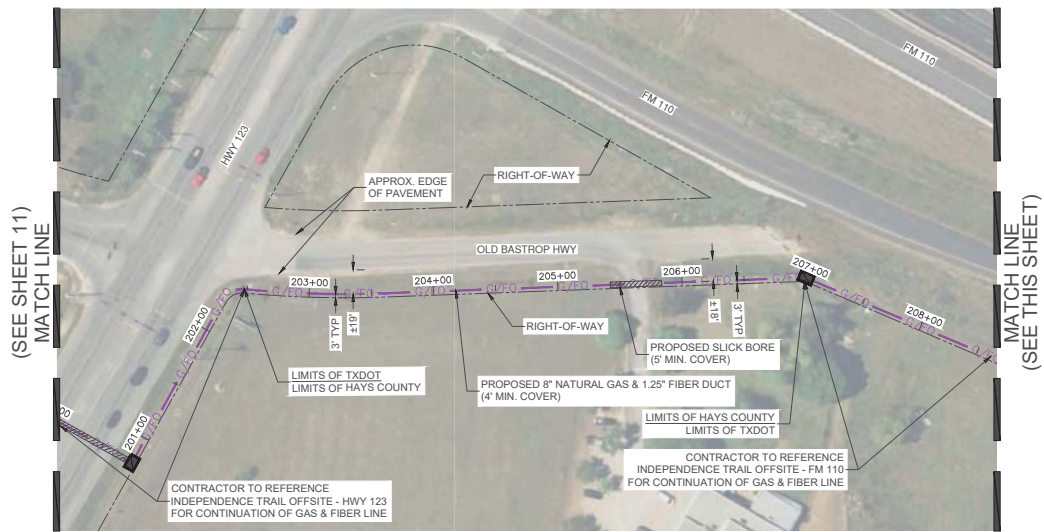


## PLAN VIEW STA 191+00 TO 199+20

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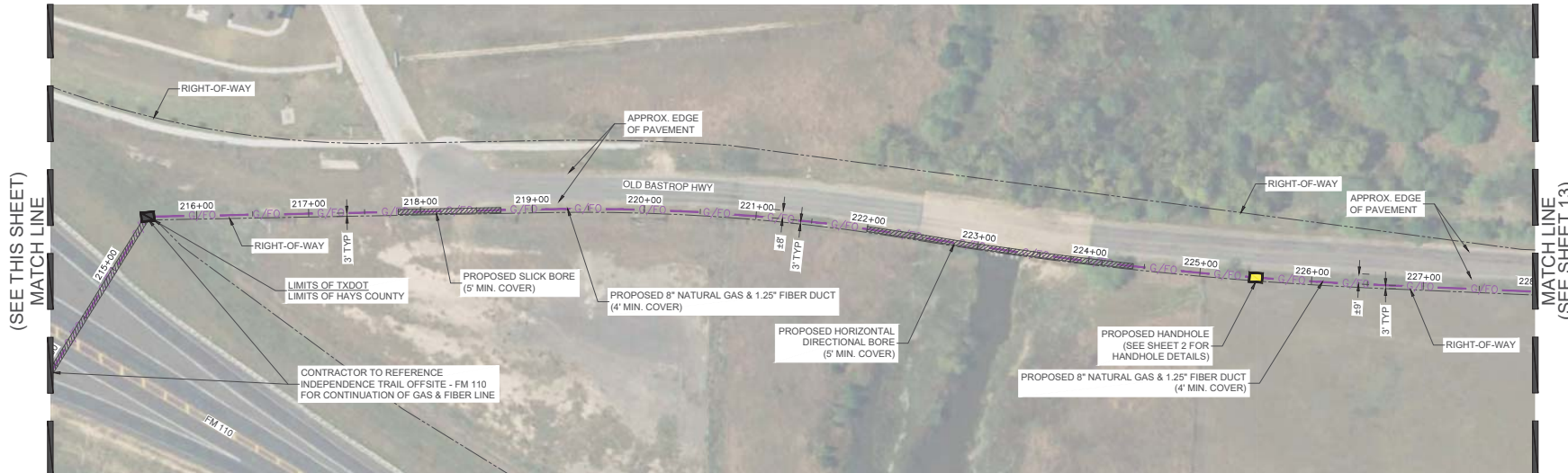
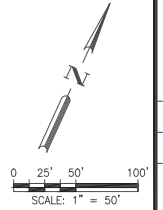


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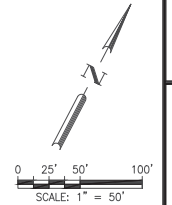
PLAN VIEW STA 202+50 TO 207+00

SCALE: 1" = 50'



PLAN VIEW STA 215+57 TO 226+00

SCALE: 1" = 50'



Know what's below.  
Call before you dig.

DESIGNED BY: GMC

REVIEWED BY: GN

DRAWN BY: GMC



INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY  
PLAN VIEW STA 179+87 TO 199+20



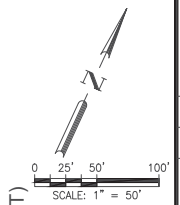
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SHEET 12 OF 14

DATE: March 2, 2023

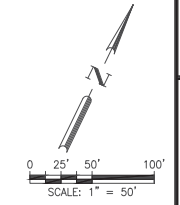
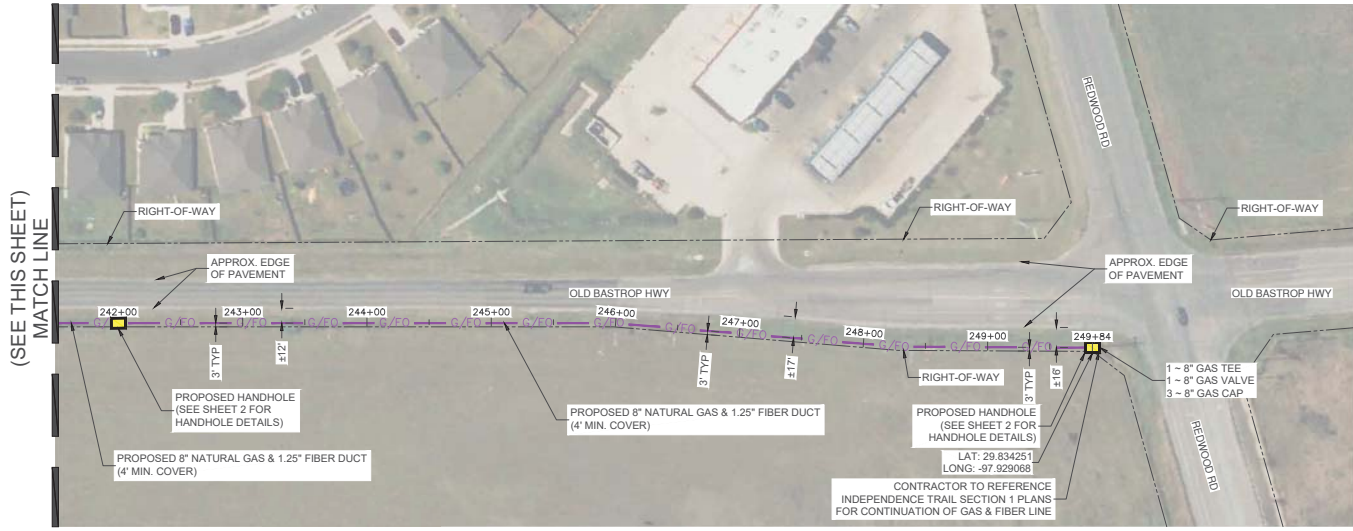


P:\ACTIVE Projects\Independence Trail\03.03.2023\03.03.2023.dwg  
F:\ACTIVE Projects\Independence Trail\03.03.2023\03.03.2023.dwg  
Layout: PLAN VIEW STA. 228+00 TO 249+84  
Project: 3/2/2023 2:03:42 PM  
ORIGINAL PLOT SIZE: 22 X 34



PLAN VIEW STA 228+00 TO 241+50

SCALE: 1" = 50'



PLAN VIEW STA 241+50 TO 249+84

SCALE: 1" = 50'

DESIGNED BY: GMC
REVIEWED BY: GN
DRAWN BY: GMC

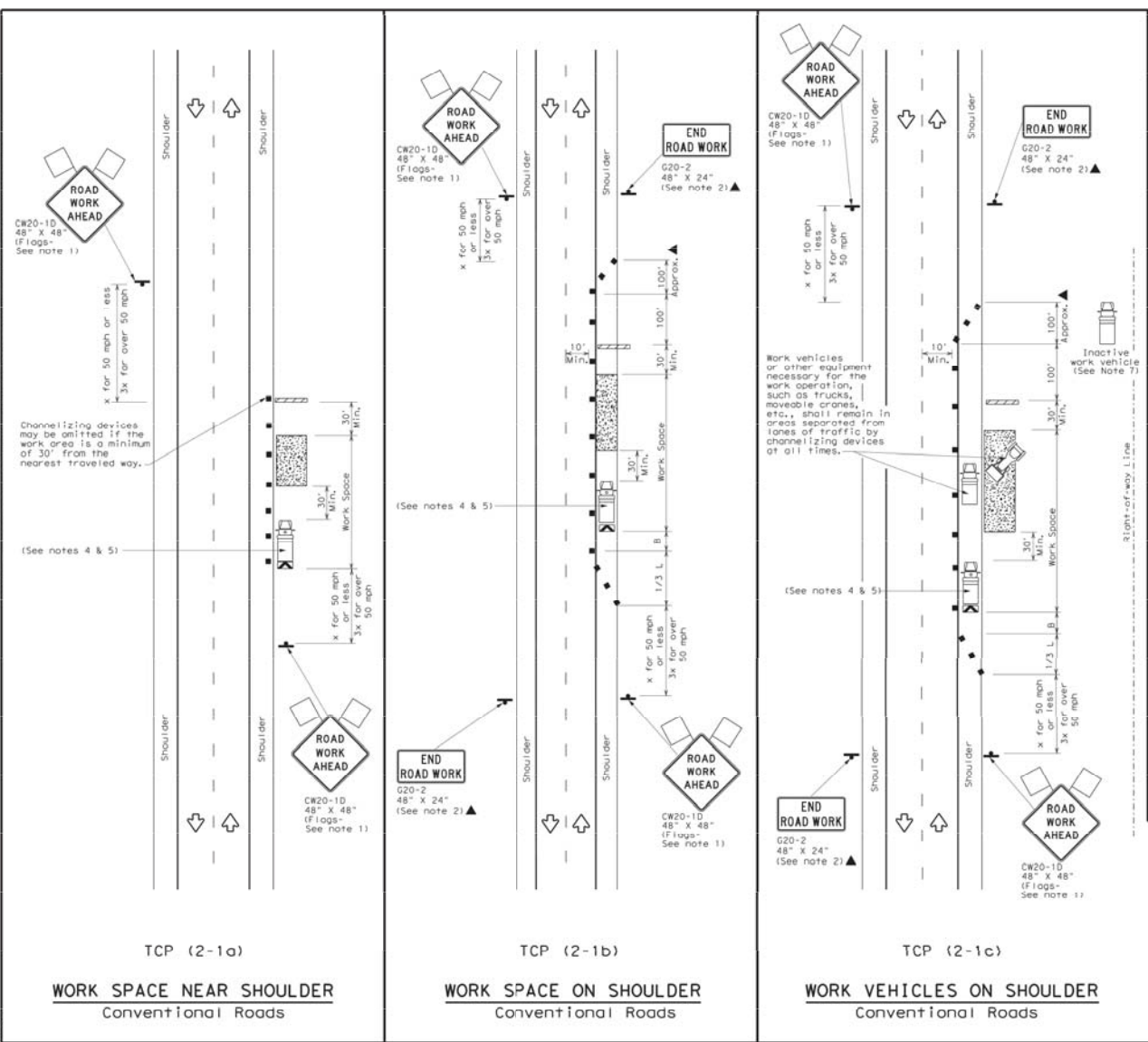
INDEPENDENCE TRAIL  
OFFSITE - OLD BASTROP HWY

PLAN VIEW STA 228+00 TO 249+84

3/2/2023

SHEET 13 OF 14

DATE: FILE:  
DISCLAIMER:  
The use of this standard is governed by the "Texas Engineering Practice Act". No warranty of any kind is made by the Texas Department of Transportation for the use of this standard for any purpose other than that for which it was intended. The user assumes all liability for any and all consequences resulting from its use.



LEGEND					
Type 3 Barricade	Channelizing Devices	Truck Mounted Attenuator (TMA)	Portable Changeable Message Sign (PCMS)	Traffic Flow	Flagger
Heavy Work Vehicle					
Trailer Mounted Flashing Arrow Board					
Sign					
Flag					

Posted Speed	Formula	Minimum Desirable Taper Lengths	Suggested Maximum Spacing of Channelizing Devices	Minimum Sign Spacing Distance	Suggested Longitudinal Buffer Space
30	L = WS	10' 11' 12' Offset/Offset/Offset	On a Taper On a Tangent	120' 90'	90'
35	L = WS	150' 165' 180'	30' 60'	120' 90'	120'
40	L = WS	205' 225' 245'	35' 70'	160' 120'	155'
45	L = WS	265' 295' 320'	40' 80'	240' 195'	195'
50	L = WS	450' 495' 540'	45' 90'	320' 240'	240'
55	L = WS	550' 605' 660'	55' 110'	500' 295'	295'
60	L = WS	600' 660' 720'	60' 120'	600' 350'	350'
65	L = WS	650' 715' 780'	65' 130'	700' 410'	410'
70	L = WS	700' 770' 840'	70' 140'	800' 475'	475'
75	L = WS	750' 825' 900'	75' 150'	900' 540'	540'

Conventional Roads Only  
Taper lengths have been rounded off.  
L=Length of Taper (ft) W=Width of Offset (ft) S=Posted Speed (MPH)

TYPICAL USAGE				
MOBILE	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY

- GENERAL NOTES
- Flags attached to signs where shown, are REQUIRED.
  - All traffic control devices illustrated are REQUIRED, except those denoted with the triangle symbol may be omitted when stated in the plans, or for routine maintenance work, when approved by the Engineer.
  - Stockpiled material should be placed a minimum of 30 feet from nearest traveled way.
  - Shadow Vehicle with TMA and high intensity rotating, flashing, oscillating or strobe lights. A Shadow Vehicle with a TMA should be used anytime it can be positioned 30 to 100 feet in advance of the area of crew exposure without adversely affecting the performance or quality of the work. If workers are no longer present but road or work conditions require the traffic control to remain in place, Type 3 Barricades or other channelizing devices may be substituted for the Shadow Vehicle and TMA.
  - Additional Shadow Vehicles with TMAs may be positioned off the paved surface, next to those shown in order to protect a wider work space. See TCP(5-1) for shoulder work on divided highways, expressways and freeways.
  - Inactive work vehicles or other equipment should be parked near the right-of-way line and not parked on the paved shoulder.
  - CR21-5 "SHOULDER WORK" signs may be used in place of CR21-10 "ROAD WORK AHEAD" signs for shoulder work on conventional roadways.

Texas Department of Transportation  
Traffic Operations Division Standard

TRAFFIC CONTROL PLAN  
CONVENTIONAL ROAD  
SHOULDER WORK

TCP (2-1) - 18

FILED	12-21-18	DATE	12-21-18	BY	12-21-18
01x001	December 1985	DATE	12-21-18	BY	12-21-18
2-94 4-98	REVISED	DATE	12-21-18	BY	12-21-18
8-95 2-12	REVISED	DATE	12-21-18	BY	12-21-18
1-97 2-18	REVISED	DATE	12-21-18	BY	12-21-18



# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 2/15/2023 .

### Utility Company Information:

Name: Universal Natural Gas, LLC / Centric Fiber, LLC  
Address: PO Box 133127 Spring TX  
Phone: 9079526414  
Contact Name: Ryan Dice

### Engineer / Contractor Information:

Name:  
Address: TX  
Phone:  
Contact Name:

### Hays County Information:

Utility Permit Number: TRN-2023-5921-UTL  
Type of Utility Service: sleeving for natural gas/fiber optics  
Project Description:  
Road Name(s): Cold River Run, Five Mile Creek Way, Left Fork Drive, Lassen Drive, Trout River Road, , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☒ Boring ☐ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department

The above-mentioned permit was approved in Hays County Commissioners Court on .

A handwritten signature in black ink, appearing to read "Mark Bell".

Engineering Technician

07/06/2023

Signature

Title

Date



HAYS COUNTY, TEXAS  
October 19, 2022







Know what's below.  
**Call before you dig.**

[illegible]

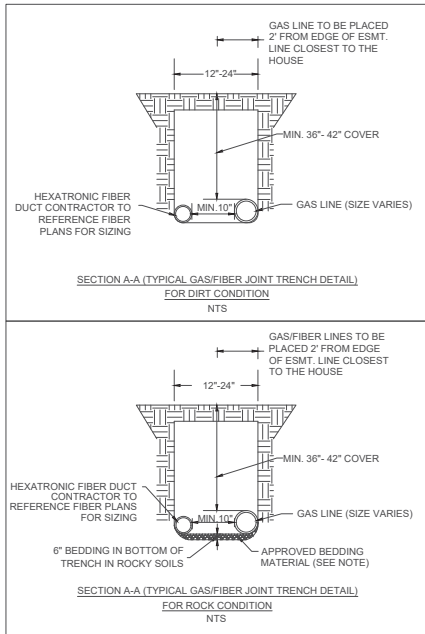
SIX CREEKS PHASE 1 SECTION 7

COVER SHEET

LEGEND	
	4" GAS SLEEVE (APPROX. 383 LF FOR ENTIRE SECTION)
	4" CONDUIT SLEEVE (APPROX. 234 LF FOR ENTIRE SECTION)
	UTILITY EASEMENT
	PROPOSED UTILITY EASEMENT

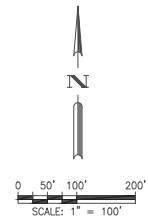
GENERAL NOTES:

1. ALL UTILITY SYMBOLS SHOWN REPRESENT APPROXIMATE LOCATIONS UNLESS OTHERWISE NOTED. CONTRACTOR SHALL REFER TO THE APPROPRIATE AGENCY'S STANDARD PRACTICES FOR THE IDENTIFICATION OF UTILITY DEPT. FOR ACTUAL LOCATIONS UNLESS OTHERWISE DIRECTED BY THE ENGINEER.
2. GAS AND/OR FIBER CONDUIT MAINSERVICES SHALL BE BENEATH ALL OTHER UTILITY INFRASTRUCTURE AT ALL CROSSINGS.
3. GAS DISTRIBUTION MAINS SHALL BE INSTALLED TO THE STANDARDS AND SPECIFICATIONS OF THE UTILITY PROVIDER.
4. ALL PIPE SHALL BE BUTT FUSED.
5. GAS DISTRIBUTION CONDUIT SHALL BE APPROVED BY THE UTILITY COMPANY. GAS AND/OR FIBER CONDUIT UTILITY SERVICE CONNECTIONS SHALL BE MADE BY THE HOME BUILDER AT TIME OF CONSTRUCTION.
6. GAS AND/OR FIBER CONDUIT MAINS SHALL BE CAPPED AT ALL DEAD END LOCATIONS WITH SOFT END FUSED END CAPS PER UTILITY PROVIDER STANDARDS AND SPECIFICATIONS.
7. CONTRACTOR SHALL INSTALL ALL TEES, BENDS, AND OTHER FITTINGS PER THE UTILITY PROVIDER'S PRACTICES.
8. TRENCHES WITHIN THE RIGHT OF WAY AND IN LINE WITH TRENCHING ACTIVITIES SHALL BE REMOVED.
9. CONTRACTOR TO MEET LOCAL JURISDICTION SPECIFICATIONS FOR SLEEVING AND COMPACTION ABOVE NATURAL GAS AND/OR FIBER CONDUIT LINE.
10. REGARDING COMPACTION ABOVE NATURAL GAS AND/OR FIBER CONDUIT LINE; EACH LAYER OF MATERIAL SHALL BE COMPACTED TO A MINIMUM 95% DENSITY AND TESTED FOR DENSITY AND MOISTURE PER LOCAL JURISDICTION.
11. ALL TESTS, TESTS PARTS, THE NUMBER OF TESTS AND TYPE OF REQUIRED TESTS SHALL BE DETERMINED BY THE LOCAL JURISDICTIONS INSPECTOR. AT A MINIMUM, TESTS SHALL BE TAKEN EVERY 100 LF FOR EACH LIFT.
12. CONTRACTOR TO VERIFY LOCATION, SERVICE LEAD LOCATION AND PLACE GAS AND/OR FIBER CONDUIT SERVICE LEADS ON THE OPPOSITE SIDE OF THE ELECTRICAL SERVICE LEADS WITHIN THE SAME LOT.



## EXCAVATION NOTE:

ALL EXCAVATIONS SHALL BE OPEN CUT, WITH BANKS KEPT AS NEARLY VERTICAL AS POSSIBLE. THE TRENCH FLOOR SHALL PROVIDE A UNIFORM BEARING FOR EACH FULL LENGTH OF PIPE SECTION. PERFORM ALL EXCAVATIONS OF WHATEVER SUBSTANCE ENCOUNTERED TO THE DEPTHS SHOWN OR INDICATED ON THE DRAWINGS. PIPE SHALL BE BEDDED WITH A MINIMUM OF 6" OF APPROVED MATERIAL ABOVE AND BELOW PIPE. CONTRACTORS ARE RESPONSIBLE FOR ALL SAFETY REQUIREMENTS (OSHA AND ANY OTHER AGENCIES THAT APPLY) ASSOCIATED WITH TRENCH CONSTRUCTION AND SHALL BE REQUIRED TO HAVE A TRENCH SAFETY PLAN PREPARED BY AN APPROVED PROFESSIONAL.



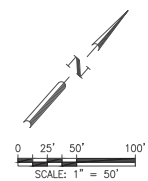
SHEET 3 OF 5

SHEET 3 OF 5



DATE: October 19, 2022  
TOTAL # OF LOTS: 73  
TOTAL # SERVICE LEADS: 69

SIX CREEKS PHASE 1 SECTION 7		SLEEVING PLAN		811 Know what's below. Call before you dig.	
DATE		DESCRIPTION		REV	
DESIGNED BY: ABS		REVIEWED BY: RB		DRAWN BY: ABS	
UNIGAS NATURAL GAS		CENTRIC FIBER			
SHEET 4 OF 5					







# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 5/29/2023 .

### Utility Company Information:

Name: Verizon  
Address: TX  
Phone: 2133007569  
Contact Name: David Norris

### Engineer / Contractor Information:

Name:  
Address: TX  
Phone:  
Contact Name:

### Hays County Information:

Utility Permit Number: TRN-2023-6421-UTL  
Type of Utility Service: Fiber  
Project Description:  
Road Name(s): , , , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☒ Boring ☒ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department

The above-mentioned permit was approved in Hays County Commissioners Court on .

A handwritten signature in black ink, appearing to read "Tyler P...".

Permit Coordinator

07/06/2023

Signature

Title

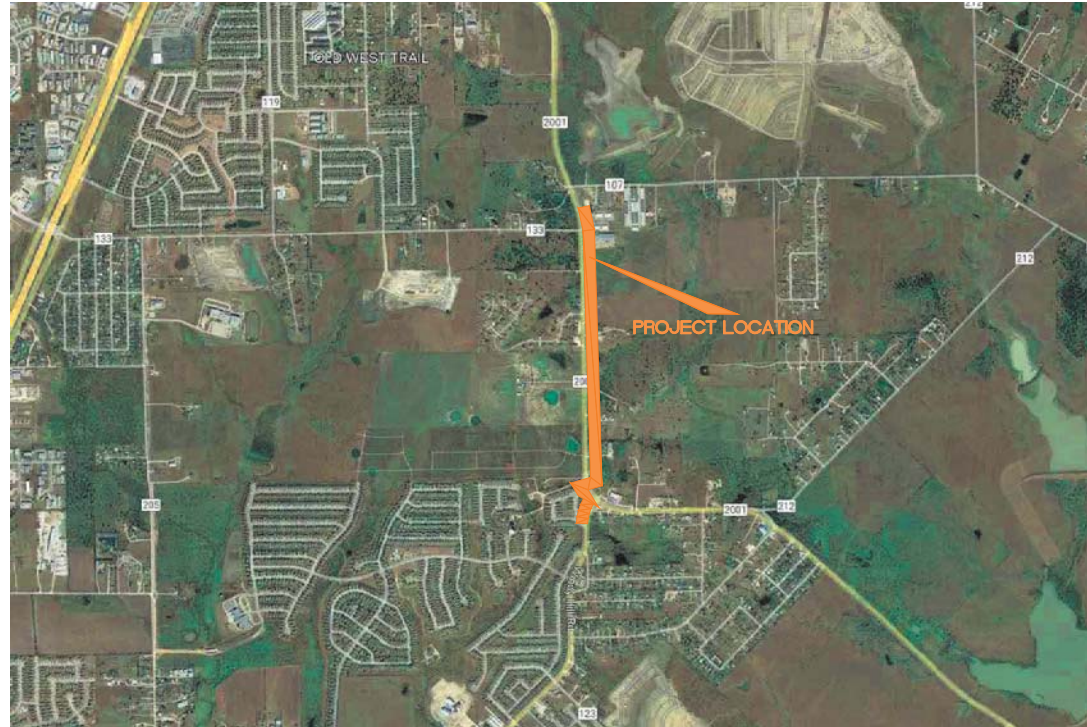
Date

HAYS COUNTY, TX  
BARRON\_LAKE\_STX

SHEET INDEX:

- 1 COVER SHEET:  
PROJECT INFORMATION
- 2 KEY MAP
- 3 CONTACTS
- 4 LEGEND
- 5 GENERAL NOTES
- 6-17 UG ROUTE PLAN, UG ROUTE PROFILE
- 18-28 CONSTRUCTION TYPICALS
- 29 TRAFFIC CONTROL TYPICALS

BOM		
MATERIAL QUANTITIES	UNIT	QTY
AERIAL FIBER W/ 6M STRAND	FT	
AERIAL FIBER OVERLASH	FT	
SNOW SHOE	EA	
ANCHOR/DOWN GUY	EA	
RISER	EA	
DIRECTIONAL BORE W/ (1) 1" HDPE	FT	5699
OPEN TRENCH W/ (1) 1" HDPE	FT	100
ADDITIONAL 2" HDPE	FT	5799
MICRODUCT	FT	
30X60X30 CORE HANDHOLE	EA	
36X60X30 HUBBELL HANDHOLE	EA	
24X36X24 NED HANDHOLE	EA	
30X60X30 NED HANDHOLE	EA	
36X60X30 NED HANDHOLE	EA	13
864CT FIBER CABLE (W/ SLACK)	FT	7099
FIBER SPLICES	EA	



LOCATION MAP:

# BARRON\_LAKE\_STX (BUDA, TEXAS)(HAYS COUNTY)

NFID: 2003CGZS.30  
SCOPE OF WORK: SuperNED  
INTERNAL ID: AUS\_2003CGZS\_30\_HCO\_3  
FQID: FIB:BUR::500901377  
EWO: 2303BEWI  
PROJECT DESCRIPTION: MCI PROPOSES TO INSTALL 5799' OF UNDERGROUND 864FOC ALONG FM 2001

BEGIN  
Latitude: N 30.059584  
Longitude: W -97.803752  
END  
Latitude: N 30.044315  
Longitude: W -97.803605



SITE NAME: BARRON\_LAKE\_STX  
SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610  
DATE: 03/23/2023  
SCALE: N.T.S.

REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL REMAIN THE PROPERTY OF MCI METRO. NO PARTS OF THESE DRAWINGS OR SPECIFICATIONS SHALL BE REPRODUCED, COPIED, OR USED FOR ANY PURPOSE WITHOUT SPECIFIC WRITTEN PERMISSION.



4801 Southwest Parkway, Building Two,  
Suite 100 Austin, Texas, 78735  
Ofc: 512.447.0575 email: info@sai.com  
Texas Firm Registration No. 10054500

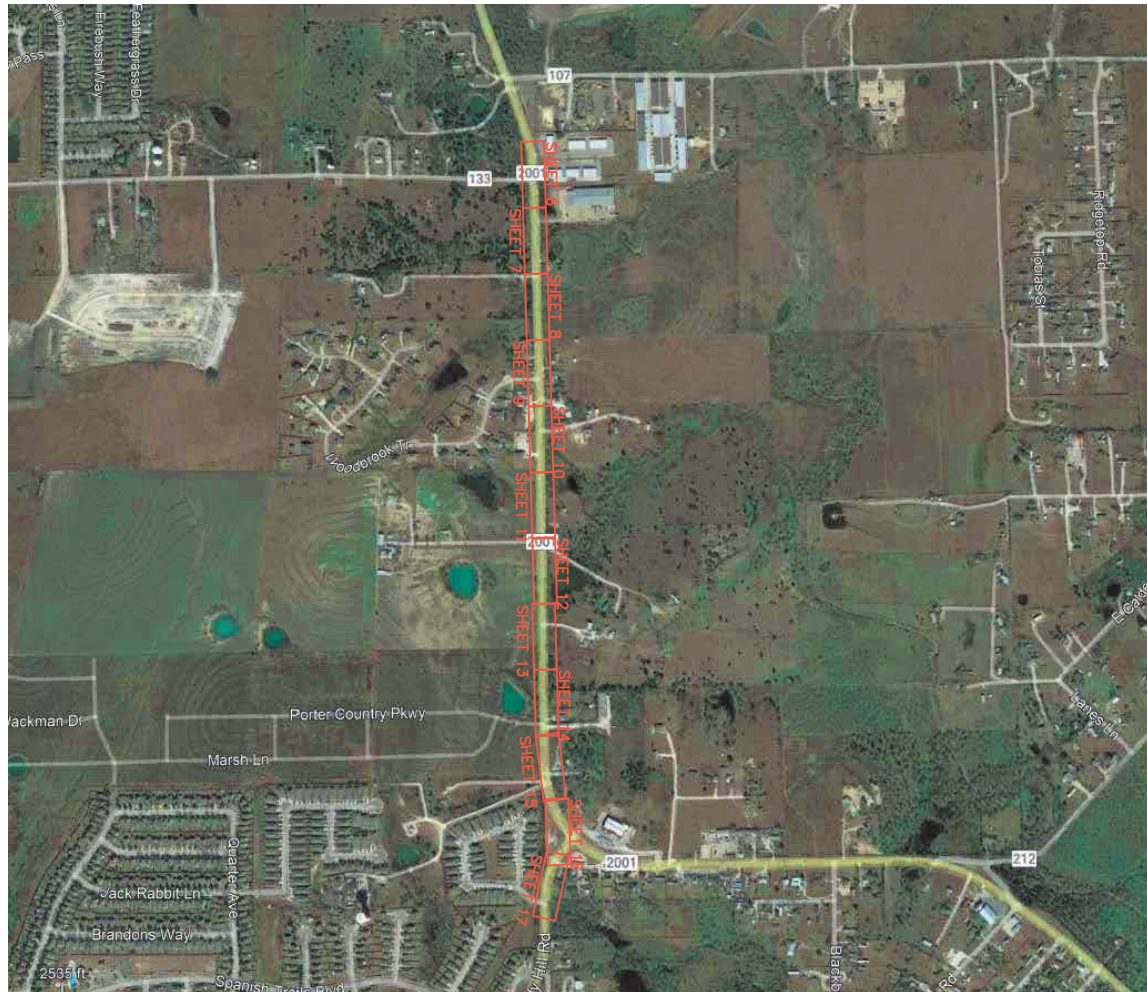
PROJECT: 1023078031

COVER

SHEET 1 OF 29

HAYS COUNTY, TX  
BARRON\_LAKE\_STX

## KEYMAP



SITE NAME: BARRON\_LAKE\_STX

SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610

DATE: 03/23/2023

SCALE: N.T.S

REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL REMAIN THE PROPERTY OF MCI METRO BEING ISSUED IN STRICT CONFIDENCE AND SHALL NOT BE REPRODUCED, COPIED, OR USED FOR ANY PURPOSE WITHOUT SPECIFIC WRITTEN PERMISSION.



4801 Southwest Parkway, Building Two,  
Suite 100 Austin, Texas, 78735  
Ofc: 512.447.0575 email: info@sam.biz  
Texas Firm Registration No. 10064300

PROJECT: 1023078031

KEYMAP

SHEET 2 OF 29

\\SAMI\CVS\PROJECTS\1023078031\100\SURVEY\02BASE\HCO\_3\AUS\_2003\0525\_30\_HCO\_3\_RECOVER.DWG



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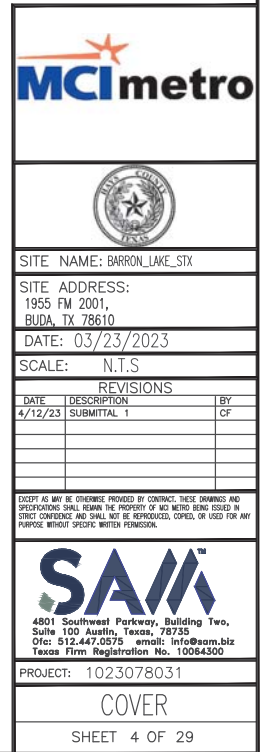
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PATH: \\SAMINC\AUS\PROJECTS\1023078031\100\SURVEY\02BASE\HCO\_3\AUS\_2003CGZS\_30\_HCO\_3\_RECOVER.DWG



	PROPOSED UNDERGROUND ROUTE		PROP. HANDHOLE
	RIGHT OF WAY LINE		FIBER OPTIC HANDHOLE (OTHERS)
	EDGE OF PAVEMENT		HANDHOLE (OTHERS)
	ROADWAY CENTERLINE		MANHOLE
	EASEMENT		MARKER
	SOLID WHITE LINE/FOG LINE		MARKER (OTHERS)
	CURB & GUTTER		MARKER (RIGHT OF WAY)
	GUARDRAIL		SIGN
	FENCE LINE		POLE
	TRAIN TRACKS		TRAFFIC SIGNAL POLE & STREET LIGHT
	DITCH LINE		ANCHOR
	LANDSCAPING		CLEANOUT W/GROUND RODS
	WATER WAY OUTLINES		PEDESTAL
	TRAFFIC SIGNAL		CULVERT
	UNDERGROUND WATER LINE		METERS
	UNDERGROUND GAS LINE		FIRE HYDRANT
	UNDERGROUND WASTEWATER SEWER LINE		VALVES
	UNDERGROUND STORM DRAIN LINE		VENT
	UNDERGROUND ELECTRIC LINE		CURB INLET
	UNDERGROUND TELEPHONE LINE		TREE
	OVERHEAD UTILITY LINE		MAILBOX
	UNDERGROUND FIBER OPTIC		NOT TO SCALE
	BRIDGE		UTILITY BOX
	GROUND SYMBOL		BOREPIT
	SPLICE SYMBOL		TRAFFIC LIGHTS



### CONSTRUCTION NOTES




1. WHERE TRENCHING TECHNIQUES ARE USED THE MINIMUM DEPTH TO THE TOP OF CONDUIT WILL BE 48" UNLESS OTHERWISE APPROVED BY THE PROJECT ENGINEER. A MAXIMUM DEPTH OF 82" IS REQUIRED TO THE TOP OF THE HDPE.
2. WHENEVER DIRECTIONAL BORING IS UTILIZED TO INSTALL CONDUITS ALL EXCAVATIONS SHALL BE BACKFILLED PER HAYS COUNTY SPECIFICATIONS.
3. VERIFICATION OF THE LOCATION OF ALL UTILITY CROSSINGS IS THE SUBCONTRACTOR'S RESPONSIBILITY. HAND DIG WHERE REQUIRED. ALL KNOWN UTILITIES MUST BE "TEST PITTED".
4. CONTACT TEXAS 811 72 HOURS IN ADVANCE OF CONSTRUCTION AT 1-800-DIG-TESS FOR LOCATION OF BURIED UTILITIES.
5. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL HAYS COUNTY TRAFFIC LOOPS LOCATED.
6. CONFIRM WITH MCI METRO, WITH HAYS COUNTY CORRESPONDENCE, THAT ALL TRAFFIC LOOP LOCATIONS HAVE BEEN COORDINATED FOR MARKING.
7. AT THE END OF EACH WORK DAY CONDUIT CAPS WILL BE PLACED ON ALL VACANT DUCTS.
8. A MINIMUM BENDING RADIUS OF 24" FOR FIBER CABLE WILL BE ADHERED TO.
9. MAXIMUM CABLE INSTALLATION TENSION SHALL NOT EXCEED 600 POUNDS.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL AND STORAGE OF ALL SHRUBBERY TO BE REPLACED.
11. RESTORATION OF THE CONSTRUCTION AREA TO ORIGINAL OR BETTER CONDITION SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
12. PLACE 6" OF 3/4" CRUSHED ROCK IN THE BOTTOM OF THE PIT PRIOR TO PLACING THE HANDHOLE.
13. ALWAYS HAND DIG WITHIN 2' OF UTILITIES.
14. PLACE A 100' COIL OF SLACK IN EACH HANDHOLE/MANHOLE.
15. EXCAVATE OUTSIDE THE DRIP LINE OF ALL TREES TO PREVENT ROOT DAMAGE.
16. CONSTRUCTION MATERIALS AND STAGING AREAS ARE NOT PERMITTED WITHIN 25' BUFFER ZONE OF WETLANDS, CREEKS, AND STREAMS.
17. THE CURB AND GUTTER IS NOT TO BE DISTURBED WITHOUT PRIOR APPROVAL.
18. IN THE EVENT THAT IT IS NECESSARY TO REMOVE ANY PORTION OF THE CURB AND GUTTER IT IS TO BE REPLACED SEAM TO SEAM IN A MATCHING CONFIGURATION TO THE ADJACENT CURB AND GUTTER.
19. ALL WORK WILL ADHERE TO THE REQUIREMENTS SET FORTH IN THE LATEST HAYS COUNTY UTILITY POLICY.
20. CONSTRUCTION NOTES SHALL APPLY TO ALL DRAWINGS.
21. A MINIMUM DEPTH OF 112" OR GREATER IS REQUIRED AT ALL RIVER, CREEK, AND/OR GULLY CROSSINGS.

### GENERAL NOTES

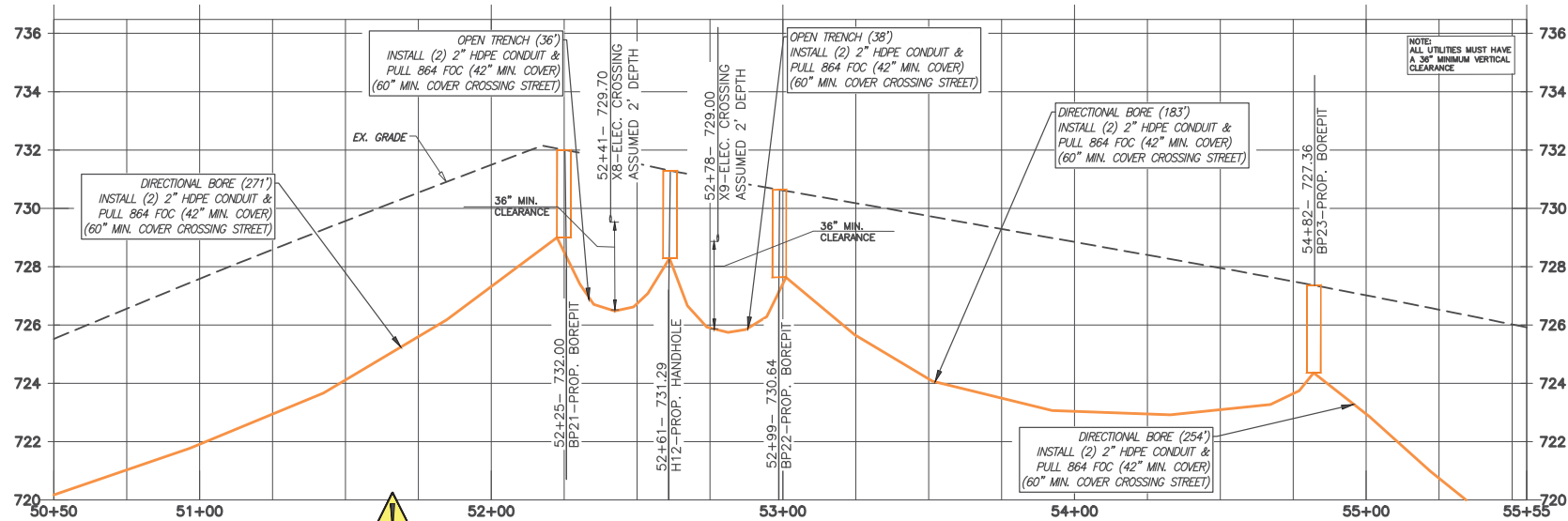
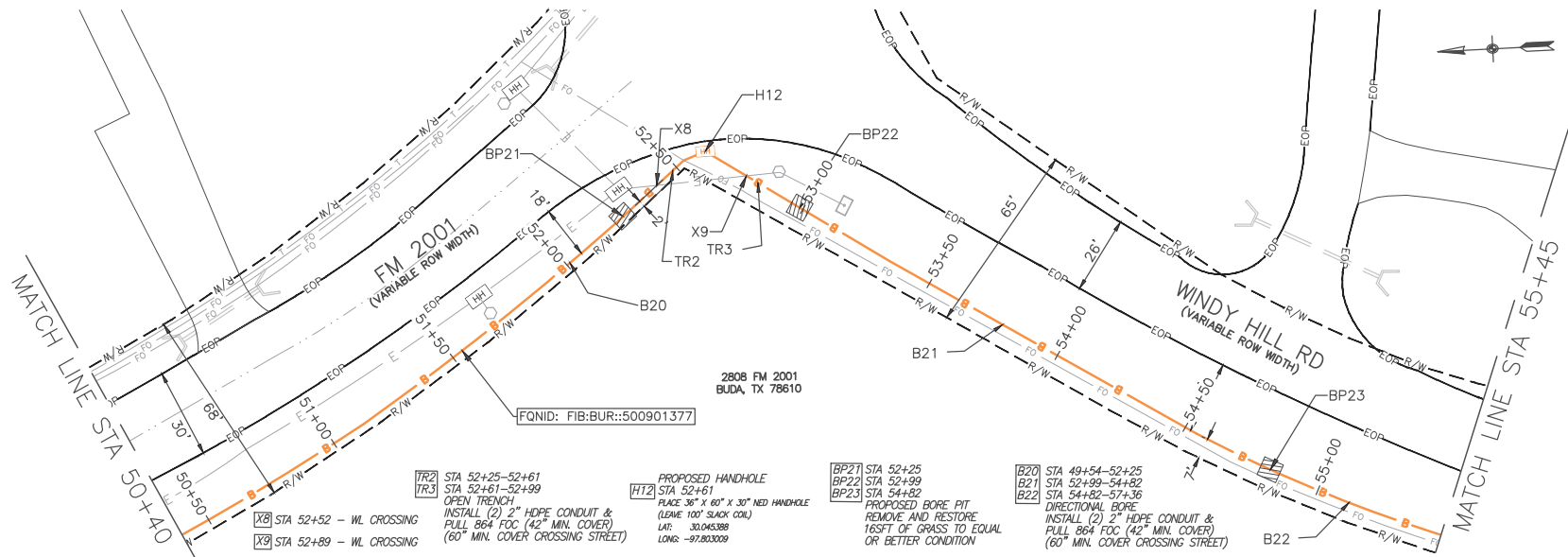
1. GENERAL NOTES SHALL APPLY TO ALL DRAWINGS.
  2. ALL WORK SHALL COMPLY WITH APPLICABLE STATE, COUNTY, & LOCAL REGULATORY AGENCIES. INCLUDING BUT NOT LIMITED TO OSHA, HAYS COUNTY, ETC.
  3. THE CONTRACTOR SHALL CONTACT THE ADJACENT PROPERTY OWNERS A MINIMUM OF 12 HOURS IN ADVANCE OF CONSTRUCTION AT THE WORK SITE.
  4. ALL TRAFFIC CONTROL DEVICES SHALL BE IN PLACED BEFORE WORK IS STARTED. DEVICES NO LONGER REQUIRED SHALL BE REMOVED AS SOON AS POSSIBLE.
  5. PEDESTRIAN TRAFFIC AREAS MUST BE MAINTAINED AT ALL TIMES. PEDESTRIANS MAY NOT BE REROUTED ONTO PRIVATE PROPERTY OR INTO STREETS.
  6. NO EQUIPMENT OR MATERIALS SHALL BE STORED OR PERMITTED TO STAND UNPROTECTED WHERE TRAFFIC IS MAINTAINED.
  7. NO EQUIPMENT OR MATERIALS SHALL BE STORED ON ROAD SURFACE AT ANY TIME.
  8. NO EQUIPMENT OR MATERIALS SHALL BE STORED ON SIDEWALK AT ANY TIME.
  9. EXCAVATION MATERIAL SHALL BE STORED AWAY FROM THE PAVED ROADWAY. ALL SPILLED MATERIAL WILL BE REMOVED IMMEDIATELY.
  10. EXISTING SIGNS, DELINEATORS, GUARDRAILS, MARKERS, TREES, SHRUBS, FENCES, WALKS, STEPS, ETC., THAT ARE DISTURBED BY THIS CONSTRUCTION SHALL BE REPLACED OR RESTORED TO THEIR ORIGINAL CONDITION OR TO THE SATISFACTION OF THE INSPECTING ENGINEER, PROPERTY OWNER, CITY, COUNTY, STATE AND/OR ANY OTHER AGENCY HAVING AUTHORITY/JURISDICTION.
  11. CITY, COUNTY, STATE ROAD SIGNS, DELINEATORS, GUARDRAILS, ETC. SHALL NOT BE REMOVED. WRITTEN PERMISSION SHALL BE REQUIRED PRIOR TO ANY EXCAVATION IN THIS AREA.
  12. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY, COUNTY, STATE SPECIFICATIONS AND STANDARDS.
  13. ALL PERSONS WHO FLAG TRAFFIC ON STATE RIGHT-OF-WAY MUST BE CERTIFIED.
  14. ALL SURFACE AND SUBSURFACE RESTORATION IS TO BE IDENTICAL TO THE ADJACENT UNDISTURBED AREAS.
  15. THE CONTRACTOR IS RESPONSIBLE FOR ANY UTILITY DAMAGES. WHEN ANY PERSON DAMAGES A UTILITY LINE OR PROTECTIVE COATING DURING EXCAVATION OR DEMOLITION THE ONSITE COUNTY INSPECTOR AND THE AFFECTED UTILITY WILL BE NOTIFIED.
  16. ON ALL WORK ASSOCIATED WITH HAYS COUNTY PROJECTS THE RESIDENT ADMINISTRATOR FOR HAYS COUNTY MUST BE NOTIFIED AT LEAST 48 HRS BEFORE STARTING WORK.
  17. CONTRACTOR IS RESPONSIBLE FOR ALL COMPACTING AND SEDIMENT CONTROL REGULATIONS.
- \* THESE PLANS MEET OR EXCEED HAYS COUNTY ROAD AND BRIDGE STANDARDS AND SPECIFICATIONS.
- \*\* NO HANDHOLES ARE TO BE PLACED WITHIN DITCH LINES.
- ALL DRIVEWAYS WILL BE BORED.

### ADDITIONAL NOTES

1. CONTRACTOR RESPONSIBLE FOR INSTALLATION/REPAIR/REPLACE OF MAILBOXES AND SIGNS. MAILBOXES AND SIGNS SHALL BE INSTALLED IN ACCORDANCE WITH HAYS COUNTY STANDARDS.
2. CONTRACTOR SHALL REPLACE ALL AREAS WITHIN HAYS COUNTY RIGHT-OF-WAY TO ORIGINAL CONDITION.
3. CONSTRUCTION SHALL NOT CHANGE OR IMPACT EXISTING DRAINAGE CONDITIONS.
4. NATURAL AREAS WITHIN HAYS COUNTY RIGHT-OF-WAY WHICH ARE DISTURBED SHALL BE RE VEGETATED OR STABILIZED WITH SOIL RETENTION BLANKETS.
5. MINIMUM OF 4' SEPARATION MUST BE MAINTAINED BETWEEN THE BORES AND ALL CULVERTS.

		
		
SITE NAME: BARRON_LAKE_STX		
SITE ADDRESS: 1955 FM 2001, BUDA, TX 78610		
DATE: 03/23/2023		
SCALE: N.T.S		
REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF
<small>EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL REMAIN THE PROPERTY OF AND BEING ISSUED IN STRICT CONFIDENCE AND SHALL NOT BE REPRODUCED, COPIED, OR USED FOR ANY PURPOSE WITHOUT SPECIFIC WRITTEN PERMISSION.</small>		
		
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PROJECT: 1023078031		
NOTES		
SHEET 5 OF 29		

HAYS COUNTY, TX  
BARRON\_LAKE\_STX



**CONTRACTOR'S NOTE:**  
ALL LINE WORK AND UTILITY LOCATIONS ARE APPROXIMATE.  
CONTRACTOR IS RESPONSIBLE FOR EXACT LOCATIONS.



**CONTRACTORS:**  
YOU ARE TO CALL THE HAYS COUNTY INSPECTOR NOTED ON THE APPROVED PERMIT 48-HOURS PRIOR TO THE START OF CONSTRUCTION.  
THE CONTRACTOR IS REQUIRED TO CONTACT HAYS COUNTY DISTRICT TRAFFIC SIGNAL SHOP AT 817-370-3661 FOR LINE LOCATES IF BURIED PORTION OF THIS WORK IS NEAR HAYS COUNTY TRAFFIC SIGNALS.

**CAUTION:**  
ALL UTILITY LOCATIONS DEPICTED ARE APPROXIMATE. CONTRACTORS REQUIRED TO TEST HOLE/POT HOLE, EXPOSE, DAYLIGHT ALL UTILITY CROSSINGS AND CALL 811 PRIOR TO CONSTRUCTION.

ANY UTILITIES CLOSER THAN 3' HORIZONTAL SEPARATION TO AN OPEN TRENCH OR BORE PIT, HAND DIGGING REQUIRED. RIGHT OF WAY LOCATION(S) DEPICTED ARE APPROXIMATE. CONTRACTORS REQUIRED TO VERIFY PRIOR TO CONSTRUCTION.

CONTRACTOR TO MAINTAIN MINIMUM CONSTRUCTION CLEARANCE REQUIREMENTS FROM ALL JURISDICTION AND THIRD PARTY INFRASTRUCTURE.

UTILITIES SHOWN ARE BASED UPON PUBLIC AVAILABLE AS-BUILT PLANS AND UTILITY MARKINGS LOCATED IN THE FIELD.

SITE: BARRON\_LAKE\_STX

SITE ADDRESS:  
1955 FM 2001  
BUDA, TX 78610

DATE: 3/28/2023

SCALE: 1" = 40'

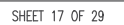
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4/12/2023	SUBMITAL 1	OF

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Texas Firm Registration No. 10064500

PROJECT: 1023078031

PLAN

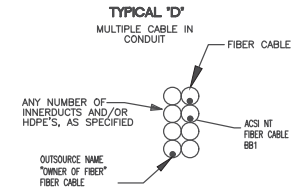
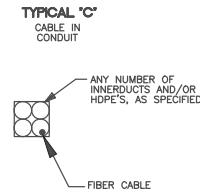
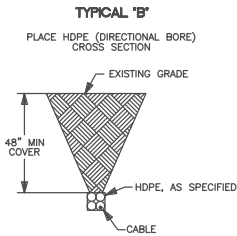
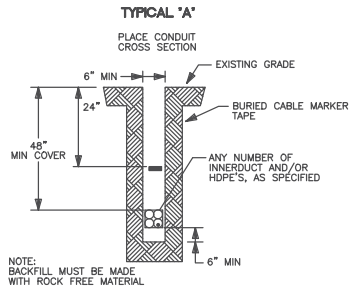
SHEET 16 OF 29



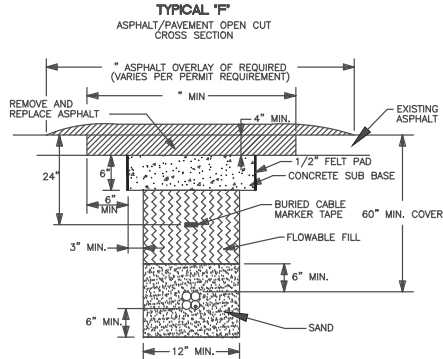
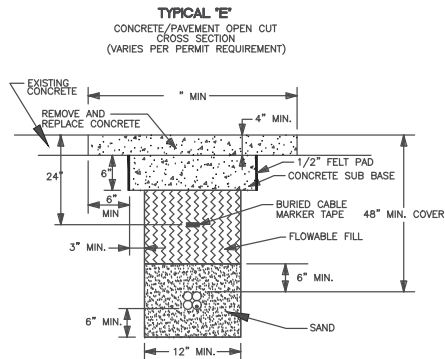


## BURIED CONSTRUCTION TYPICALS - 1

### PLACEMENT - TYPICALS



### OPEN CUT - TYPICALS



1. THE BOTTOM OF THE TRENCH SHALL BE LEVEL, FLAT AND NOT HAVE ANY ROCK DEBRIS.
2. ALL BACKFILL MUST BE APPROVED BY ENGINEER, AND/OR PERMITTING AUTHORITY INSPECTOR.
3. EXCAVATED MATERIAL MAY BE DEEMED SUITABLE BACKFILL BY ENGINEER AND/OR PERMITTING AUTHORITY INSPECTOR.
4. MINIMUM SIX (6) INCHES OF CLEAN SAND SHALL BE PLACED OVER THE CONDUIT.
5. FLOWABLE FILL MIX DESIGN SHALL BE PER CITY AND/OR PERMITTING AUTHORITY.
6. ALL FLOWABLE FILL AND CONCRETE SHALL BE VIBRATED USING A 2" DIAMETER VIBRATOR.
7. CONCRETE AND ASPHALT THICKNESS SHALL MATCH EXISTING.
8. #4 DOWELS SHOULD BE DRILLED INTO ADJACENT UNDISTURBED CONCRETE TO PREVENT DIFFERENTIAL SETTLEMENT.



SITE NAME: BARRON\_LAKE\_STX  
SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610  
DATE: 03/23/2023  
SCALE: N.T.S.

REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF

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PROJECT: 1023078031

BUR CONST TYP1

SHEET 18 OF 29

## BURIED CONSTRUCTION TYPICALS - 2

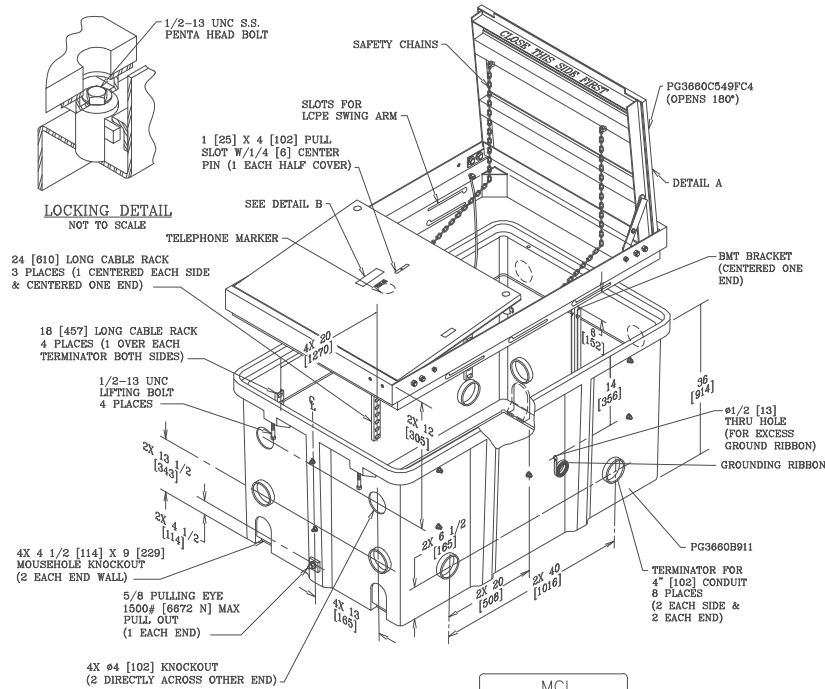
1. ALL BACKFILL MUST BE APPROVED BY ENGINEER OR PERMITTING AUTHORITY INSPECTOR.
2. EXCAVATED MATERIAL MAY BE DEEMED SUITABLE BACKFILL BY ENGINEER, AND/OR PERMITTING AUTHORITY.
3. A MAXIMUM OF EIGHT (8) INCH LIPS OF BACKFILL MATERIAL WILL BE ALLOWED. THE SURFACES OF CURBS AND SIDEWALKS SHALL BE PLACED ABOVE THE CONDUIT.
4. THE BOTTOM OF THE TRENCH SHALL BE LEVEL, FLAT, AND NOT HAVE ANY ROCK DEBRIS.
5. ALL DISTURBED GRASS AREAS ARE TO BE SEEDDED WITH KENTUCKY 31 FESCUE SEEDS, FERTILIZERS APPLIED AND MAINTAINED TO ACHIEVE A SATISFACTORY GRASS COVER TO CONTROL EROSION.
6. IN CORPUS CHRISTI DISTRICT DATS WILL BE PLANTED SEED 1 THROUGH NOV 30. IN DALLAS DISTRICT DATS WILL BE PLANTED SEED 1 THROUGH NOV 30. IN EL PASO, SAN PATRICO, LIVE OK, JIM WELLS, KLEBERG, NUECES, AND ARANSAS.)

1. REMOVE ENTIRE SIDEWALK PANEL JOIN TO JOINT.
2. EXPANSION BOARD SHALL BE PLACED ON ALL EXISTING CONCRETE EDGES.
3. FLOWABLE FILL MIX DESIGN SHALL BE PER PERMITTING AUTHORITY SPECIFICATIONS.
4. THE NEW CONCRETE SIDEWALK SHALL BE PLACED LEVEL AND FLAT TO MATCH EXISTING.
5. THE FINISH SHALL MATCH EXISTING SIDEWALK.
6. FOUR (4) INCHES OF CLEAN SAND SHALL BE PLACED OVER THE MULTICELL CONDUIT.
7. THE BOTTOM OF THE TRENCH SHALL BE LEVEL, FLAT, AND NOT HAVE ANY ROCK DEBRIS.
8. CONCRETE REINFORCEMENT SHALL CONSIST OF WIRE MESH 6"x6"x10 GAUGE WIRE OR NO.4 REBAR PLACED ON 12" CENTERS.
9. ALL FLOWABLE FILL AND CONCRETE SHALL BE VIBRATED USING A 2" DIAMETER VIBRATOR.
10. CONCRETE SIDEWALK THICKNESS SHALL MATCH EXISTING.

1. BITUMINOUS CONCRETE SURFACE SHALL BE PLACED TO A DEPTH EQUAL TO THE EXISTING SURFACE OR 2" MINIMUM. (COARSE SURFACE)
2. MINIMUM 6" CONCRETE SHALL BE PLACED TO A DEPTH EQUAL TO THE EXISTING PAVEMENT OR 4" MINIMUM. (BC)
3. THE TOP 2" -5" OF THE TRENCH BELOW PAVEMENT SHALL BE BACKFILLED WITH CRUSHER RUN.
4. ALL ROAD SURFACE EDGES SHALL BE SAWED IN A STRAIGHT LINE.
5. SS-1 TOP SOAT COAT WILL BE APPLIED AT THE RATE 0.1 GAL. PER SQ. YARD OVER THE CONCRETE BASE AND THE EDGES OF THE EXISTING ASPHALT.
6. THE ASPHALT PATCH SHALL BE SMOOTH, FLAT AND EVEN WITH EXISTING ASPHALT SURFACE. ALL JOINTS WILL BE SEALED AFTER PAVING.
7. FOUR (4) INCHES OF CLEAN SAND SHALL BE PLACED OVER THE CONDUIT.
8. BOTH SIDES OF THE TRENCH SHALL BE LEVEL, A 3" SAND BEDDING WILL BE PLACED AS REQUIRED.
9. TYPICAL TRENCH WIDTH IS 12".

		
		
SITE NAME: BARRON_LAKE_STX		
SITE ADDRESS: 1955 FM 2001, BUENA TX 78610		
DATE: 03/23/2023		
SCALE: N.T.S		
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DATE	DESCRIPTION	BY
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PROJECT: 1023078031		
CABLE MARKER		
SHEET 20 OF 29		

HUBBELL HANDHOLE DETAIL  
36" X 60" X 30": PG3660Z439FC4

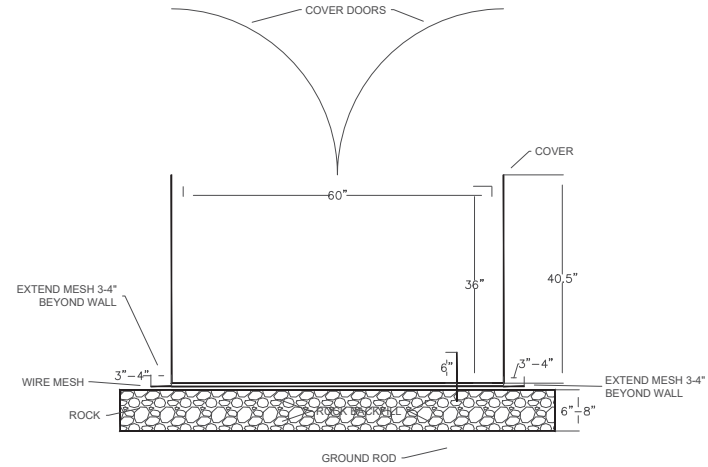


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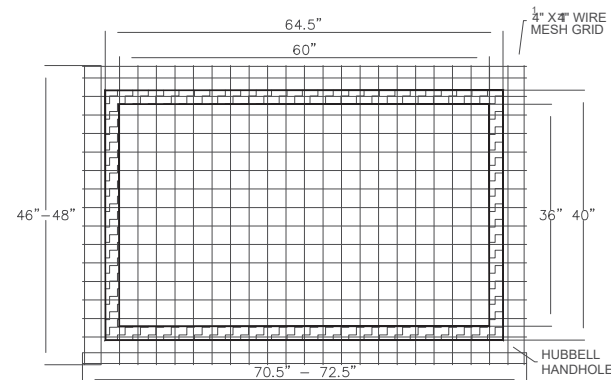
- LOGO TO BE SPECIFIED: MCI
- THIS ASSEMBLY IS RATED FOR A STATIC DESIGN LOAD OF 15,000 LBS. [66,720 N] OVER A 10 [254] X 10 [254] AREA AND MUST PASS A MINIMUM STATIC TEST LOAD OF 22,500 LBS. [100,080 N].
- THIS ENCLOSURE IS RECOMMENDED FOR 900 PAIR CABLES OR LESS.

DIMENSIONS ARE IN INCHES OR MILLIMETERS IN BRACKETS UNLESS OTHERWISE NOTED.					
	BY	DATE	WEIGHT	3621 INDUSTRIAL PARK DR	LOC
DRN	J.P.	6/27/17	1046#	LENNOR CITY, TN 37771	LC
			474kg	800-346-3002	S
				WWW.QUAZITE.COM	
CHK	MEF	6/28/17	SCALE	DRAWING DESCRIPTION	REV
			NTS	QUAZITE ASSEMBLY	A
			SIZE		
APR			B		6/17
PROJECT NUMBER			DRAWING NUMBER		
118254			PG3660Z439FC4		
SHEET 1 OF 2					


HUBBELL HANDHOLE INSTALLATION DETAIL  
(SIDE VIEW)



HUBBELL HANDHOLE INSTALLATION DETAIL  
(TOP VIEW)



**MCI metro**



SITE NAME: BARRON\_LAKE\_STX

SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610

DATE: 03/23/2023

SCALE: N.T.S.

REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF

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Texas Firm Registration No. 10084500

PROJECT: 1023078031

36X60X30 HUB HH

SHEET 21 OF 29

HAYS COUNTY, TX  
BARRON\_LAKE\_STX

### MATERIAL PROPERTIES

THE FOLLOWING MATERIAL PROPERTIES FOR POLYMER CONCRETE PRODUCTS WERE ESTABLISHED THROUGH INDEPENDENT THIRD PARTY TESTING:

COMPRESSIVE STRENGTH	ASTM C 579	> 12,500 PSI
FLEXURAL STRENGTH (REINFORCED)	ASTM D 790	> 7,500 PSI
FLEXURAL STRENGTH (NON-REINFORCED)	ASTM D 790	> 3,000 PSI
MODULUS OF RUPTURE	ASTM C 99	□ 3,000 PSI
WATER ABSORPTION	ASTM C 97	□ 0.25%
IMPACT RESISTANCE	ASTM D 2444	> 70 FT-LB
FRICTION COEFFICIENT	ASTM C 1028	> 0.5
CHEMICAL RESISTANCE	ASTM D 543	RESISTANT, > 75% RETENTION

### PHYSICAL PROPERTIES

THIS UNIT (BODY & LID) MEETS OR EXCEEDS THE REQUIREMENTS OF SCTE 77 TIER 22 AND 30K PERFORMANCE (DESIGN LOAD: 30,000 LBS / TEST LOAD: 45,000 LBS)

**T22/30K STANDARD HANDHOLE**  
**DESIGN LOAD: 30,000 LBS**  
**TEST LOAD 45,000 LBS**

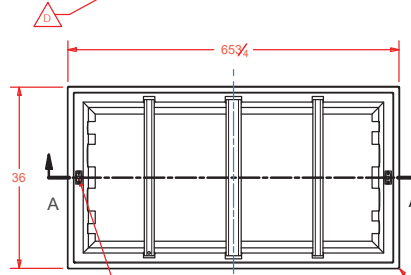
REVISION HISTORY			
REV	DESCRIPTION	REV BY	DATE APPROVED
D	CHANGE ESTIMATED WEIGHTS AND LOAD RATE MARKING UPDATED TO 30K: DESIGN LOAD: 30,000 LBS. TEST LOAD 45,000 LBS	GTORRES	12/16/2019 AGARCIA

### CUSTOMER APPROVAL

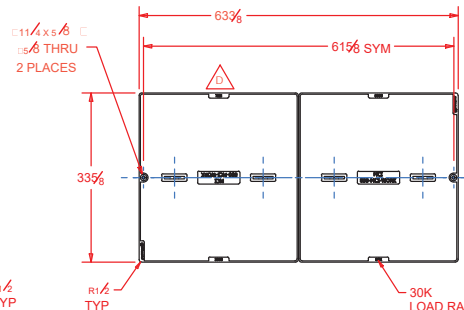
PRODUCT IS APPROVED IN ACCORDANCE WITH THE SPECIFICATIONS DESCRIBED ON THIS SHEET.

SIGNATURE \_\_\_\_\_

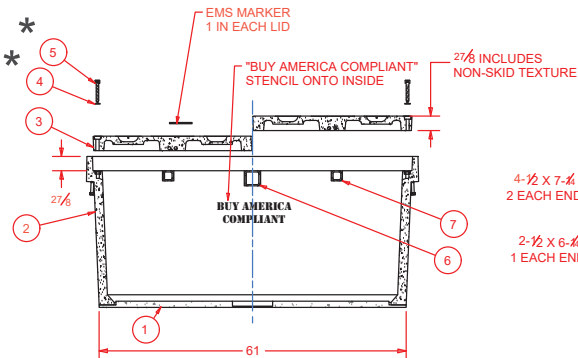
DATE \_\_\_\_\_



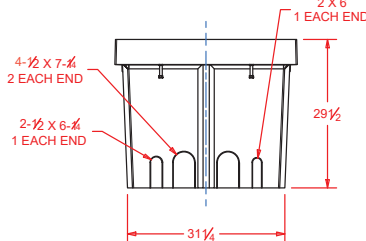
BOX - TOP VIEW



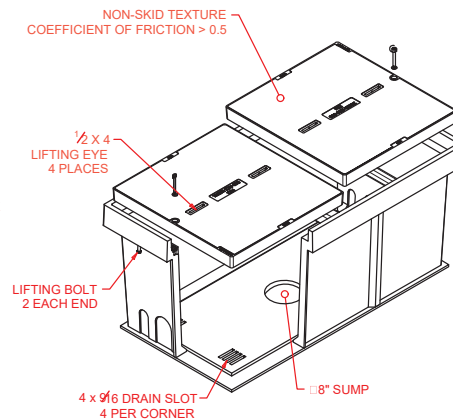
LID - TOP VIEW



SECTION A-A  
WITH LID AND HARDWARE SHOWN



END VIEW



MATERIAL: POLYMER CONCRETE WITH FRP FLOOR.

NOTE: FOR SKU 30606100K BAG ALL HARDWARE MARKED WITH (\*) AND TAPE BAG TO 3X3 CROSS BRACE

7	2 0700557	SQ TUBE 2X2X1/4 31 LONG GALV
6	1 0700569	SQ TUBE 3X3X1/4 31 LONG GALV
5	2 05823400	BOLT, JOHNNY, SS, 1/2-10 ACME X 3-3/4 LONG HEX PIN
4	2 HWH-F11	WASHER, FLAT SST .531 ID x 1.062 OD .095 THICK
3	2 30605015	LID, PC3060 T22/30K - MCI
2	1 30602030	PC3060-30 BODY
1	1 30609000	FLOOR, FG 3060

ITEM QTY	SKU	DESCRIPTION
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801 S PINE ST  
MADERA, CA 93637  
1-800-486-7070

TITLE  
UNIT, PC3060-30 30K - MCI 800-MCI-WORK - CONDUIT KNOCKOUTS AND FRP FLOOR

SIZE  
C

DWG NO  
30606100 / 30606100K

REV  
D

APPROVED  
AGARCIA 7/21/2017

SCALE  
SHEET 1 OF 1

## CUSTOMER FORMAT DRAWING

TOTAL EST. UNIT WEIGHT: 810 LBS

EST. LID WEIGHT: 136 LBS (EA HALF) | EST. BODY WITH FLOOR WEIGHT: 535 LBS

UNLESS OTHERWISE SPECIFIED  
ALL DIMENSIONS ARE IN INCHES  
TOLERANCE:

XXX = .005

.XX = .010

.X = .030

FRACTION = 1/16

ANGLE = 1:1



SITE NAME: BARRON\_LAKE\_STX

SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610

DATE: 03/23/2023

SCALE: N.T.S

REVISIONS

DATE DESCRIPTION BY

4/12/23 SUBMITTAL 1 CF

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Office: 512.447.0575 email: info@sam.biz  
Texas Firm Registration No. 10084500

PROJECT: 1023078031

36X60X30 OC HH

SHEET 22 OF 29

PATH: \\SAMINC\AUS\PROJECTS\1023078031\100\SURVEY\02BASE\HCO\_3\AUS\_2003CGZS\_30\_HCO\_3\_RECOVER.DWG

Diagram illustrating the cross-section of a parallel bore culvert. The diagram shows two parallel bores separated by a minimum of 24 inches. The bores are labeled "PARALLEL BORES WILL MAINTAIN MIN 24" SEPARATION". The distance between the bores is marked as "(5' MIN)". The bores are labeled "4'x4' BORE PIT". The ground level is indicated by a horizontal line labeled "GROUND LEVEL". The bores are labeled "CABLE/CONDUIT BORE UNDERSIDE OF CULVERT". The minimum depth of the bores is marked as "MIN 48" (MIN)".



REVISION	
DATE	DESCRIPTION

SHEET 23 OF 29

PATH: \\SAMINC\AUS\PROJECTS\1023078031\100\SURVEY\02BASE\HCO\_3\AUS\_2003CGZS\_30\_HCO\_3\_RECOVER.DWG

Diagram illustrating the cross-section of a trench for cable/conduit installation. The diagram shows the trench depth, width, and the placement of the cable/conduit relative to the ground level and the right of way.

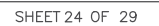
- RIGHT OF WAY**: The top horizontal dimension line.
- VARIABLES**: Dimensions that vary, including the distance from the right of way to the trench edge and the distance from the trench edge to the cable/conduit.
- PLACE BORE PIT/HANDHOLES AS CLOSE TO THE RIGHT OF WAY AS POSSIBLE**: Instruction for the placement of the bore pit/handhole.
- GROUND LEVEL**: The horizontal line representing the ground surface.
- ROAD/DRIVEWAY**: The area between the ground level and the cable/conduit.
- 60" (MIN)**: The minimum depth of the trench.
- 4'x4' BORE PIT OR HANDHOLE**: The dimensions of the bore pit or handhole at each end of the trench.
- CABLE/CONDUIT**: The bottom horizontal dimension line.

CROSSING UNDER DRIVEWAYS (2)-2"  
CONDUITS WILL BE PLACED



SCALE: N.T.S

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**DETAIL 'B'**  
GROUND CONNECTION

**DETAIL 'C'**  
FARGO CLAMP

NOTE: Ground rod to be a maximum of inches above floor level of handhole.

Labels in the main assembly diagram include:  
 1/2 "x8" GROUND ROD  
 HANDHOLE  
 COVER NOT SHOWN FOR CLARITY  
 NO. 6 BARE COPPER WIRE  
 FIBER OPTIC CABLE  
 SOUTH/WEST FIBER CABLE  
 CONDUIT  
 2X22 BURIED SERVICE WIRE  
 2X22 BURIED SERVICE WIRE  
 CONDUIT  
 NORTH/EAST FIBER CABLE  
 2X22 BURIED SERVICE WIRE  
 REMOVABLE HEAD  
 SERVICE WIRE TERMINATION RING SIDE  
 SERVICE WIRE TERMINATION TIP SIDE  
 GREEN BONDING HARNESS  
 2X22 BURIED SERVICE WIRE  
 NO. 6 BARE COPPER WIRE  
 MARKER POST  
 1 1/4" HDPE DUCT TO MARKER POST



DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF



SHEET 25 OF 29



421 - HYDRAULIC CEMENT CONCRETE (with required SP 421---024)

SPECIFICATION REQUIREMENTS

1) The following will need to be shown on the plans or require a plan note:

A coarse aggregate magnesium sulfate soundness loss other than a maximum OF 18% (optional)

If a value less than 1.0% will be used for the maximum decantation for coarse aggregate (optional)

For all concrete subject to direct traffic if an acid insoluble value less than 60% will be used (optional)

If blending of fine aggregates to meet the acid insoluble requirement will not be allowed (optional)

If a sand equivalent of less than 80 will be used (optional)

For Class K concrete if fineness modulus values outside the range of 2.60 and 2.80 will be allowed (optional)

If mortar and grout will be used in the project (required)

Strength requirements for concrete Classes F, H, K, and HES if used (required)

Coarse aggregate grade for Class K and HES if used (required)

If the responsibility of the contractor is waived regarding furnishing and maintaining: (optional)

- o test molds
- o curing facilities
- o maturity meters if used,
- o wheelbarrow or other container acceptable for the sampling of concrete
- o strength-testing equipment in accordance with the controlling test (ie., compression machine or flexural beam breakers)

If the controlling strength test will not be compressive (optional)

If the contractor will not be responsible for the handling and transportation of test specimens and the cleaning of molds, if needed (optional)

When sulfate resistant concrete is required (required)

HAYS COUNTY plant/truck inspection/certification in lieu of NRMCA/professional engineer certification for NON-STRUCTURAL CONCRETE ONLY (optional)

To allow the use of volumetric mixers for structural concrete (optional)

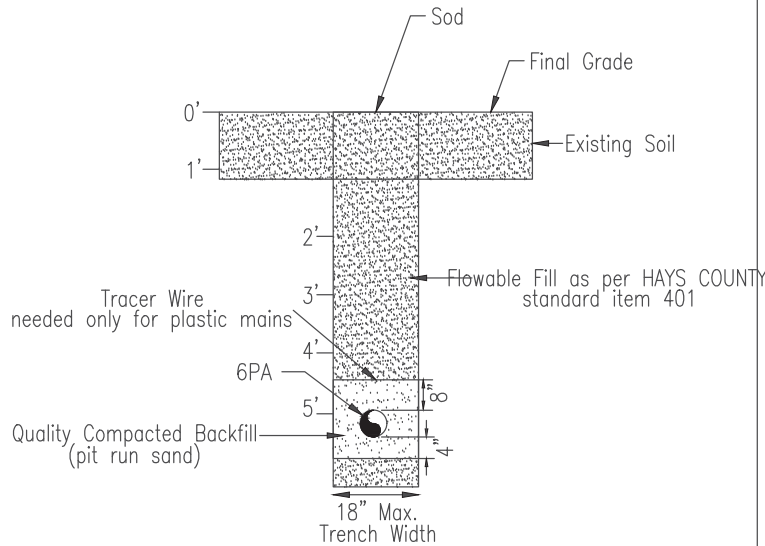
To designate the use of high performance concrete classes: C(HPC), F(HPC), H(HPC), and S(HPC) (required)

Designate an alternate strength over-design requirement other than what is in the specification only for Class K, non-structural concrete and Class C concrete not used for bridge class structures (optional)

Designate dosage rate of corrosion inhibiting admixture if used (required)

To waive air entrainment requirements for all concrete classes or individual concrete classes (already waived for Class B and drilled shaft concrete) (optional - refer to Bridge and Pavement Design Manuals)

To alter target air contents (currently set at 4.0% for pavements and 5.5% for structural concrete) (optional)



Trench Detail For Earth Excavation Only < 10' from Curb

SITE NAME: BARRON_LAKE_STX		
SITE ADDRESS: 1955 FM 2001, BUDA, TX 78610		
DATE: 03/23/2023		
SCALE: N.T.S		
REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF
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PROJECT: 1023078031		
TRENCHDET2		
SHEET 26 OF 29		



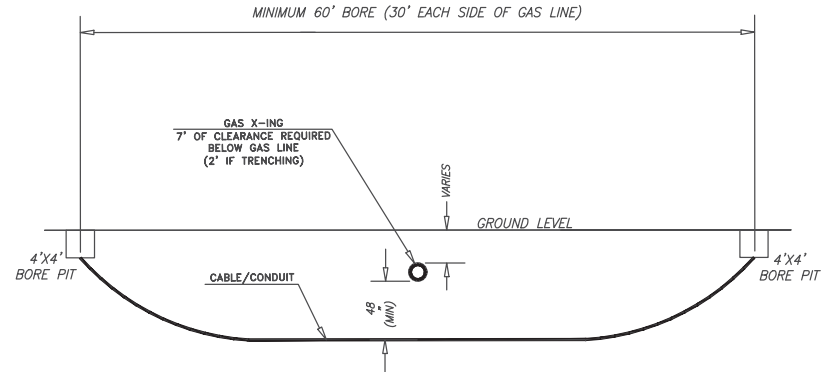
REVISIONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF



SHEET 27 OF 29

HAYS COUNTY, TX  
BARRON\_LAKE\_STX

### GAS PIPELINE CROSSING BORE DETAIL



SITE NAME: BARRON\_LAKE\_STX

SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610

DATE: 03/23/2023

SCALE: N.T.S

#### REVISIONS

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4/12/23	SUBMITTAL 1	CF

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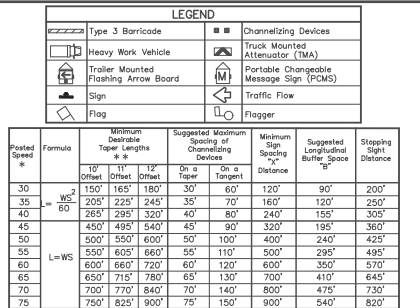


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Texas Firm Registration No. 10084500

PROJECT: 1023078031

TYP GAS BORE DETAIL

SHEET 28 OF 29



\* Conventional Roads Only  
\*\* Taper lengths have been rounded off.  
L=Length of Taper(FT) W=Width of Offset(FT) S=Posted Speed(MPH)

TYPICAL USAGE				
MOBILE	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY

2. Flashes attached to signs where signs are REQUIRED.

3. All traffic control devices are REQUIRED, except those denoted with the triangle symbol may be omitted when stated elsewhere in the plans, or for routine maintenance work, when approved by the Engineer.

4. On CR-1, CR-2, CR-3 and CR-4, the "NO STOPPING" or "NO WORK AHEAD" sign may be used if advance warning ahead of the flagger or R-1-2 "HELP" sign is less than 100 feet.

5. A Shoulder Vehicle with TMA should be used anytime it can be positioned 30 to 150 feet from the edge of the area of work. The use of a Shoulder Vehicle improves the performance or quality of the work. If workers are no longer present but road or work conditions require traffic control to remain in place, the use of 24" STOP signs or other channelizing devices may be substituted for the Shoulder Vehicle and TMA.

6. Additional Shoulder Vehicles with TMAs may be positioned as needed to protect work areas.

7. Flashes should be placed on the following:

**Section 1-1-2a)**

1. R-1-2 "HELP" sign traffic control may be used on projects with approaches that have multiple lane closures. For projects in urban areas, work areas should be no longer than one half city block. In rural areas on roadways with less than 2000 AWT, work areas should be no longer than 1/2 mile.

2. R-1-2 "HELP" sign with R1-2up "TO OCCURRING TRAFFIC" plaque shall be placed on a support at a 7 foot minimum mounting height.

**Section 1-1-2b)**

1. Flagger should use two-way radios or other methods of communication to control traffic.

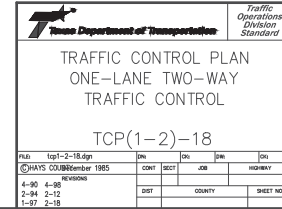
2. Length of work section should be based on the ability of flagger to communicate.

3. If work area is located near a horizontal or vertical curve, the buffer distances should be increased in proportion to the length of the curve.

4. Flagger should be positioned at the rear of the work area, facing the approaching traffic and a queue of stopped vehicles (see table above).

5. Channelizing devices should be placed as needed to maintain a pilot car in leading traffic and approved by the Engineer.

6. Flagger should use 24" STOP paddles to control traffic. Flashes should be omitted to emergency vehicles.



SITE ADDRESS:  
1955 FM 2001,  
BUDA, TX 78610

SCALE: N.T.S

REVISONS		
DATE	DESCRIPTION	BY
4/12/23	SUBMITTAL 1	CF

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL REMAIN THE PROPERTY OF MCI METRO BEING ISSUED IN STRICT CONFIDENCE AND SHALL NOT BE REPRODUCED, COPIED, OR USED FOR ANY PURPOSE WITHOUT SPECIFIC WRITTEN PERMISSION.

4801 Southwest Parkway, Building Two,  
Suite 100 Austin, Texas, 78735  
Ofc: 512.447.0575 email: info@sam.biz  
Texas Firm Registration No. 10064300

TCP



# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 6/5/2023 .

### Utility Company Information:

Name:  
Address: TX  
Phone:  
Contact Name:

### Engineer / Contractor Information:

Name: Centric  
Address: PO Box 133127 Spring 77393  
Phone: 9365815757  
Contact Name: Grant Nelson

### Hays County Information:

Utility Permit Number: TRN-2023-6298-UTL  
Type of Utility Service: natural gas / fiber optic  
Project Description:  
Road Name(s): Redwood Rd, , , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☒ Boring ☒ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department  
The above-mentioned permit was approved in Hays County Commissioners Court on .

07/06/2023

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Signature

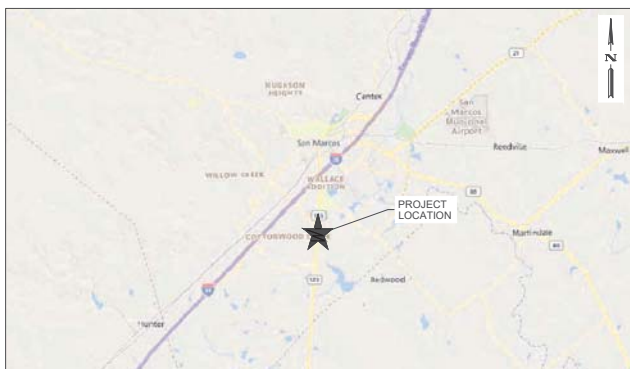
Title

Date

# UNIVERSAL NATURAL GAS / CENTRIC FIBER HIGH BRANCH OFFSITE - REDWOOD RD HAYS COUNTY PERMIT

HAYS COUNTY, TEXAS

May 16, 2023



VICINITY MAP

SCALE: N.T.S.



LOCATION MAP

SCALE: N.T.S.

SHEET INDEX	
NO.	TITLE
1	COVER SHEET
2	GENERAL NOTES
3	DETAIL SHEET
4	PLAN VIEW STA 15+75 TO 18+51

REV	DESCRIPTION	DATE	APP



HIGH BRANCH OFFSITE -  
REDWOOD RD  
COVER SHEET



DATE: May 16, 2023








DESIGN: JCM	RVW: RB
CAD: JCM	PROJECT ID: 133-001
SHEET 1 OF 4	

ORIGINAL PLOT SIZE: 22 X 34

J:\Projects\AUS\High Branch (133-001)\02 Design\01 Offsite\01 Gas\REDWOOD RD\HIGH BRANCH OFFSITE - REDWOOD RD.dwg Layout: GENERAL NOTES Date: 5/16/2023 8:41:30 AM

GENERAL NOTES:

1. TOTAL DISTANCE = 276 L.F.
2. MAOP = 60 PSI
3. ALL UTILITY WORK WITHIN THE COUNTY RIGHT OF WAY SHALL BE CONSTRUCTED PER SPECIFICATIONS AND REQUIREMENTS OF THE COUNTY.
4. ALL UTILITY SYMBOLS SHOWN REPRESENT APPROXIMATE LOCATIONS UNLESS OTHERWISE NOTED. CONTRACTOR SHALL REFER TO THE APPROPRIATE AGENCY'S STANDARD SPECIFICATIONS AND INSTALLATION DETAILS FOR ACTUAL LOCATIONS UNLESS OTHERWISE DIRECTED BY THE ENGINEER.
5. GAS MAINS/SERVICES SHALL HAVE A MINIMUM 2-FOOT VERTICAL CLEARANCE FROM ANY OTHER UTILITY AT ALL CROSSINGS.
6. ALL GAS DISTRIBUTION MAINS SHALL BE INSTALLED PER THE STANDARDS AND SPECIFICATIONS OF THE UTILITY PROVIDER.
7. GAS MAINS SHALL BE CAPPED AT ALL DEAD END LOCATIONS WITH END CAPS PER UTILITY PROVIDER STANDARDS AND SPECIFICATIONS.
8. CONTRACTOR SHALL INSTALL ALL TEES, BENDS, AND OTHER FITTINGS USING BUTTFUSION OR ELECTROFUSION PER THE INTENT OF THE PLANS.
9. ELEVATION AND PARCEL DATA SHOWN ARE DOWNLOADED FROM AVAILABLE GIS DATA AT THE TIME FROM THE COUNTY RECORDS, AND MAY NOT REPRESENT ACTUAL CONDITIONS. CONTRACTOR SHALL NOTIFY ENGINEER AND OWNER WITH ANY DISCREPANCIES.
10. CONTRACTOR SHALL OBTAIN WRITTEN PERMISSION FROM LAND OWNERS TO OPEN CUT DRIVEWAYS AND SHALL MAINTAIN ACCESS ACROSS THE DRIVEWAYS THROUGHOUT CONSTRUCTION.
11. BORE PIT SHALL BE APPROXIMATELY 8'X16'X16' IN DEPTH. CONTRACTOR MAY VARY THE SIZE AND DEPTH AS NECESSARY FOR CONSTRUCTION. SPOILS FROM THE PIT SHALL REMAIN ADJACENT TO THE PIT IT WAS EXCAVATED FROM AND PLACED IN SUCH A MANNER THAT DOES NOT IMPACT THE ROADWAY OR ADJACENT PRIVATE LAND.
12. CONTRACTOR SHALL ADHERE TO TEXAS ADMINISTRATIVE CODE FOR UNDERGROUND UTILITIES, INCLUDING BUT NOT LIMITED TO OBJECT MARKERS.
13. CONTRACTOR SHALL COORDINATE WITH UTILITY PROVIDER FOR OBJECT MARKERS TYPE AND MATERIALS TO BE INSTALLED AT POINTS OF ENTRY TO THE RIGHT OF WAY, AT EVERY CROSSING, AND EVERY 500 L.F. ALONG THE PIPELINE ALIGNMENT PER TAC 21.40.
14. CONTRACTOR SHALL ADHERE TO STANDARDS AND SPECIFICATIONS FOR THE INSTALLATION OF THE GAS MAIN WITH THE RAILROAD COMMISSION, TEXAS ADMINISTRATIVE CODE, AND THE UTILITY PROVIDER.
15. THE UTILITY PROVIDER WILL PLACE CONSTRUCTION STAKING SHOWING THE CONTRACTOR THE LOCATION OF THE EXISTING RIGHT-OF-WAY.
16. CONTRACTOR SHALL CONTACT TEXAS-811 A MINIMUM OF TWO BUSINESS DAYS PRIOR TO BEGINNING WORK. CONTRACTOR IS RESPONSIBLE FOR IDENTIFYING AND PROTECTING ALL EXISTING UTILITIES.
17. WHEN BORING UNDER EXISTING DRIVEWAYS OR ROADS, CONTRACTOR TO BORE GAS AND FIBER UTILITIES SEPARATELY TO ENSURE 12" SEPARATION.
18. HANDHOLE TO BE INSTALLED APPROXIMATELY EVERY 1,000 FEET.
19. OPEN TRENCHES WITHIN 10' OF THE TRAVEL LANE REQUIRE TRAFFIC RATED BARRIERS.
20. NO OPEN TRENCHES ALLOWED DURING NON-WORKING HOURS.
21. CONTRACTOR IS RESPONSIBLE FOR THE DESIGN OF THE PROPOSED HORIZONTAL DIRECTIONAL DRILLING (HDD) CONSTRUCTION METHOD SHOWN IN THE DRAWING. THE PROFILE VIEW OF THE PROPOSED HDD IS INTENDED ONLY TO SHOW AN EXAMPLE BORE PATH FOR PERMITTING PURPOSES.

LEGEND	
TOTAL LF OF INSTALL	276 LF
TOTAL LF OF TRENCH	201 LF
TOTAL LF OF BORE	75 LF
 G/F0	PROPOSED 8" NATURAL GAS & 1.25" HDPE DUCT - 276 LF
	PROPOSED SLICK BORE
	RIGHT-OF-WAY
	PROPERTY LINE
 PL	EXISTING PIPELINE
	EXISTING HANDHOLE
 G/F0	EXISTING 8" NATURAL GAS & 1.25" HDPE DUCT

REV	DESCRIPTION	DATE	APP



HIGH BRANCH OFFSITE -  
REDWOOD RD  
GENERAL NOTES

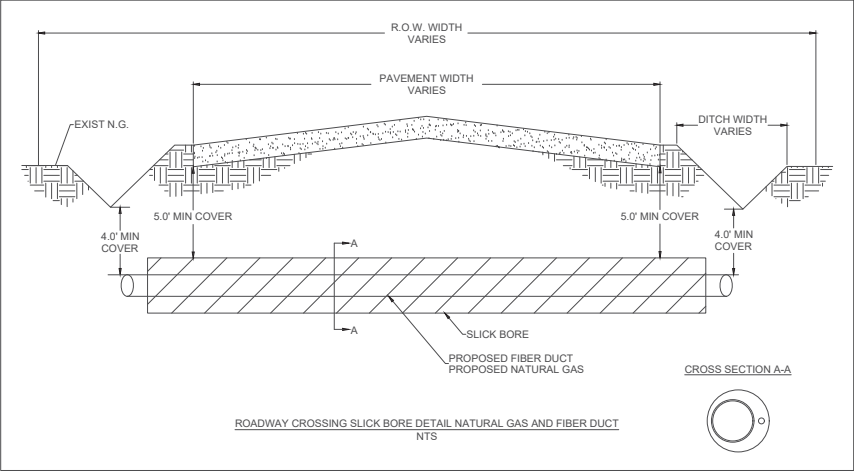




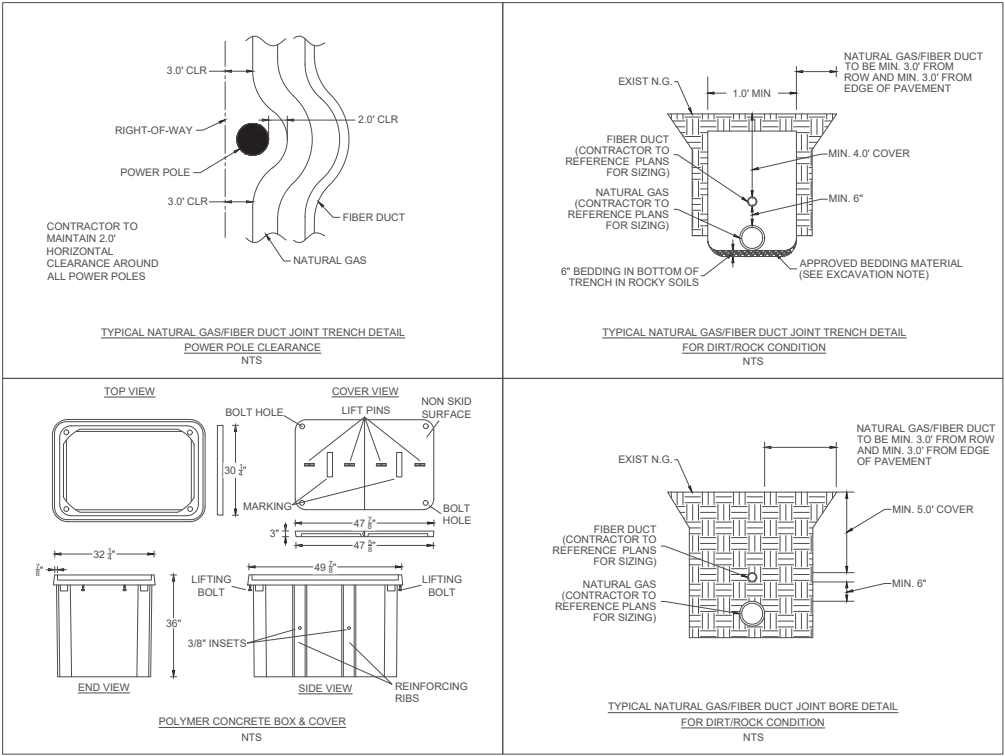
Know what's below.  
Call before you dig.

DATE: May 16, 2023

DESIGN: JCM	
CAD: JCM	RWW: RB
PROJECT ID: 133-001	
SHEET 2	OF 4



**EXCAVATION NOTE:**  
ALL EXCAVATIONS SHALL BE OPEN CUT, WITH BANKS KEPT AS NEARLY VERTICAL AS POSSIBLE. THE TRENCH FLOOR SHALL PROVIDE A UNIFORM BEARING FOR EACH FULL LENGTH OF PIPE SECTION. PERFORM ALL EXCAVATIONS OF WHATEVER SUBSTANCE ENCOUNTERED TO THE DEPTHS SHOWN OR INDICATED ON THE DRAWINGS. PIPE SHALL BE BEDDED WITH A MINIMUM OF 6" OF APPROVED MATERIAL ABOVE AND BELOW PIPE. CONTRACTORS ARE RESPONSIBLE FOR ALL SAFETY REQUIREMENTS (OSHA AND ANY OTHER AGENCIES THAT APPLY) ASSOCIATED WITH TRENCH CONSTRUCTION AND SHALL BE REQUIRED TO HAVE A TRENCH SAFETY PLAN PREPARED BY AN APPROVED PROFESSIONAL.



Know what's below.  
Call before you dig.

DATE: May 16, 2023

REV	DESCRIPTION	DATE	APP



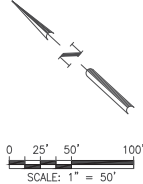
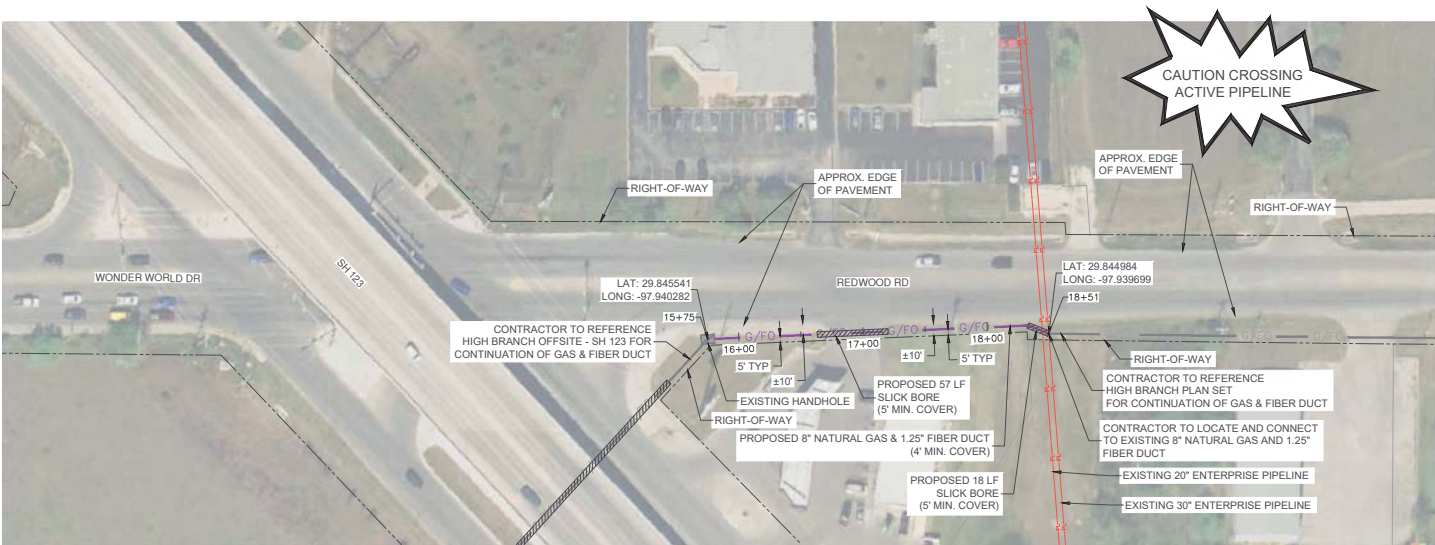
HIGH BRANCH OFFSITE -  
REDWOOD RD  
DETAIL SHEET



DESIGN: JCM	
CAD: JCM	RWW: RB
PROJECT ID: 133-001	
SHEET 3	OF 4



J:\Projects\AUS\High Branch\133-001\02 Design\01 Offsite\01 Gas\REDWOOD RD\HIGH BRANCH OFFSITE - REDWOOD RD.dwg    Plotted: 5/16/2023 8:41:31 AM    ORIGINAL PLOT SIZE: 22 X 34



PLAN VIEW STA 15+75 TO 18+51  
SCALE: 1" = 50'

		DATE	APR
		DESCRIPTION	
REV			
HIGH BRANCH OFFSITE - REDWOOD RD			
PLAN VIEW STA 15+75 TO 18+51			
			
5/16/2023			
DESIGN: JCM			
CAD: JCM		RWV: RB	
PROJECT ID: 133-001			
SHEET 4 OF 4			



Know what's below.  
Call before you dig.

DATE: May 16, 2023



# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after .

### Utility Company Information:

Name: Texas Gas Service  
Address: 9228 Tuscany Way Austin TX  
Phone:  
Contact Name:

### Engineer / Contractor Information:

Name:  
Address: TX  
Phone:  
Contact Name:

### Hays County Information:

Utility Permit Number: TRN-2023-6241-UTL  
Type of Utility Service: 6" Natural Gas PE Main  
Project Description:  
Road Name(s): Nutty Brown Rd, Kit Carson Dr, Davy Crockett Dr, , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☒ Boring ☒ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department  
The above-mentioned permit was approved in Hays County Commissioners Court on .

07/06/2023

---

Signature

Title

Date

NOTES:

- CONTRACTOR SHALL NOTIFY THE PUBLIC WORKS DEPARTMENT 24 HOURS PRIOR TO STARTING CONSTRUCTION OR CLEARING OPERATIONS.
- CONTRACTOR SHALL CALL "ONE CALL" AT 1-800-344-8377 FOR UTILITY LOCATIONS AT LEAST 48 HOURS PRIOR TO ANY WORK IN CITY EASEMENTS OR STREET RIGHT OF WAYS.
- THIS PROJECT IS LOCATED WITHIN THE BEAR CREEK WATERSHED (CLASSIFIED AS BARTON SPRINGS ZONE) AND SHALL BE DEVELOPED, CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH CHAPTER 25 OF THE CODE OF THE CITY OF AUSTIN.
- A/NO X PORTION OF THIS SITE IS LOCATED WITHIN PARKLAND OR LAND USED FOR PARK PURPOSES. (IF SUCH LAND IS INCLUDED, DOCUMENTATION OF PARKS AND RECREATION DEPT APPROVAL IS REQUIRED AT THE TIME OF SUBMITTAL FOR GENERAL PERMIT PROGRAM APPROVAL.)
- X A/NO PORTION OF THIS SITE IS LOCATED WITHIN THE 100-YEAR FLOODPLAIN, PER CITY OF AUSTIN AND FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAPS.
- THIS PROJECT IS/IS NOT X WITHIN THE EDWARDS AQUIFER RECHARGE ZONE AS DEFINED BY THE CITY OF AUSTIN. THIS PROJECT IS/IS NOT X WITHIN THE EDWARDS AQUIFER RECHARGE ZONE AS REGULATED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
- THERE ARE/ARE NO X CRITICAL ENVIRONMENTAL FEATURES WITHIN 150' OF ANY PORTION OF THIS PROJECT. A FIELD INVESTIGATION HAS BEEN PERFORMED AS A PART OF THIS PROJECT. A FIELD INVESTIGATION X HAS NOT BEEN PERFORMED AS A PART OF THIS PROJECT AND IS NOT REQUIRED.
- THE STANDARD SHEETS INCLUDED IN THIS PLAN SET WERE PROVIDED BY THE GENERAL PERMIT PROGRAM OFFICE FOR USE ON GENERAL PERMIT PROJECTS ONLY. IF ANY MODIFICATIONS TO THE SHEETS WERE MADE, THEY ARE CLEARLY INDICATED ON THE SHEET ITSELF AND IN THE COVER SHEET INDEX.
- ADDITIONAL TRENCH E/S CONTROL: TRIANGULAR SEDIMENT FILTER DIKE WILL BE INSTALLED ACROSS FULL WIDTH OF TRAFFIC CLOSURE AND DOWNSTREAM OF CONSTRUCTION AREA, PERPENDICULAR TO CURB. FILTER DIKE TO FOLLOW ACTIVE CONSTRUCTION. REMOVING AND RE-SETTING FILTER DIKE IS CONSIDERED SUBSIDIARY TO BARRICADES AND TRAFFIC HANDLING.
- PROJECT SCHEDULE MUST BE APPROVED BY THE GENERAL PERMIT PROGRAM (GPP) COORDINATOR. INSTALLATION AND REMOVAL OF TEMPORARY AND PERMANENT EROSION/SEDIMENTATION CONTROLS MUST BE REFLECTED IN THE SCHEDULE, BY STATION NUMBER. GPP INSPECTOR MUST BE NOTIFIED A MINIMUM OF 48 HOURS IN ADVANCE OF TRANSITION BETWEEN PHASES.
- APPROPRIATE EASEMENTS/APPROVALS MUST BE SECURED AND DOCUMENTED FOR PROJECT AREAS LOCATED OUTSIDE OF RIGHT OF WAYS. NO WORK SHALL BE PERFORMED WITHIN THESE AREAS UNTIL ASSOCIATED RIGHT OF ENTRY HAS BEEN SECURED. ADDITIONALLY, PROJECT PORTIONS IMPACTED BY LACK OF RECORDED DOCUMENT NUMBERS WILLO NOT BE CONSIDERED FOR FORMAL GPP REVIEW.
- CONTRACTOR SHALL STAKE ALL PROPOSED SERVICE CONNECTIONS LOCATED WITHIN THE CRITICAL ROOT ZONE OF TREES 8" IN CALIPER AND LARGER AT LEAST 21 CALENDAR DAYS PRIOR TO CONSTRUCTION OF SUCH SERVICES. STAKING SHALL CONSIST OF A LATH WITH NAIL AND PAINT MARKINGS. IN CASES WHERE A STAKE CANNOT BE PLACED WITHOUT DAMAGING PROPERTY, CONTRACTOR MAY USE PAINT ONLY. ONCE STAKING IS COMPLETED, IT IS THE CONTRACTOR'S RESPONSIBILITY TO INFORM THE CITY OF AUSTIN'S CONSTRUCTION INSPECTOR WITHIN TWENTY-FOUR HOURS. THE CITY OF AUSTIN'S CONSTRUCTION INSPECTOR WILL THEN COORDINATE A FIELD REVIEW OF THE SERVICE LOCATIONS WITH THE GENERAL PERMIT PROGRAM COORDINATOR AND PROPERTY OWNERS. SERVICE LINE LOCATIONS MAY BE ADJUSTED BASED ON THE REVIEW AND WILL BE RESTAKED BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE CONTRACT. ALL SERVICE LINE STAKING SHALL BE MAINTAINED UNTIL THE SERVICE IS INSTALLED.
- THIS NOTE IS BEING PLACED ON THE PLAN SET IN THE ABSENCE OF A TEMPORARY TRAFFIC CONTROL PLAN (TCP) WITH THE FULL UNDERSTANDING THAT AN ENGINEERED TCP SHALL BE SUBMITTED TO TOPREVIEW@AUSTINTEXAS.GOV OR REVIEW A MINIMUM OF 6 WEEKS PRIOR TO THE START OF CONSTRUCTION. THE APPLICANT/PROJECT REPRESENTATIVE FURTHER RECOGNIZES THAT A TOP REVIEW FEE IS REQUIRED FOR THE INITIAL REVIEW AND ALL REVIEWS, AS PRESCRIBED BY THE MOST CURRENT VERSION OF THE CITY'S FEE ORDINANCE.

SHEET LIST TABLE	
SHEET NUMBER	SHEET TITLE
1	COVER
2	SYMBOLOLOGY
3	SITE PLAN
4	NUTTY BROWN ROAD (1+00 - 4+50)
5	NUTTY BROWN ROAD (STA 4+50 - 9+50)
6	NUTTY BROWN ROAD (STA 9+50 - 12+00)
7	KIT CARSON DRIVE (STA 12+00 - 16+50)
8	KIT CARSON DRIVE (STA 16+50 - 21+50)
9	KIT CARSON DRIVE (STA 21+50 - 26+50)
10	KIT CARSON DRIVE (STA 26+50 - 31+50)
11	KIT CARSON DRIVE (STA 31+50 - 36+00)
12	KIT CARSON DRIVE (STA 36+00 - 40+50)
13	KIT CARSON DRIVE (STA 40+50 - 45+50)
14	KIT CARSON DRIVE (STA 45+50 - 49+50)
15	DAWY CROCKETT DRIVE (STA 49+50 - 54+00)
16	DAWY CROCKETT DRIVE (STA 54+00 - 58+50)
17	DAWY CROCKETT DRIVE (STA 58+50 - 62+50)
18	DAWY CROCKETT DRIVE (STA 62+50 - 67+50)
19	DAWY CROCKETT DRIVE (STA 67+50 - 72+50)
20	DAWY CROCKETT DRIVE (STA 72+50 - 77+50)
21	DAWY CROCKETT DRIVE (STA 77+00 - 81+50)
22	DAWY CROCKETT DRIVE (STA 81+50 - 85+50)
23	DAWY CROCKETT DRIVE (STA 85+50 - 90+50)
24	DAWY CROCKETT DRIVE (STA 90+50 - 95+50)
25	DAWY CROCKETT DRIVE (STA 95+50 - 100+50)
26	DAWY CROCKETT DRIVE (STA 100+50 - 104+50)
27	DAWY CROCKETT DRIVE (STA 104+50 - 108+00)
28	CONSTRUCTION DETAILS AND NOTES
29	TREE PROTECTION AND ENVIRONMENTAL DETAILS AND NOTES 1
30	TREE PROTECTION AND ENVIRONMENTAL DETAILS AND NOTES 2
31	TRAFFIC CONTROL PLAN DETAIL & TEST STATION DETAIL
32	BILL OF MATERIALS

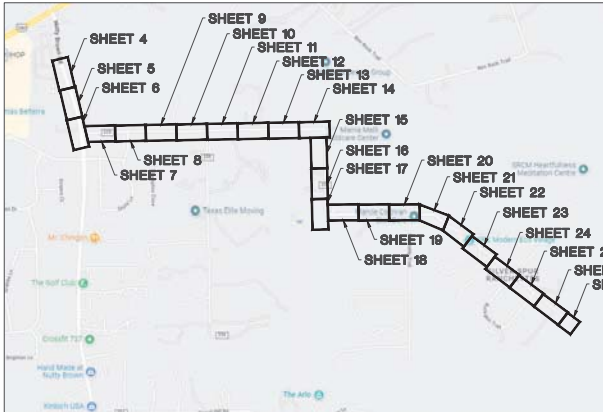
GENERAL PERMIT PROGRAM CORRECTIONS RECORD					
NUMBER	DESCRIPTION	BY	CORRECT (C) ADD (A) VOID (V) SHEET NUMBER	TOTAL SHEETS IN CORRECTION PLAN SET	CITY OF AUSTIN APPROVAL/DATE

TOTAL WORK ORDER QUANTITIES	
TOTAL PIPE INSTALLATION	QTY
6" PE (BORE)	5182'
6" PE (OPEN TRENCH)	5292'
1/2" PE (FOR TRACER WIRE)	5182'
TOTAL PIPE RETIREMENT	QTY
6" PE	9'



**Texas Gas Service**  
A Division of ONE Gas

# NUTTY BROWN RD MLE GAS MAIN INSTALLATION MAOP: 60 PSIG



LOCATION MAP N.T.S.  
AUSTIN, TX

UTILITY LOCATIONS SHOWN ON PLAN ARE BASED ON FIELD AND DOCUMENT RESEARCH AND MAY BE NEITHER ACCURATE NOR COMPLETE. CONTRACTOR IS FULLY RESPONSIBLE FOR PHYSICALLY LOCATING THE HORIZONTAL AND VERTICAL LOCATION OF ALL UTILITIES IN THE CONSTRUCTION VICINITY PRIOR TO ANY WORK.



MWO: 2022-1001777253  
CUE: 35692

GENERAL PERMIT PROGRAM APPROVAL DOES NOT CONSTITUTE UTILITY ALIGNMENT/ASSIGNMENT APPROVAL.

RELEASE OF THIS APPLICATION DOES NOT CONSTITUTE A VERIFICATION OF ALL DATA, INFORMATION AND CALCULATIONS SUPPLIED BY THE APPLICANT. THE ENGINEER OF RECORD IS SOLELY RESPONSIBLE FOR THE COMPLETENESS, ACCURACY AND ADEQUACY OF HIS/HER SUBMITTAL, WHETHER OR NOT THE APPLICATION IS REVIEWED FOR CODE COMPLIANCE BY CITY ENGINEERS.

PROJECT INFORMATION:

OWNER:  
TEXAS GAS SERVICE

CONTACT:  
LINDA DUNKESON  
9228 TUSCANY WAY  
AUSTIN, TX 78754  
(512) 465-1135 (OFFICE)  
LINDADUNKESON@ONEGAS.COM

SUBMITTAL PREPARED BY:

**ENEngineering**

9442 CAPITAL OF TEXAS HIGHWAY, NORTH PLAZA 1, SUITE 544  
AUSTIN, TX 78759  
TEL: 630-353-4000  
FAX: 630-353-7777  
WWW.ENENGINEERING.COM  
TX BOARD FIRM # - 11507

SEALED BY:	DATE:
ISSUED FOR PERMIT	
SIGNATURE	DATE

CONTACT:  
PHIL DOLL, SR. PROJECT MANAGER  
PHONE:  
(800) 957-5764 (OFFICE)

SUBMITTED FOR APPROVAL BY:

ENGINEER OF RECORD DATE

APPROVED BY GENERAL PERMIT HOLDER:

TEXAS GAS SERVICE 12/15/2022  
FOR GENERAL PERMIT HOLDER DATE  
AGP-01-24-2023  
ANNUAL GENERAL PERMIT NUMBER

APPROVALS:

FOR TRAVIS COUNTY DATE

TRAVIS COUNTY PERMIT NUMBER DATE

TxDOT PERMIT NUMBER DATE

FOR AUSTIN WATER UTILITY DATE

CITY OF AUSTIN PARKS AND RECREATION DEPARTMENT MoU NUMBER DATE

APPROVAL FOR SITE DEVELOPMENT PERMIT:

GENERAL PERMIT PROGRAM COORDINATOR DATE  
PLANNING AND DEVELOPMENT REVIEW DEPARTMENT

DEVELOPMENT PERMIT NUMBER

SUBMITTAL DATE:

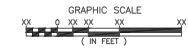
GENERAL PERMIT PROGRAM

- — — — — EXISTING RIGHT OF WAY
- - - - - EXISTING EASEMENT
- — — — — EXISTING CENTERLINE
- - - - - EXISTING LOT LINES
- EXISTING BUILDING OUTLINE
- EXISTING PAVEMENT
- . . — — EXISTING FLOODPLAIN
- EXISTING WATER EDGE
- RWL — — EXISTING REUSE WATER LINE
- CW — — EXISTING CHILLED WATER LINE
- WL — — EXISTING WATER  
(DOUBLE LINE WHEN ≥ 24")
- WW — — EXISTING WASTE WATER  
(DOUBLE LINE WHEN ≥ 15")
- SS — — EXISTING STORM SEWER  
(DOUBLE LINE WHEN ≥ 18")
- SD — — EXISTING STORM DRAIN  
(DOUBLE LINE WHEN ≥ 18")
- OE — — EXISTING OVERHEAD ELECTRIC
- UE — — EXISTING UNDERGROUND ELECTRIC
- OT — — EXISTING OVERHEAD TELEPHONE LINE
- UT — — EXISTING UNDERGROUND TELEPHONE LINE
- UC — — EXISTING UNDERGROUND COMMUNICATION LINE
- UF — — EXISTING UNDERGROUND FIBER LINE
- TS — — EXISTING UNDERGROUND TRAFFIC SIGNAL
- X — — EXISTING FENCE
- 0 — — EXISTING GUARDRAIL
- ||||| EXISTING RAILROAD
- 999 — — EXISTING CONTOUR

- MP2PE — — EXISTING GAS MAIN  
PRESSURE CLASS PIPE SIZE MATERIAL
- X— MP2PE —X— RETIRED GAS MAIN
- SV2PE — — EXISTING GAS SERVICE  
PRESSURE CLASS PIPE SIZE MATERIAL
- X— SV2PE —X— RETIRED GAS SERVICE
- DETAIL — EXISTING GAS MAIN
- - - - - DETAIL — EXISTING GAS MAIN  
(UNDERGROUND)
- X EXISTING RETIREMENT MARK
- I EXISTING BLIND FLANGE
- EXISTING REDUCER
- EXISTING TRANSITION FITTING
- ⊗ EXISTING GAS VALVE
- EXISTING LINE STOPPER
- EXISTING TAP TEE/HVT
- ⌒ EXISTING PIPE CROSSING
- ⌒ EXISTING CAP
- EXISTING FLOW ARROW

- PROPOSED GAS MAIN (BORE/INSERT)
- - - - - PROPOSED GAS MAIN (OPEN TRENCH)
- PROPOSED GAS SERVICE (BORE/INSERT)
- - - - - PROPOSED GAS SERVICE (OPEN TRENCH)
- DETAIL — PROPOSED GAS MAIN
- - - - - DETAIL — PROPOSED GAS MAIN  
(UNDERGROUND)
- I PROPOSED WELD TIE-IN
- PROPOSED REDUCER
- PROPOSED TRANSITION FITTING
- ⊗ PROPOSED GAS VALVE
- PROPOSED LINE STOPPER
- PROPOSED TAP TEE/HVT
- ⌒ PROPOSED PIPE CROSSING
- ⌒ PROPOSED CAP
- ⌒ PROPOSED ANODE
- PROPOSED FLOW ARROW
- ▨ PROPOSED PAVEMENT BREAK
- ▨ PROPOSED BORE PIT

- STORM DRAIN INLET
- ⊗ STORM DRAIN MANHOLE
- ⌒ CULVERT END
- ⊗ WASTE WATER MANHOLE
- ⊗ FIRE HYDRANT
- ⊗ REUSE WATER MANHOLE
- ⊗ WATER MANHOLE
- ⊗ WATER VALVE
- ⊗ WATER METER
- ⊗ TELEPHONE MANHOLE
- ⊗ COMMUNICATION MANHOLE
- ⊗ FIBER MANHOLE
- ⊗ ELECTRIC MANHOLE
- ⊗ LIGHT POLE
- ⊗ UTILITY POLE
- ⊗ ELECTRIC BOX
- ⊗ UNKNOWN MANHOLE
- ⊗ STREET SIGN
- ▨ TRAFFIC BARRIER
- ⊗ TREE
- ⊗ BUSH
- 00+00 | STATION MARK



NORTH ARROW

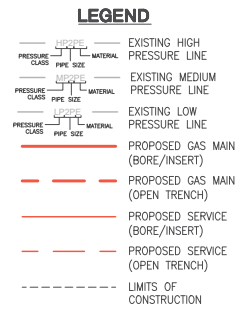
—AA— — — — — SEE MATCHLINE "AA" SHT # XX  
STATION 00+00

MATCHLINE

SCALE

SIGNATURE		DATE	
ISSUED FOR PERMIT			
PREPARED BY: <b>Evergreen Engineering</b> 18412 CAPITAL OF TEXAS HIGHWAY, NORTH PLAZA 1, SUITE 200, DALLAS, TEXAS 75259 TEL: 469-433-4000 FAX: 469-433-4001 WWW.EVERGREENENGINEERING.COM TX BOARD REG # - 11507			
Texas Gas Service A Division of Gulf States			
DESIGNED BY: J. MERCURI	DATE: 5/3/2023	CHECKED BY: S. HIRSCH	DATE: 5/3/2023
APPROVED BY: P. DOLL	DATE: 5/3/2023	SCALE: NOT TO SCALE	
NUTTY BROWN RD MLE GAS MAIN INSTALLATION SYMBOLOLOGY		PROJECT NO: 2022-1001777253	WORKSHEET NO: 6405
		DATE: 5/3/2023	TIME: 10:39:26.72
		SHEET 2 OF 32	

GENERAL PERMIT PROGRAM



ADDRESS TABLE				
ADDRESS RANGE	STREET	CROSS STREET 1	CROSS STREET 2	CROSS STREET 3
12507-12526	NUTTY BROWN RD	-	-	-
11099-110600	KIT CARSON DR	DRURY LN	DANIEL BOONE DR	-
10498-10101	DAVY CROCKETT DR	OLD BALDY TR	BUCKSKIN TRL	BUCKSKIN TRL

NUTTY BROWN RD MILE GAS MAIN INSTALLATION SITE PLAN		DRAWING BY J. MERCURI	DATE 5/3/2023	 <b>Texas Gas Service.</b> <i>A Division of Gulf State</i>	PREPARED BY <b>ENGINEERING</b> 9442 CAPITAL OF TEXAS HIGHWAY, NORTH FORT WORTH, TEXAS 76116 TEL. 817-335-3200 WWW.ENGINEERING.COM 15.0000 PWS # - 11007	SOURCE	DATE
APPROVED BY S. HIRSCH		P. DOLL	DATE 5/3/2023			<b>ISSUED FOR PERMIT</b>	
UNCLD 1002-100177253	WARD, GARY 6405 WY1611	DATE 5/3/2023	SCALE NOT TO SCALE	<b>GENERAL PERMIT PROGRAM</b>			
SHEET 3 OF 32							



# Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640  
(P) 512-393-7385 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## UTILITY PERMIT APPROVAL LETTER

**\*\* Notification must be given IN WRITING at least 24 hours before work begins and proper traffic control must be implemented throughout the work zone. \*\***

The utility company or any of its representatives, engineers, contractors, or authorized agents agree to use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation AND will insure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained during installation.

### General Special Provisions:

1. Construction of this line will begin on or after 6/1/2023 .

### Utility Company Information:

Name: TEXAS GAS SERVICE  
Address: 9228 TUSCANY WAY AUSTIN TX  
Phone: 5124211531  
Contact Name: TEXAS GAS SERVICE TGS

### Engineer / Contractor Information:

Name: Texas State Utilities  
Address: 2601 E. Howard Lane MANOR TX 78653  
Phone:  
Contact Name: Texas State Utilities

### Hays County Information:

Utility Permit Number: TRN-2023-6424-UTL  
Type of Utility Service: COMMERCIAL GAS LINE  
Project Description:  
Road Name(s): 235 Ledge Stone Dr, , , , , ,  
Subdivision:  
Commissioner Precinct:

What type of cut(s) will you be using ? ☐ Boring ☒ Trenching ☐ Overhead ☐ N/A

Authorization by Hays County Transportation Department

The above-mentioned permit was approved in Hays County Commissioners Court on .

A handwritten signature in black ink, appearing to read "Tyler P...".

Permit Coordinator

07/06/2023

Signature

Title

Date



[illegible]



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Judge Chris Johnson

Sponsor:

Commissioner Ingalsbe

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### Agenda Item:

Authorize the execution of a renewal Letter Agreement with the Community Supervision and Corrections Department (CSCD) related to the FY 2024 Veteran's Services - Veteran's Treatment Court Grant for Adult Probation Services. **INGALSBE/JOHNSON**

### Summary:

Commissioners Court authorized the original letter agreement with CSCD related to Veteran's Treatment Court on August 6, 2019, which is grant funded through Texas Veteran's Commission. As part of this program, CSCD provides one Adult Probation Officer to participate and collaborate in weekly staff meetings with the Veteran's Court team. The assigned officer will supervise the participants in the program and utilize Texas Risk Assessment System (TRAS) case classification instruments per Community Justice Assistance Standards & Local Adult Probation procedures.

The renewal grant period is July 1, 2023 through June 30, 2024 and the granting agency will reimburse all costs associated with the Adult Probation Officer assigned to these duties.

### Fiscal Impact:

Amount Requested: \$70,181

Line Item Number: 001-612-99-097.5448

### Budget Office:

Source of Funds: TVC Grant Funds

Budget Amendment Required Y/N?: No

Comments: This grant funded contract is budgeted during the annual budget process.

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Community Supervision and Corrections Department Agreement

G/L Account Validated Y/N?: Yes, Contract Services

New Revenue Y/N?: N/A

Comments:

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### Attachments

CSCD TVC Renewal Agreement





## Community Supervision and Corrections Department

*Serving the Courts and Communities of Caldwell, Comal and Hays Counties*

Eric A. Aguirre – Director

1703 S. Colorado, Box 9 ~ Lockhart, Texas 78644 ~ (512) 398-4307 ~ Fax (512) 398-3297

Honorable Ruben Becerra  
Hays County Judge  
Hays County Courthouse  
111 E. San Antonio St., Ste. 300  
San Marcos, Texas 78666

Date: June 22, 2023

Re: Veterans Treatment Court Extension of Letter Agreement

Dear Judge Becerra:

On August 6, 2019, a Letter of Agreement formally outlining the joint duties and responsibilities regarding the Hays County Veterans Treatment Court was approved by Hays County Commissioner's Court. The Agreement included compensation reimbursement from the County of Hays to the Community Supervision and Corrections Department (CSCD) for the salary and fringe benefits of the assigned Community Supervision Officer (CSO). Extensions were executed in the month of June for the years 2020, 2021, and 2022.

As per the agreement, and contingent on approval by Commissioner's Court and continued funding from the Texas Veterans Commission to Hays County, the CSCD requests that the agreement signed on August 6, 2019 be extended for the period of one year with the salary and fringe benefits of the assigned CSO being increased to **\$70,181.00** beginning on July 1, 2023 and ending on June 30, 2024.

Sincerely,

Eric Aguirre, CSCD Director  
Counties of Caldwell, Comal, and Hays

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Honorable Ruben Becerra  
Hays County Judge

# DECISION PACKAGE FOR NEW BUDGETED PROGRAM

(To be used for explanation/justification of new equipment, personnel, and programs)

Program/Equipment Name: FY2024 Hays VTC

Description of proposed new program:

Cost


Personnel:

CSO II Salary		\$ 54,166.67
FICA	0.0765	\$ 4,144
Retirement	0.1400	\$ 7,583
Insurance	\$622.60/Mo (PY2023 Rates) /MO (member only)	\$ -
Travel/Per Diem/Lodging		\$ 750
Registration Fees		\$ 250

Equipment:

	\$ -

Other:

UA Supplies (Test Kits)	\$2.50 per kit @ 200	\$ 500.00
UA Lab Confirmations	\$22.75/8 pangel screen @ 10	\$ 227.50
	\$18.00/etg-lcms @ 10	\$ 180.00
	\$14.00/etg-eig @ 170	\$ 2,380.00
		\$ -

Benefits of funding and consequences of not funding:


Total Cost

\$ 70,181

Department Head Signature

*Eric Aguirre*

6/22/2023



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Constable Ron Hood

Sponsor:

Commissioner Smith

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### Agenda Item:

Authorize the County Judge to execute an Amendment Order Form with Flock Group, Inc. for the Constable Pct. 4 Office to purchase a software subscription for one Falcon Flex LPR Camera System under the Sheriff's Office Master Agreement; authorize a purchasing waiver to the purchasing policy. **SMITH/HOOD**

### Summary:

The Falcon Flex LPR camera system is a license plate reader that will capture license plates and vehicle characteristics and will be installed on a mobile message board that will be placed throughout the Hays County Pct. 4 area. The device is leased on an annual subscription basis in order to have access to the software and ability to tie into additional networks through the platform. Hays County will own and control the data that is captured, Flock owns the hardware and will maintain and/or replace the device in the event of potential malfunction. Funds are available within the operating budget for this request.

### Fiscal Impact:

Amount Requested: \$3,500.00 (annually)  
\$776.71 (FY23 eff 7/11/23)  
Line Item Number: 001-638-00.5429

### Budget Office:

Source of Funds: General Fund  
Budget Amendment Required Y/N?: No  
Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a purchasing policy waiver of three quotes  
G/L Account Validated Y/N?: Yes, Software Maintenance and Licensing  
New Revenue Y/N?: N/A  
Comments:

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### Attachments

Flock Order Amendment



**FLOCK GROUP INC.  
AMENDMENT ORDER FORM**

This Amendment Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and TX - Hays County SO identified below (“**Agency**”) (each of Flock and TX - Hays County SO, a “**Party**”). This Amendment Order Form (“**Order Form**”) hereby incorporates and includes the previously executed agreement, dated 4/5/2022, relating to the provision of services by Flock to the TX - Hays County SO ( “**GOVERNMENT AGENCY CUSTOMER AGREEMENT**”) attached (the “**Terms**”), any schedules attached thereto, and incorporated herein by reference, which describe and set forth the general legal terms governing the relationship (collectively, the "**Agreement**" ). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations. In full consideration of the continued promises and warranties contained therein, this Amendment Order Form shall supersede, amend and replace any prior agreements between the Parties relating to the subject hereof. The Parties understand and agree that any prior orders or agreements between the Parties have been replaced and any outstanding services provided by Flock are now subject to this Agreement.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

The GOVERNMENT AGENCY CUSTOMER AGREEMENT is amended as follows: The Government Agency Agreement’s initial term commenced on September 1, 2022 and ends August 30, 2024, with annual payments due each September, such Additional Equipment listed in the Product Table below shall be prorated from date of signature of this amendment through August 30, 2023, with the first full annual payment due in line with the Government Agency Agreement in September 2023.

Customer: TX - Hays County SO	Contact: Mark Cumberland
Address: 1307 Uhland Road, San Marcos Texas 78666	Phone: (512) 393-7800
	E-Mail: mcumberland@co.hays.tx.us
Expected Payment Method:	Billing Contact: Mark Cumberland
Initial Term: 24 Months Renewal Term: 24 Months	Special Terms (If Applicable):

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$3,500.00
Flock Safety Flock OS			
FlockOS ™	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon ® Flex	Included	1	Included
Subtotal before Proration for Year 1:			\$3,500.00
Annual Recurring Subtotal:			\$3,500.00
Estimated Tax:			\$0.00
Contract Total:			\$7,000.00

By executing this Order Form, TX - Hays County SO represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

TX - Hays County SO

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Shell

---

### Agenda Item:

Authorize the Sheriff's Office to use existing funds of \$1,108.00 to purchase law enforcement equipment for SWAT and amend the budget accordingly. **SHELL/CUTLER**

### Summary:

The Sheriff's Office requests to use existing funds to purchase a Deftec 40mm single launcher. The 40mm launcher requested by SWAT is proposed as a less lethal tool designed to allow for the use of less-lethal force at extended ranges up to 70 meters. This significantly lowers the risk to all parties involved in a force incident that would normally be handled at much closer ranges.

The SWAT team has used a version of these launchers for two decades, and they have proven to be an irreplaceable asset in preventing unnecessary close contact and injury prevention. These launchers accept different munitions for different effects, such as chemical and diversionary making them extremely versatile and suited for a wide range of situations. The launcher will be issued to and utilized by a less-lethal certified SWAT Team operator.

This purchase costs \$1,108.00 with GT Distributors, utilizing buyboard #698-23. No additional funds are needed; SWAT Law Enforcement Supplies funding will be used and amended to the Sheriff's Office Law Enforcement Equipment Operating general ledger.

### Fiscal Impact:

Amount Requested: \$1,108.00

Line Item Number: 001-618-00.5717\_400

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$1,108 - Increase LE Equipment\_Ops 001-618-00.5717\_400

(\$1,108) - Decrease LE Supplies\_SWAT 001-618-00.5206\_004

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, Buyboard #698-23

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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### Attachments

GT QUOTE #QTE0171867



GT Distributors - Austin  
 1124 New Meister Ln., Ste 100  
 Pflugerville TX 78660  
 (512) 451-8298 Ext. 0000

Quote	QTE0171867
Date	4/21/2023
Page:	1

**Bill To:**

Hays County Sheriffs Office (TX)  
 Attn: Accounts Payable  
 1303 Uhland Road  
 San Marcos TX 78666

**Ship To:**

Hays County Sheriffs Office (TX)  
 1307 Uhland Road  
 San Marcos TX 78666

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
DT 042123	000262	BF	FACTORY DIRECT	NET 15	0/0/0000	2,744,750

Quantity	Item Number	Description	UOM	Unit Price	Ext. Price
1	DT-1425*	DefTec *FEL* LMT 40mm L.W. Single Launche	EA	\$1,087.07	\$1,087.07
1	NOTES:	Notes:  Quotation reflects BuyBoard Contract 698-23. Contract period 4/1/23-3/31/24. Email BuyBoard PO's to info@buyboard.com	EA	\$0.00	\$0.00

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE  
 PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR  
 REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Thank you, your salesman was Adam Balak

Subtotal	\$1,087.07
Misc	\$0.00
Tax	\$0.00
Freight	\$20.00
Total	\$1,107.07



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Mike Jones

Sponsor:

Judge Becerra

---

### Agenda Item:

Authorize an amendment for expenditures related to DR-4705 Winter Storm Mara related to debris removal and cleanup operations and amend the budget accordingly. **BECERRA/MIKE JONES**

### Summary:

On February 14, 2023 the court authorized \$500k as an emergency use of reserves for expenses related to debris removal as a result of the Winter Storm. On April 22nd a federal disaster declaration was issued offering financial aid to local governments for cleanup and recovery efforts. The direct expenses are anticipated to be close to \$750k with 75% reimbursed by FEMA. An additional \$250k will be budgeted for remaining project expenses and close out.

### Fiscal Impact:

Amount Requested: \$250,000

Line Item Number: 001-656-99-182.4301/.5448

### Budget Office:

Source of Funds: FEMA Grant Funds

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$250,000) - Increase Intergovernmental Revenue 001-656-99-182.4301

\$250,000 - Increase Contract Services 001-656-99-182.5448

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sheriff Cutler

Sponsor:

Commissioner Shell

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### Agenda Item:

Ratify the authorization of Cornerstone Detention Products, Inc. to conduct emergency repairs to the intercom system located in the Hays County Jail pursuant to the GSA Contract GA-07-269AA and our Service Agreement and authorize a discretionary exemption pursuant to Texas Local Government Code 262.024 (a)(7)(D) for all open market items.

**SHELL/CUTLER**

### Summary:

The Hays County Sheriff's Department called Cornerstone Detention Products, Inc. to perform emergency work on the intercom system in the Hays County Jail on Friday, July 7, 2023. The work will be covered under the GSA Contract GA-07F-269AA and/or our Service Agreement, however the contracts do not include travel, mileage, lodging and per diems. The Hays County Sheriff's Office is requesting a discretionary exemption pursuant to Texas Local Government Code 262.024 (a)(7)(D) for all open market items.

### Fiscal Impact:

Amount Requested: TBD

Line Item Number: 001-618-03.5451

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: GSA Contract GA-07F-269AA and requires a discretionary exemption pursuant to Texas Local Government Code 262.024 (a)(7)(D) for all open market items

G/L Account Validated Y/N?: Yes, Building Maintenance and Repair

New Revenue Y/N?: N/A

Comments:

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## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry H. Borcharding

Sponsor:

Commissioner Ingalsbe

Co-Sponsor:

Commissioner Shell

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### Agenda Item:

Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement between Hays County and Freese & Nichols, Inc regarding inspection of MS4 facilities as required by the City of San Marcos and authorize a discretionary exemption pursuant to Texas Local Government Code Chpt. 262.024(a) (4). **INGALSBE/SHELL/BORCHARDING**

### Summary:

The City of San Marcos requires owners of MS4 (Municipal Separate Storm Sewer System) facilities to have an approved firm inspect all such facilities every two years. Freese & Nichols is an approved provider of the needed services. Facilities are located at the Sheriffs Office, Juvenile Center, Government Center, and Elections/IT.

### Fiscal Impact:

Amount Requested: \$7,776.00

Line Item Number: 020-710-00.5448\_010

### Budget Office:

Source of Funds: Road & Bridge General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(4) for professional services.

G/L Account Validated Y/N?: Yes, Contract Services Road Work

New Revenue Y/N?: N/A

Comments:

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### Attachments

MS4 PSA

**PROFESSIONAL SERVICES AGREEMENT**  
**HAYS COUNTY, TEXAS**

**HAYS COUNTY**, a political subdivision of the State of Texas (hereinafter the “County”) with administrative offices at 111 E. San Antonio, Suite 300, San Marcos, Texas 78666, and **FREESE AND NICHOLS, INC.** hereinafter “Contractor”), whose primary place of business is located at **10431 Morado Circle, Unit 300, Austin, TX 78759**, hereby enter into this Professional Services Agreement (hereinafter “Agreement”) effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (hereinafter “Effective Date”). The County and Contractor (collectively “the parties to this Agreement” or “the parties”) agree as follows:

**1. OVERVIEW**

We understand that inspections and reports are needed to comply with the City of San Marcos’ (City) requirements for annual inspections of permanent stormwater management facilities. We also understand that these inspection reports must be submitted to the City by January 31, 2024. FNI proposes to provide professional services as requested by the County to assist with inspection of the County’s four (4) permanent stormwater management facilities located within the City of San Marcos and development of the inspection reports as fully described in **Exhibit “A”**.

**2. SERVICES**

Contractor agrees to perform services for the County in accordance with the County’s instructions and, in particular, the instructions of **Jerry Borcharding** and/or legal counsel for the Hays County Commissioners Court; and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be limited to those services and terms attached hereto as Exhibit “A”, and any subsections of Exhibit “A”, if as and when they are attached hereto and signed by the parties (collectively “the Work”). If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibits “A” and/or “C”), the Compensation cited in Section 5 of this Agreement may also be amended to conform with the change in Scope of Services, as agreed by the parties.

**3. ADDITIONAL TERMS**

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit “C”, attached hereto.

**4. DURATION**

The parties agree that the Work shall be completed **two (2) months** after commencement date. (hereinafter the “Completion Date”). In the event that Contractor is unable to complete the Work by the Completion Date, Contractor shall request an extension of the Completion Date in writing no later than fifteen (15) business days prior to the Completion Date. The County may grant extensions of the Completion Date for all reasonable extension requests and shall do so in writing.

**5. COMPENSATION**

Contractor will be compensated for the Work on an hourly-charge basis, the terms of which are

cited in Contractors rate schedule, which is attached hereto as Exhibit “B.” Despite any reference to Contractors rate schedule, which shall be used to calculate monthly invoice amounts under this Agreement or a change in the Scope of Services (i.e. Amendment), the parties agree that the County shall pay Contractor a total fee not to exceed **seven thousand seven hundred and seventy-six dollars (\$7,776 USD)** for the Work under this Agreement.

## **6. PAYMENT**

Contractor shall invoice the County for the Work performed under this Agreement on a monthly basis, beginning at the end of the first full month following the Effective Date. The County agrees to promptly pay all invoices in accordance with Texas Government Code Chapter 2251 and by sending payment to Contractor’s address stated in Section 8, below.

## **7. NOTICE OF COMPLETION**

Upon completion of the Work, Contractor shall send a Notice of Completion to the County in writing, and the County shall have the option to inspect the Work (or the product thereof) before it is considered complete under this Agreement. If the County is satisfied that the Work under this Agreement is complete, the County shall send Contractor an Acceptance of Completion in writing. If, after inspection, the County does not agree that the Work is complete or believes that the Work is of deficient quality, the County shall send Contractor a Deficiency Letter, stating the specific aspects of the Work that are incomplete and/or deficient. If, after ten (10) business days from the County’s receipt of Contractor’s Notice of Completion, the County does not send Contractor either an Acceptance of Completion or a Deficiency Letter, the Work under this Agreement shall be considered complete.

## **8. NOTICE (GENERAL)**

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Hays County, Attn: County Judge, 111 E. San Antonio, Suite 300 San Marcos, Texas 78666; <bert.cobb@co.hays.tx.us>.

All notices issued by the County under or regarding this Agreement shall be provided in writing to Contractor at its primary place of business.

Notices from one party to another under this Section may be made by U.S. Mail, parcel post, Facsimile, or Electronic Mail, sent to the designated contact at any of the designated addresses cited above.

## **9. INSURANCE**

Contractor agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County’s acceptance of Contractor’s Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, Contractor shall, at its sole expense, provide and maintain Commercial General Liability insurance that meets or exceeds the industry standard for professional services providers in Contractor’s field of employment and for the type of services that are being performed by Contractor under this Agreement. Such insurance coverage shall specifically name the COUNTY as co-insured. This insurance coverage shall cover all perils arising from the activities of Contractor, its officers, directors, employees, agents or sub-contractors, relative to this Agreement. Contractor shall be responsible for any deductibles stated in the policy. A copy of the current Certificate of Liability Insurance is attached hereto as Exhibit “D”. A true copy of each new Certificate of Liability

Insurance shall be provided to the COUNTY within seven (7) of the new policy date at the following address: Office of General County, Hays County Courthouse, 110 East San Antonio, Suite 202, San Marcos, Texas 78666.

So long as this Agreement is in effect, Contractor shall not cause such insurance to be canceled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days after the COUNTY has received written notice as evidenced by a return receipt of registered or certified mail.

#### **10. MUTUAL INDEMNITY**

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable.

The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement.

Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

#### **11. COMPLIANCE WITH LAWS**

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

#### **12. SURVIVAL**

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 3, 5, 8, 10, 12, 14, 15, 16, 17, 18, 20, 21 and 22.

#### **13. FORCE MAJEURE**

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

#### **14. SEVERABILITY**

If any Section or provision of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is

possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are as consistent with the parties' intents as possible.

#### **15. MULTIPLE COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

#### **16. SECTION HEADINGS, EXHIBITS**

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled "Overview," shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

#### **17. WAIVER BY PARTY**

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

#### **18. GOVERNING LAW AND VENUE**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Hays County, Texas.

#### **19. ASSIGNMENT**

Neither party to this Agreement may assign its duties, interests, rights, benefits and/or obligations under this Agreement, in whole or in part, without the other party's prior written consent thereto.

#### **20. BINDING EFFECT**

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

#### **21. ENTIRE AGREEMENT; AMENDMENT**

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this Agreement must be made in writing and signed by the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.

#### **22. WORK PRODUCT**

Any and all product, whether in the form of calculations, letters, findings, opinions, or the like, shall be the property of Hays County during and after performance of the Work. Contractor shall have a right to retain a copy of all Work product for record-keeping purposes.

**23. TERMINATION BY COUNTY**

This Agreement may be terminated by Hays County, for any reason whatsoever, by providing thirty (30) days written notice to Contractor. Any approved services provided under this Agreement up to the date of termination may be invoiced by Contractor after the termination date, and payment of said invoice shall not be unreasonably withheld by the County.

*Signatures by the parties to this Professional Services Agreement follow on the next page.*

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND DO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.

\_\_\_\_\_  
Hays County, Texas

By: Ruben Becerra  
Hays County Judge

\_\_\_\_\_  
Free  and Nichols, Inc.

By: John New, PE  
Vice President



## **EXHIBIT A**

### **Scope of Work**

FNI proposes to provide professional services as requested by the County to assist with inspection of the County's four (4) permanent stormwater management facilities within the City of San Marcos and development of the inspection reports as described in the following Tasks:

#### **Task 1            Data Collection**

FNI will coordinate with the City to obtain the approved site plan design drawings for each facility to be inspected. If available, FNI will obtain copies of maintenance records for each facility from the County. These shall be provided prior to submittal of the draft inspection packet. FNI will review the plans of the existing facilities and prepare for the field inspections.

#### **Task 2            Field Inspections**

FNI will perform one (1) visual inspection of the existing facilities (using the City inspection forms as guidance) and will endeavor to determine if the facilities are functioning as originally designed, require maintenance to maintain functionality, have significant issues that impair functionality or require immediate maintenance or repair. FNI will take photographs corresponding to each section of the inspection forms to support the assessment. Visual inspections will include:

- One (1) bioretention basin: Sheriff's Office (1307 Uhland Road)
- One (1) dry detention basin: Juvenile Detention Center (2250 Clover Barker)
- One (1) wet basin: Government Center (712 S. Stagecoach Trail)
- One (1) rain garden: Dick's Classic Car Museum (120 Stagecoach Trail)

#### **Task 3            Reporting**

FNI will compile the inspection report packets for each facility including:

- Permanent Stormwater Management Facility Inspection Cover Sheet (1 per inspection regardless of the number of facilities inspected).
- Inspection form (one for each facility inspected) – completed inspection forms with engineer's assessment, comments, photographs, and plan sheets.
- Maintenance records (if available).

FNI will submit the draft inspection report packets to the County for review, and conduct one (1) phone meeting with the County to discuss any maintenance or functional issues observed during the visual inspection, as well as the timeline for expected completion of maintenance or repair activities (required to be included in the submittal to the City). FNI will then incorporate comments from the County into the inspection report packets and submit the final inspection report packets to the City and County (email in PDF format). If a facility is deemed to "fail" the inspection, FNI will submit the report to the City within 5 business days from the time of the inspection as required by the City. Reports for "passed" or "passed with conditions" facilities shall be submitted to the CITY based on the timeline outlined above.

**ADDITIONAL SERVICES**

FNI may provide the following services for an additional fee upon request from the County:

- Facility re-inspection.
- Additional site visits other than the one (1) inspection.
- Performing detailed field measurements and/or survey beyond a visual assessment.
- Preparing engineering documents (PS&E) for the repairs and maintenance of a facility beyond the general recommendations made on the inspection form.

**RESPONSIBILITIES OF HAYS COUNTY**

Hays County shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as the County's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define the County's policies and decisions with respect to FNI's services for the Project.
- B. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.
- C. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- D. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as the County deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.

## **DESIGNATED REPRESENTATIVES**

FNI and the County designate the following representatives:

### **Hays County Designated Representative**

Mr. Jim Parman  
P.O. Box 906  
San Marcos, Texas 78667  
Phone: 512-738-2555  
e-mail: James.Parman@co.hays.tx.us

### **FNI Project Manager**

Mr. Will Huff, P.E., CFM  
10431 Morado Circle, Unit 300  
Austin, Texas 78759  
Phone: 512-617-3195  
e-mail: will.huff@freese.com

### **FNI Accounting Representative**

Mr. Billy Metzger  
10431 Morado Circle, Unit 300  
Austin, Texas 78759  
Phone: 512-617-3177  
e-mail: billy.metzger@freese.com

## **COMPENSATION**

FNI proposes to provide the professional services described above for the not-to-exceed total of Seven Thousand Seven Hundred and Seventy-Six Dollars (\$7,776). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described above as Additional Services, FNI will notify the County for approval before proceeding. Additional Services shall be computed based on the Schedule of Charges in Attachment CO.

**EXHIBIT B**

**Fee/Rate Schedule**

**FEE SCHEDULE SHALL BE INSERTED AT THE  
TIME OF AGREEMENT/CONTRACT EXECUTION**

-- EXHIBIT "C" --

**Additional Terms to the Services provided by Contractor, if any, are as follows:**

**A.** N/A

**B.** \_\_\_\_\_  
\_\_\_\_\_

**C.** \_\_\_\_\_  
\_\_\_\_\_

**D.** \_\_\_\_\_  
\_\_\_\_\_

**E.** \_\_\_\_\_  
\_\_\_\_\_

**F.** \_\_\_\_\_  
\_\_\_\_\_

**G.** \_\_\_\_\_  
\_\_\_\_\_

**H.** \_\_\_\_\_  
\_\_\_\_\_

**I.** \_\_\_\_\_  
\_\_\_\_\_

**J.** \_\_\_\_\_  
\_\_\_\_\_

**K.** \_\_\_\_\_  
\_\_\_\_\_

**L.** \_\_\_\_\_  
\_\_\_\_\_



EXHIBIT D

FREEAND-02

KSUTTON

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/21/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME:		
	PHONE (A/C, No, Ext): (703) 827-2277	FAX (A/C, No): (703) 827-2279	
	E-MAIL ADDRESS: admin@amesgough.com		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Hartford Underwriters Insurance Company A+ (XV)		30104
INSURED  Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	INSURER B : Hartford Casualty Insurance Company A+ (XV)		29424
	INSURER C : Hartford Accident and Indemnity Company A+ (XV)		22357
	INSURER D : Continental Casualty Company (CNA) A, XV		20443
	INSURER E :		
	INSURER F :		

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab.  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			42UUNOL5238	10/23/2022	10/23/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			42UENOL5558	10/23/2022	10/23/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			42 XHU OL 5836	10/23/2022	10/23/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	42WBOL6H3F	10/23/2022	10/23/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	<input checked="" type="checkbox"/> Professional Liab.			AEH008214422	10/23/2022	10/23/2023	Per Claim \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
PROFESSIONAL LIABILITY AGGREGATE LIMIT: \$10,000,000

Hayes County, TX, its officers, directors, employees, agents or sub-contractors, relative to this Agreement are included as Additional Insured with respect to General Liability, Auto Liability, and Umbrella Liability when required by written contract. General Liability, Auto Liability and Umbrella Liability are primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and when required by written contract. General Liability, Auto Liability, Umbrella Liability and Workers Compensation policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions

## CERTIFICATE HOLDER

## CANCELLATION

Hays County, TX Office of General County, Hays County Courthouse 110 East San Antonio Suite 202 San Marcos, TX 78666	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding, P.E., Transportation Director

Sponsor:

Commissioner Shell

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### Agenda Item:

Discussion and possible action to authorize the Court to execute a Contract Amendment No. 4 in the amount of \$346,000.00 to the Professional Services Agreement between Hays County and American Structurepoint, Inc. for additional design services on the RM 3237 Phase 1 Intersection improvements project in Precinct 3, as part of the Hays County Road Bond Program, utilizing a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(4) and amend the budget accordingly. **SHELL/BORCHERDING**

### Summary:

This Contract Amendment increases the contract compensation cap by \$346,000.00 from \$4,550,000.00 to \$4,896,000.00. This will allow for the execution of Work Authorization #4 which authorizes the separation of Phase 1 intersection improvement design into three separate PS&E packages as requested by the Texas Department of Transportation (TxDOT), in the amount of \$345,890.00, funded by the Transportation Department [16-767-020]. The separation of the plan sets will allow TxDOT to provide \$16 million in safety funding to construct these projects.

### Fiscal Impact:

Amount Requested: \$346,000.00

Line Item Number: 020-710-00-767.5621\_400

### Budget Office:

Source of Funds: Road & Bridge General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$346,000 - Increase Engineering\_Operating 020-710-00-767.5621\_400

(\$346,000) - Decrease Contract\_Consulting 020-710-00.5448\_008

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(4) for professional services.

G/L Account Validated Y/N?: Yes, Engineering Capital Operating

New Revenue Y/N?: N/A

Comments:

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### Attachments

RM3237Phase1(3PSE)-ASI-Amendment04

**CONTRACT AMENDMENT NO. 4**  
**TO**  
**HAYS COUNTY**  
**CONTRACT FOR ENGINEERING SERVICES**

**HAYS COUNTY ROAD BOND PROJECT:**  
**RM 3237 Safety Improvements Project from RM 150 to RM 12 (“Project”)**

THIS CONTRACT AMENDMENT NO. 4 to Hays County Contract for Engineering Services is by and between Hays County, Texas, a political subdivision of the State of Texas, (the "County") and American Structurepoint, Inc. (the "Engineer") and becomes effective as of the date of the last party's execution below.

WHEREAS, the County and the Engineer executed the Hays County Contract for Engineering Services dated effective October 11, 2017 (the “Contract”); and Amendment No. 1 on February 25, 2020; and Amendment N0. 2 on May 12, 2020; and Amendment No. 3 on December 21, 2021;

WHEREAS, pursuant to Article 14 of the Contract, the terms of the Contract may be modified by a written fully executed Contract Amendment;

WHEREAS, the “Compensation Cap” under Article 5 of the Contract limits the maximum amount payable under the Contract to \$4,550,000.00; and,

WHEREAS, it has become necessary to amend the Contract.

**AGREEMENT**

NOW, THEREFORE, premises considered, the County and the Engineer agree that the Contract is amended as follows:

- I. The Compensation Cap under Article 5 of the Contract is hereby increased from \$4,550,000.00 to \$4,896,000.00 .

All other terms of the Contract are unchanged and will remain in full force and effect.



IN WITNESS WHEREOF, the County and the Engineer have executed this Contract Amendment, to be effective as of the date of the last party's execution below.

**ENGINEER:**

By: Ben W. Borcharding  
Signature

Ben Borcharding  
Printed Name

Vice President  
Title

6/28/2023  
Date

**COUNTY:**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Carlos A. Lopez, P.E.  
6/30/2023



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

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### Agenda Item:

Discussion and possible action to authorize the County Judge to execute a TIA Contribution Agreement between Hays County and Arroyo Cap II-1, LLC, in the amount of \$56,446.00, for certain off-site traffic improvements related to the Sunset Oaks/Highmeadow Subdivision, and amend the budget accordingly. **INGALSBE/BORCHERDING**

### Summary:

The county had previously negotiated with the developer of the subdivision to have builders taking down lots in the Sunset Oaks/Hymeadow Subdivision to pay a pro-rata share of \$334 per lot for traffic improvements identified in a Traffic Impact Assessment. This particular section, Hymeadow Section 3, Phase 4 has 169 residential lots and the developer has provided a check to Hays County in the amount of \$56,446.00.

### Fiscal Impact:

Amount Requested: N/A

Line Item Number: 020.2010\_188

### Budget Office:

Source of Funds: N/A

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

---

### Attachments

TIA agreement

## **TIA CONTRIBUTION AGREEMENT**

This TIA CONTRIBUTION AGREEMENT ("Agreement") is made by and between **Arroyo Cap II-1, LLC**, a Delaware limited liability company, hereinafter called the "**Developer**", and **Hays County**, a political subdivision of the State of Texas, hereinafter called the "**County**" regarding HYMEADOW SECTION THREE PHASE FOUR, a subdivision recorded in Document No. 23020351, Official Public Records of Hays County, Texas, consisting of 169 residential lots.

### **WITNESSETH:**

**WHEREAS**, the County has, or is contemplating, entering into this TIA Contribution Agreement with the Developer to facilitate the construction by the County of certain offsite traffic improvements with a subtotal of \$727,400.00 (the estimated "**Project Costs**") which are related to the Sunset Oaks/Hymeadow Subdivision in Hays County, Texas (the "**Subdivision**"), said traffic improvements, as reflected on Table 1 attached hereto (the "**Project**").

**WHEREAS**, multiple parties own and are developing the Subdivision, and the County has, or will, enter into agreements with such parties requiring each party who owns and is developing a portion of the Subdivision to pay to the County \$334.00 per residential lot in the portion of the Subdivision owned by that party as a contribution to the cost of the Project.

**WHEREAS**, the County agrees that so long as Developer pays Developer's Contribution (defined in Article 2) to the County, the amount so paid will represent all of Developer's financial or other responsibility or contributions for the Project and Developer will not be responsible for any other shared costs related to the Project.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, Developer and the County do agree as follows:

### **AGREEMENT**

#### **Article 1. Effective Date**

This Agreement becomes effective when signed by the last party whose signature makes the Agreement fully executed.

#### **Article 2. Funding and Work Responsibilities**

Developer shall pay to the County Three Hundred Thirty-Four and No/100 Dollars (\$334.00) for each residential lot in any recorded final plat within the portion of the Subdivision owned by Developer ("**Developer's Contribution**") within three (3) business days after the later of recording of such final plat or execution of this Agreement. TxDOT, the City of San Marcos, and Hays County have agreed that the Developer's Contribution for the Project is capped at \$334.00 per final platted residential lot owned by Developer within the Subdivision, regardless of the total transportation cost. Developer has no further financial or other responsibility for the Project regardless of whether the Project exceeds anticipated Project Costs. Offsite improvements required by the TIA will be built by Hays County using the funds contributed under this

Page 1

Agreement. Notwithstanding anything to the contrary contained herein, Developer shall remain solely responsible for the cost of all Driveway improvements reflected on Table 1 hereto located on Developer's property.

Article 3. Compliance with Conditions of TIA Contribution Agreement between Hays County and the Developer

The County acknowledges that the Developer has no responsibility for any Project Costs outside of the items mentioned in Article 2 herein.

Article 4. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after separate written consent of the parties), addressed to such party at the following addresses:

Hays County:	111 E. San Antonio San Marcos, Texas 78666 ATTN: Mark Kennedy
Developer:	c/o Arroyo Capital, LLC 18575 Jamboree Rd., Suite 350 Irvine, California 92612 Attn.: Leigh Austin
With copy to:	c/o Oaktree Capital Management, L.P. 333 S. Grand Ave., 28 <sup>th</sup> Floor Los Angeles, CA 90071 Attn.: Jason Keller
And copy to:	c/o Oaktree Capital Management, L.P. 333 S. Grand Ave., 28 <sup>th</sup> Floor Los Angeles, CA 90071 Attn.: Cary L. Kleinman
And copy to:	Rutan & Tucker, LLP 18575 Jamboree Rd., Suite 900 Irvine, CA 92612 Attn.: F. Kevin Brazil, Esq.
And copy to:	Starlight Homes Texas L.L.C. 10721 Research Blvd, Suite B-210 Austin, Texas 78759 Attn: Keith Pearson

All notices shall be deemed given on the date so delivered or so deposited in the mail unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be

delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 5. Entire Agreement. This Agreement represents the entire and integrated agreement between the County and the Developer and supersedes all prior negotiations, representations or arguments either written or oral.

Article 6. Lawful Authority. The execution and performance of this Agreement by the County and the Developer have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the County and the Developer in accordance with its terms.

Article 7. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

Article 8. Indemnification. It is understood and agreed between the Parties that the County and the Developer, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **NEITHER THE COUNTY NOR THE DEVELOPER ASSUMES ANY RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT.**

Article 9. Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term "will" is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

Article 10. Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

Article 11. No Waiver. No waiver by the County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Article 12. Public Information Act. Hays County is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

Article 13. Additional Documents. The Developer and the County covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Article 14. Compliance with Laws. In performing this Agreement, the Developer will comply with all local, state and federal laws.

Article 15. Counterparts. This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

This TIA Contribution Agreement is hereby EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 2023.

**County of Hays:**

By: \_\_\_\_\_  
The Honorable Ruben Becerra  
Hays County Judge

**ATTEST:**

\_\_\_\_\_  
Elaine H. Cardenas, Hays County Clerk

**Developer:**

**ARROYO CAP II-1, LLC, a**  
Delaware limited liability company

By: Arroyo Capital II, LLC, a Delaware  
limited liability company, its sole member

By: Jeffrey B. Brouelette  
Jeffrey B. Brouelette, Executive Vice President



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Shell

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### Agenda Item

Discussion and possible action to consider the acceptance of road construction and surface drainage improvements, release of the Letter of Credit #20234033 in the amount of \$18,520.06, acceptance of the maintenance bond #PB03016800851M2 in the amount of \$60,222.12, and acceptance of the revegetation bond #PB03016800851M1 in the amount of \$7,078.86 for 6 Creeks subdivision, Phase 1, Section 10. **SHELL/BORCHERDING**

### Summary

Staff recommends acceptance of construction of roads and drainage improvements within the County ROW, and all regulatory signage as posted. An engineer's concurrence letter and as-built construction plans have been received. The Transportation Department has inspected and approved the improvements and will monitor the revegetation efforts for all disturbed areas within County ROW.

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### Attachments

6 Creeks Ph.1, Sec. 10 Agenda

**HAYS COUNTY  
TRANSPORTATION DEPARTMENT**



P.O. BOX 906  
San Marcos, TX 78667

512/393-7385  
FAX: 512/393-7393

June 6, 2023

Honorable Ruben Becerra  
111 E. San Antonio Street  
San Marcos, Texas 78666

RE: 6 Creeks subdivision, Phase 1, Section 10

Dear Commissioners and Judge:

Becky Carroll, P.E., with Pape-Dawson Engineers, is requesting that Hays County accept construction of the roads and surface drainage improvements for 6 Creeks subdivision, Phase 1, Section 10, release the Letter of Credit #20234033 in the amount of \$18,520.06, accept the 2-year maintenance bond #PB03016800851M2 in the amount of \$60,222.12, and accept the 1-year revegetation bond #PB03016800851M1 in the amount of \$7,078.86. A concurrence letter and as-built plans have been received as required by Hays County.

I recommend that construction be accepted per staff recommendations under Hays County specifications.

Respectfully,

Jerry Borcharding, P.E.  
Director  
Hays County Transportation



# Philadelphia Indemnity Insurance Company

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004  
877-438-7459

Bond No. PB03016800851M2

## MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we DNT Construction, LLC as Principal, and Philadelphia Indemnity Insurance Company, a corporation organized under the laws of the State of Pennsylvania, and duly authorized to do business in the State of Texas as Surety, are held and firmly bound unto Hays County as Oblige, in the penal sum of Sixty Thousand Two Hundred Twenty Two Dollars and 12/100 (\$60,222.12) to which payment well and truly to be made we do bind ourselves, and each of our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the said Principal entered into a contract with Hays County for 6 Creeks Phase 1 Section 10 Hays County Development District - Roadway and Surface Drainage, which contract is hereinafter referred to as the "Contract."

WHEREAS, said Oblige requires that the Principal furnish a bond conditioned to guarantee for the period of Two year (s) from date of acceptance of the work performed under the Contract against all defects in workmanship and materials which would have been the responsibility under the Contract for which written notice is made to Surety during said period

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH that, if the Principal shall indemnify the Oblige for all loss that the Oblige may sustain by reason of any defective materials or workmanship which may become apparent and with respect to which notice is delivered to Surety in writing during the period of Two year (s) from and after date of acceptance of the work under the Contract, then this obligation shall be void, otherwise to remain in full force and effect.

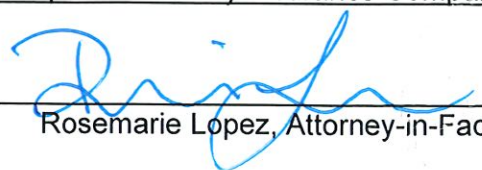
No right of action shall accrue hereunder to or for the benefit of any person or entity other the Oblige named herein, nor shall any suit be filed or action maintained on this bond more than twenty five (25) months after the date of the earliest timely notice of defect by Oblige to Surety.

SIGNED, SEALED AND DATED THIS 3rd day of April, 2023.

DNT Construction, LLC  
Principal

By:   
Dean Tomme, President

Philadelphia Indemnity Insurance Company

By:   
Rosemarie Lopez, Attorney-in-Fact

PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Tom Mulanax, Michael Whorton, David Whorton, Rachel Martinez, Rosemarie Lopez, Jeremy Farque and/or Noe Moreno of Whorton Insurance Services, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November, 2016.

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5<sup>TH</sup> DAY OF MARCH, 2021.

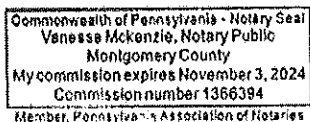
(Seal)



John Glomb, President & CEO  
Philadelphia Indemnity Insurance Company

On this 5<sup>th</sup> day of March, 2021 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public:



residing at: Bala Cynwyd, PA

My commission expires: November 3, 2024

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5<sup>th</sup> day March, 2021 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 3rd day of April, 2023.



Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY

# MAINTENANCE - REVEGETATION BOND

Bond No. PB03016800851M1

## KNOW ALL MEN BY THESE PRESENTS,

That we DNT Construction, LLC, as Principal, and Philadelphia Indemnity Insurance Company, a corporation organized under the laws of the State of Pennsylvania, and authorized to do business in the State of Texas, as Surety, are held and firmly bound unto Hays County, Texas as Oblige in the penal sum of Seven Thousand Seventy Eight and 86/100 and 86/100 (\$7,078.86) to which payment well and truly to be made we do bind ourselves, and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the said Principal has completed that certain work (herein referred to as the "Work") described as:

Non-Native Seeding for Erosion Control, Hydro Mulch Improvements – 6 Creeks Section Phase 1 Section 10 Hays County Development District - Revegetation Bond

**WHEREAS**, the Oblige requires that the Principal furnish a bond conditioned to guarantee the Work against defects in workmanship and materials which are the responsibility of the Principal under the contract under which the Work was constructed, and which did not appear prior to the final completion of the Work.

**NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the Principal shall indemnify the Oblige for all loss that the obligee may sustain by reason of defective materials or workmanship which may first become apparent, and with respect to which written notice is delivered to Surety, at the expiration of the period of sixty days from the date of substantial completion, being the establishment of grass/vegetation at 70% in areas of hydro mulch, then this obligation shall be void, otherwise to remain in full force and effect for a period of up to One Year. However, such termination shall not discharge the Surety from any liability previously accrued pursuant to this bond.

This obligation does not cover normal wear and tear of materials, misuse or abuse by the Oblige or third parties, failure of Oblige to perform oblige-required maintenance, nor any defects known to Oblige prior to final completion of the Work nor any defects discovered or occurring after the expiration of the period set forth above.

**SIGNED, sealed and dated** this April 3, 2023.

DNT Construction, LLC

Principal

By: 

Dean Tomme, President

Philadelphia Indemnity Insurance Company

Surety

By: 

Rosemarie Lopez, Attorney-In-Fact

PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Tom Mulanax, Michael Whorton, David Whorton, Rachel Martinez, Rosemarie Lopez, Jeremy Farque and/or Noe Moreno of Whorton Insurance Services, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November, 2016.

RESOLVED:

That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER  
RESOLVED:

That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF MARCH, 2021.

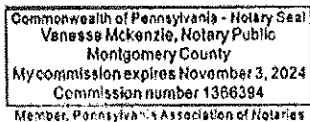


(Seal)

John Glomb, President & CEO  
Philadelphia Indemnity Insurance Company

On this 5<sup>th</sup> day of March, 2021 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public:



residing at:

Bala Cynwyd, PA

My commission expires:

November 3, 2024

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5<sup>th</sup> day March, 2021 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 3rd day of April, 2023.



Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY



May 1, 2023

Mr. Jim Parman  
Hays County Transportation Department  
2171 Yarrington Rd  
Kyle, TX 78640

Re: Engineer's Concurrence for Project Acceptance

Dear Mr. Parman:

Project: 6 Creeks-Phase 1, Section 10  
Date: May 1, 2023  
Developer: HM 6 Creeks Development, Inc.  
2901 Bee Caves Road, Suite F  
Austin, TX 78746

Consultant Engineer: Pape-Dawson Engineers, Inc.  
Attn: Becky Carroll, P.E.  
2000 NW Loop 410  
San Antonio, TX 78213

On this date, I, the undersigned Professional Engineer in the State of Texas, confirm that a member of my staff had met with the Project Contractor, City of Kyle and Hays County and made a final visual observation of the above referenced project. The items noted during the final Hays County walk-through on April 10, 2023 have been addressed and no other discrepancies from the approved plans were found other than those identified on the Plan of Record. I, therefore, recommend acceptance of this project by the City of Kyle and Hays County.

Sincerely,  
Pape-Dawson Engineers, Inc.



Becky Carroll, P.E.  
Vice President

P:\81\41\26\Word\Letters\230405a1 HaysCo- Concurrence Letter.docx

## IRREVOCABLE LETTER OF CREDIT

**Borrower:** HM 6 Creeks Development, Inc  
2901 Bee Caves Rd Ste. F  
Austin, TX 78746

**Lender:** American Bank of Commerce  
Austin Downtown Banking Center  
610 West 5th  
Austin, TX 78701

**Beneficiary:** Hays County  
111 E San Antonio  
San Marcus, TX 78666

**NO.: 20234033**

**EXPIRATION DATE.** This letter of credit shall expire upon the close of business on 03-16-2024 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

**AMOUNT OF CREDIT.** Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Eighteen Thousand Five Hundred Twenty & 06/100 Dollars (\$18,520.06) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

**WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.**

**DRAFT TERMS AND CONDITIONS.** Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

**USE RESTRICTIONS.** All drafts must be marked "DRAWN UNDER American Bank of Commerce IRREVOCABLE LETTER OF CREDIT NO. 20234033 DATED 03-16-2023," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

**PERMITTED TRANSFEREES.** The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

**TRANSFEREES REQUIRED DOCUMENTS.** When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

**COMPLIANCE BURDEN.** Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

**NON-SEVERABILITY.** If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

**GOVERNING LAW.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Texas without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Texas.

**EXPIRATION.** Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Colby Machacek, County Planner

Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Discussion and possible action to accept fiscal surety for street and drainage improvements in the amount of \$2,553,164.45 for the Waterstone, Unit B, Subdivision (Irrevocable Standby Letter of Credit No. FTFC-23234). **INGALSBE/BORCHERDING**

### Summary

The final plat for Waterstone, Unit B Subdivision is being reviewed under the interlocal cooperation agreement with the City of San Marcos.

Formal acceptance of fiscal surety is required by Commissioners Court action.

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### Attachments

Plat

Letter of Credit





CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	31.38'	20.00'	89°53'10"	S88°46'00"W	28.26'
C2	31.48'	20.00'	90°11'28"	S171°3'25"W	28.33'
C3	29.72'	1,030.00'	1°39'12"	S61°29'34"W	29.72'
C4	46.40'	30.07'	88°23'51"	N74°59'56"W	41.93'
C5	665.98'	2,602.21'	14°39'49"	N38°07'55"W	664.16'
C6	65.37'	79.00'	47°24'30"	N21°53'45"W	63.52'
C7	63.92'	119.00'	30°46'29"	N1°33'44"W	63.15'
C8	78.04'	79.00'	56°35'54"	N00°40'02"W	74.90'
C9	148.59'	530.00'	16°03'49"	N35°39'50"E	148.11'
C10	31.41'	20.00'	89°59'09"	N01°17'50"W	28.28'
C11	31.42'	20.00'	90°00'51"	N88°42'10"E	28.29'
C12	113.65'	480.00'	13°33'57"	N50°28'43"E	113.38'
C13	98.87'	421.31'	13°26'47"	N50°31'02"E	98.65'
C14	59.27'	480.00'	7°04'28"	S47°18'37"W	59.23'
C15	33.91'	20.00'	97°08'16"	S02°16'43"W	29.99'
C16	23.56'	15.00'	90°00'00"	S88°42'35"W	21.21'
C17	222.90'	327.00'	39°03'21"	S63°14'16"W	218.61'
C18	204.23'	373.00'	31°22'14"	S67°04'49"W	201.68'
C19	22.40'	15.00'	85°33'20"	S08°37'02"W	20.37'
C20	57.84'	527.00'	6°17'19"	S31°00'58"E	57.81'
C21	152.06'	473.00'	18°25'11"	S37°04'54"E	151.41'
C22	20.12'	25.00'	46°06'20"	S69°20'40"E	19.58'
C23	159.01'	50.00'	18°21'24"	S01°17'27"E	99.98'
C24	20.12'	25.00'	46°06'20"	S66°45'45"W	19.58'
C25	23.56'	15.00'	90°00'00"	S01°17'25"E	21.21'
C26	26.69'	20.00'	76°26'54"	S84°30'52"E	24.75'
C27	99.44'	420.00'	13°33'57"	N50°28'43"E	99.21'
C28	131.77'	470.00'	16°03'49"	N35°39'50"E	131.34'
C29	23.56'	15.00'	90°00'00"	S01°17'25"E	21.21'
C30	23.56'	15.00'	90°00'00"	S88°42'35"W	21.21'
C31	23.56'	15.00'	90°00'00"	N01°17'25"W	21.21'
C32	23.56'	15.00'	90°00'00"	N88°42'35"E	21.21'
C33	7.85'	5.00'	90°00'00"	S01°17'25"E	7.07'
C34	23.56'	15.00'	90°00'00"	N88°42'35"E	21.21'
C35	36.13'	23.00'	90°00'05"	N01°17'27"W	32.53'
C36	7.85'	5.00'	89°59'55"	S88°42'33"W	7.07'
C37	7.85'	5.00'	90°00'05"	N01°17'28"W	7.07'
C38	23.56'	15.00'	89°59'55"	S88°42'33"W	21.21'
C39	23.56'	15.00'	90°00'00"	S01°17'25"E	21.21'
C40	7.85'	5.00'	90°00'01"	N88°42'35"E	7.07'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C41	7.85'	5.00'	90°00'00"	S88°42'35"W	7.07'
C42	23.56'	15.00'	90°00'05"	S01°17'27"E	21.21'
C43	7.85'	5.00'	89°59'55"	N88°42'33"E	7.07'
C44	31.42'	20.00'	90°00'00"	N01°17'25"W	28.28'
C45	7.85'	5.00'	90°00'05"	S01°17'27"E	7.07'
C46	29.82'	527.00'	3°14'33"	S44°40'14"E	29.82'
C47	22.40'	15.00'	85°33'20"	S85°49'38"E	20.37'
C48	140.80'	427.00'	18°53'36"	N60°50'30"E	140.17'
C49	7.68'	5.00'	88°00'37"	N26°17'00"E	6.95'
C50	71.30'	143.00'	28°34'07"	N32°00'21"W	70.57'
C51	31.42'	20.00'	90°00'00"	S88°42'35"W	28.28'
C52	23.56'	15.00'	90°00'00"	N88°42'35"E	21.21'
C53	7.85'	5.00'	90°00'00"	N01°17'25"W	7.07'
C54	81.27'	163.00'	28°34'07"	N32°00'21"W	80.43'
C55	7.68'	5.00'	88°00'37"	N61°43'36"W	6.95'
C56	63.33'	427.00'	8°29'51"	S78°31'01"W	63.27'
C57	24.68'	15.00'	94°16'03"	S35°37'55"W	21.99'
C58	165.76'	273.00'	34°47'18"	S28°53'46"E	163.22'
C59	7.85'	5.00'	90°00'00"	S88°42'35"W	7.07'
C60	23.56'	15.00'	90°00'00"	S01°17'25"E	21.21'
C61	93.42'	327.00'	16°22'04"	S38°06'23"E	93.10'
C62	38.59'	110.00'	20°05'55"	N72°42'59"E	38.39'
C63	7.63'	5.00'	87°24'38"	S73°37'39"E	6.91'
C64	37.20'	20.00'	106°34'28"	N29°28'43"E	32.07'
C65	35.31'	90.00'	22°28'54"	N35°02'58"W	35.09'
C66	23.56'	15.00'	90°00'00"	S88°42'35"W	21.21'
C67	7.85'	5.00'	90°00'00"	S01°17'25"E	7.07'
C68	56.85'	110.00'	29°36'48"	S31°29'01"E	56.22'
C69	31.10'	20.00'	89°05'05"	S611°3'09"E	28.06'
C70	76.19'	143.00'	30°31'43"	N58°58'27"E	75.30'
C71	7.85'	5.00'	90°00'00"	N01°17'25"W	7.07'
C72	7.85'	5.00'	90°00'00"	S88°42'35"W	7.07'
C73	111.11'	163.00'	39°03'21"	S63°14'16"W	108.97'
C74	31.57'	90.00'	20°05'55"	S72°42'59"W	31.41'
C75	81.56'	327.00'	14°17'27"	S17°35'52"E	81.35'
C76	22.72'	15.00'	86°46'55"	S53°50'36"E	20.61'
C77	186.09'	273.00'	39°03'21"	N63°14'16"E	182.51'
C78	23.56'	15.00'	90°00'00"	N01°17'25"W	21.21'
C79	7.63'	5.00'	87°24'38"	S18°57'43"W	6.91'
C80	37.36'	100.00'	21°24'18"	S40°02'11"E	37.14'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C81	78.35'	100.00'	44°53'29"	S28°17'35"E	76.36'
C82	35.29'	50.00'	40°26'39"	S28°04'10"E	34.57'
C83	29.56'	200.00'	8°28'02"	S50°31'31"E	29.53'
C84	46.08'	200.00'	13°12'05"	S48°09'30"E	45.98'
C85	26.70'	200.00'	7°39'00"	S46°15'20"E	26.68'
C86	18.26'	200.00'	5°13'52"	S52°41'46"E	18.25'
C87	13.86'	50.00'	15°53'05"	S47°22'10"E	13.82'
C88	17.19'	50.00'	19°41'55"	S49°16'35"E	17.11'
C89	13.92'	50.00'	15°56'56"	S51°09'04"E	13.87'
C90	22.30'	29.54'	43°15'28"	S64°39'43"E	21.78'
C91	12.90'	50.00'	14°46'36"	N82°25'37"E	12.86'
C92	46.83'	50.00'	53°39'56"	N48°12'21"E	45.14'
C93	19.71'	50.00'	22°34'55"	N10°04'55"E	19.58'
C94	26.49'	50.00'	30°21'32"	N16°23'19"W	26.18'
C95	47.96'	50.00'	54°57'09"	N59°02'40"W	46.14'
C96	5.13'	50.00'	5°52'35"	N89°27'32"W	5.13'
C97	2.43'	473.00'	0°17'38"	N46°08'41"W	2.43'
C98	63.55'	473.00'	7°41'59"	N42°08'56"W	63.50'
C99	62.85'	473.00'	7°36'46"	N34°29'37"W	62.80'
C100	23.24'	473.00'	2°48'55"	N29°16'46"W	23.24'
C101	15.24'	373.00'	2°20'28"	S52°33'56"W	15.24'
C102	68.69'	373.00'	10°33'04"	S59°00'42"W	68.59'
C103	68.69'	373.00'	10°33'04"	S69°33'46"W	68.59'
C104	51.61'	373.00'	7°50'38"	S78°48'07"W	51.57'
C105	52.32'	327.00'	9°10'01"	N78°10'56"E	52.26'
C106	52.10'	327.00'	9°07'45"	S69°02'03"W	52.05'
C107	42.29'	327.00'	7°24'37"	S60°45'51"W	42.26'
C108	76.19'	327.00'	13°20'57"	S50°23'04"W	76.01'
C109	1.50'	273.00'	0°18'53"	N43°52'02"E	1.50'
C110	58.44'	273.00'	12°15'52"	N50°09'24"E	58.33'
C111	57.43'	273.00'	12°03'08"	N62°18'54"E	57.32'
C112	61.98'	273.00'	13°00'30"	N74°50'43"E	61.85'
C113	6.75'	273.00'	1°24'59"	N82°03'27"E	6.75'
C114	6.75'	163.00'	2°22'21"	S81°34'46"W	6.75'
C115	34.29'	163.00'	12°03'08"	S74°22'02"W	34.22'
C116	34.29'	163.00'	12°03'08"	S62°18'54"W	34.22'
C117	34.29'	163.00'	12°03'08"	S50°15'47"W	34.22'
C118	1.50'	163.00'	0°31'38"	S43°58'24"W	1.50'
C119	29.71'	110.00'	15°28'35"	S28°14'31"E	29.62'
C120	19.79'	110.00'	10°18'37"	S41°08'06"E	19.77'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C121	31.28'	327.00'	5°28'48"	S32°39'44"E	31.26'
C122	36.00'	327.00'	6°18'28"	S38°33'22"E	35.98'
C123	26.14'	327.00'	4°34'49"	S44°00'00"E	26.13'
C124	1.74'	273.00'	0°21'57"	N46°06'26"W	1.74'
C125	57.11'	273.00'	11°59'09"	N39°55'54"W	57.00'
C126	58.95'	273.00'	12°22'22"	N27°45'08"W	58.84'
C127	47.95'	273.00'	10°03'51"	N16°32'02"W	47.89'
C128	10.94'	163.00'	3°50'39"	S19°38'38"E	10.93'
C129	35.20'	163.00'	12°22'22"	S27°45'08"E	35.13'
C130	34.10'	163.00'	11°59'09"	S39°55'54"E	34.04'
C131	1.04'	163.00'	0°21'57"	S46°06'26"E	1.04'

LINE TABLE			LINE TABLE			LINE TABLE		
LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S43°53'58"W	60.00'	L29	S46°17'30"E	78.86'	L57	N08°47'55"W	13.75'
L2	N46°17'25"W	109.01'	L30	N51°23'42"E	26.39'	L58	N69°51'08"E	17.77'
L3	S43°42'35"W	100.63'	L31	N17°43'18"W	26.57'	L59	S44°14'13"W	47.27'
L4	N70°51'41"W	46.50'	L32	N46°17'25"W	60.41'	L60	S50°44'20"E	52.55'
L5	S62°00'17"W	13.00'	L33	N46°17'25"W	105.00'	L61	S05°50'51"E	49.65'
L6	S75°49'19"W	168.00'	L34	N46°17'25"W	225.41'	L62	S46°17'30"E	52.17'
L7	S79°08'50"W	102.67'	L35	N17°43'18"W	26.57'	L63	S54°45'32"E	33.90'
L8	S80°36'36"W	182.67'	L36	S82°45'57"W	23.42'	L64	S41°33'27"E	101.37'
L9	S75°23'03"W	79.11'	L37	S46°17'25"E	40.86'	L65	S50°44'50"E	15.55'
L10	S55°27'39"W	108.77'	L38	N62°40'02"E	12.04'	L66	S55°18'42"E	40.65'
L11	S27°52'19"E	107.31'	L39	N82°45'57"E	47.90'	L67	S39°25'37"E	14.55'
L12	S62°07'41"W	54.00'	L40	S46°17'25"E	159.56'	L68	S59°07'32"E	42.42'
L13	S60°39'58"W	150.58'	L41	N46°17'25"W	159.56'	L69	S43°10'36"E	40.41'
L14	N45°36'00"W	96.85'	L42	N43°42'35"E	39.50'			
L15	N62°22'05"W	60.00'	L43	S43°42'35"W	39.50'			
L16	N27°37'55"E	96.28'	L44	N43°42'35"E	29.50'			
L17	N43°41'07"E	54.00'	L45	S62°40'02"W	12.04'			
L18	N43°41'44"E	1.98'	L46	S82°45'57"W	90.81'			
L19	S43°08'31"W	20.01'	L47	S43°42'35"W	90.00'			
L20	S43°42'35"W	29.50'	L48	S43°42'35"W	90.00'			
L21	S51°23'42"W	26.39'	L49	N46°17'25"W	90.00'			
L22	S46°17'25"E	82.37'	L50	S46°05'41"E	2.43'			
L23	N46°17'30"W	82.00'	L51	S42°14'45"E	44.97'			
L24	N46°17'30"W	90.00'	L52	S34°56'31"E	44.97'			
L25	S46°17'25"E	90.00'	L53	S29°34'51"E	21.06'			
L26	S46°17'25"E	90.00'	L54	N57°15'41"E	34.64'			
L27	N43°42'35"E	90.00'	L55	S62°22'05"E	13.25'			
L28	S46°17'30"E	110.00'	L56	N88°47'27"E	31.49'			

FINAL PLAT  
WATERSTONE  
UNIT B  
H

KNOW ALL MEN BY THESE PRESENTS §  
STATE OF TEXAS §  
COUNTY OF TRAVIS §

KNOWN ALL MEN BY THESE PRESENTS, THAT WE, DRP TX 3, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WITH ITS HOME ADDRESS AT 590 MADISON AVENUE, 13TH FLOOR, NEW YORK, NEW YORK 10022, BEING THE OWNERS OF 35.14 ACRES OF LAND IN THE WILLIAM HEMPHILL SURVEY NUMBER 4, ABSTRACT NUMBER 221, HAYS COUNTY, TEXAS, AND BEING A PART OF A CALLED 231.12 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 22030063 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS;

DO HEREBY SUBDIVIDE 35.14 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS

#### WATERSTONE UNIT B

IN WITNESS WHEREOF, DRP TX 3, LLC, HAVE CAUSED THESE PRESENTS TO BE EXECUTED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

#### PRELIMINARY

BRIAN CLAUSON \_\_\_\_\_ DATE  
DRP TX 3, LLC  
590 MADISON AVENUE  
13TH FLOOR  
NEW YORK, NEW YORK 10022

STATE OF TEXAS §  
COUNTY OF TRAVIS §

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED, \_\_\_\_\_, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND HAS ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE CAPACITY FOR THE PURPOSED AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

NOTARY PUBLIC MY COMMISSION EXPIRES: \_\_\_\_\_  
IN AND FOR THE STATE OF TEXAS

HAYS COUNTY:  
STATE OF TEXAS §  
COUNTY OF HAYS §

I, ELAINE HANSON CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_M., AND DULY RECORDED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D. AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN INSTRUMENT NUMBER \_\_\_\_\_  
WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

#### PRELIMINARY

ELAINE HANSON CARDENAS, MBA, PHD, COUNTY CLERK  
HAYS COUNTY, TEXAS

HAYS COUNTY:  
STATE OF TEXAS §  
COUNTY OF HAYS §

I, THE UNDERSIGNED, DIRECTOR OF THE HAYS COUNTY DEVELOPMENT SERVICES DEPARTMENT, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL HAYS COUNTY REQUIREMENTS AS STATED IN THE INTERLOCAL COOPERATION AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS FOR SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SAN MARCOS.

#### PRELIMINARY

MARCUS PACHECO, DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES  
HAYS COUNTY, TEXAS

CITY OF SAN MARCOS  
APPROVAL CERTIFICATE

APPROVED AND AUTHORIZED TO BE RECORDED ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE PLANNING ZONING COMMISSION OF THE CITY OF SAN MARCOS, TEXAS.

CIP & ENGINEERING \_\_\_\_\_ DATE

DIRECTOR OF PLANNING & DEVELOPMENT SERVICES \_\_\_\_\_ DATE

RECORDING SECRETARY \_\_\_\_\_ DATE

CHAIRMAN, PLANNING & ZONING COMMISSION \_\_\_\_\_ DATE

HAYS COUNTY:  
STATE OF TEXAS §  
COUNTY OF HAYS §

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER SUPPLY OR STATE-APPROVED COMMUNITY WATER SYSTEM. DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY HAYS COUNTY TO QUESTION THE SELLER CONCERNING GROUNDWATER AVAILABILITY. RAINWATER COLLECTION IS ENCOURAGED AND IN SOME AREAS MAY OFFER THE BEST RENEWABLE WATER RESOURCE.

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPMENT SERVICES.

NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL HAYS COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

#### PRELIMINARY

MARCUS PACHECO, DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES  
HAYS COUNTY, TEXAS

#### PRELIMINARY

ERIC VAN GAASBEEK, R.S., C.F.M., FLOODPLAIN ADMINISTRATOR  
HAYS COUNTY DEVELOPMENT SERVICES  
HAYS COUNTY, TEXAS

#### ENGINEER'S CERTIFICATION:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

I, TRACY A. BRATTON, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

#### PRELIMINARY

TRACY A. BRATTON, P.E. \_\_\_\_\_ DATE  
TEXAS REGISTRATION NO. 90095  
DOUCET & ASSOCIATES, INC.  
7401B HIGHWAY 71 WEST, SUITE 160  
AUSTIN, TEXAS 78735

#### SURVEYOR'S CERTIFICATION:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

I, JOHN BARNARD, REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT AND ACCOMPANYING LEGAL DESCRIPTION OF EVEN DATE REPRESENT AN ACTUAL SURVEY PERFORMED ON THE GROUND UNDER MY SUPERVISION.

#### PRELIMINARY

JOHN BARNARD \_\_\_\_\_ DATE  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 5749  
DOUCET & ASSOCIATES, INC.  
JBARNARD@DOUCETENGINEERS.COM

STREET SUMMARY				
STREET NAME	R.O.W. WIDTH	PAVEMENT WIDTH	LINEAR FEET	ROADWAY CLASSIFICATION
MUSTANG ISLAND WAY	54' R.O.W.	27'	1136	RS54-30A
AYRE LOOP	54' R.O.W.	27'	1549	RS54-30A
ALAMITO AVENUE	54' R.O.W.	27'	1417	RS54-30A
PORT ARANSAS PASS	54' R.O.W.	27'	297	RS54-30A
CHAPEL BECK DRIVE	54' R.O.W.	27'	779	RS54-30A
HAW BRANCH VIEW	54' R.O.W.	27'	393	RS54-30A
YUBA PATH	54' R.O.W.	27'	779	RS54-30A
ALLEY-3	20' R.O.W.	20'	348	RS20-15A
ALLEY-4	20' R.O.W.	20'	270	RS20-15A
ALLEY-5	20' R.O.W.	20'	392	RS20-15A
ALLEY-6	20' R.O.W.	20'	246	RS20-15A
ALLEY-7	20' R.O.W.	20'	393	RS20-15A
			TOTAL	
*ROADWAY CLASSIFICATION BASED ON CITY OF SAN MARCOS TCM			7,999	

LOT SUMMARY	
TOTAL NUMBER OF BLOCKS	16
TOTAL NUMBER OF LOTS	147
RESIDENTIAL LOTS	143
DRAINAGE EASEMENT LOTS	0
LANDSCAPE LOTS	0
COMMERCIAL LOTS	0
OPEN SPACE LOTS	5
TOTAL OVERALL ACREAGE	35.14

FINAL PLAT  
WATERSTONE  
UNIT B  
HAYS COUNTY, TEXAS

#### AREA TABLE:

- TOTAL LOT ACREAGE: 26.47 ACRES.  
THIS PROJECT CONTAINS 147 LOT, AVERAGING 0.1808 AC. THERE ARE:  
0 LOTS > 10 AC.  
1 LOT BETWEEN 10 AC AND 5 AC;  
1 LOTS BETWEEN 5 AC AND 2 AC;  
0 LOTS BETWEEN 2 AC AND 1 AC;  
145 LOTS < 1 AC.
  - THE TOTAL AREA OF STREET IN THIS SUBDIVISION IS 8.67 ACRES.
  - THE TOTAL LENGTH OF ALL STREETS IN THIS SUBDIVISION IS 7,999 LINEAR FEET.
- TOTAL ACREAGE: 35.14 ACRES.

#### FLOOD NOTE:

THIS PROPERTY IS LOCATED WITHIN UNSHADED ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS SHOWN ON THE FLOOD INSURANCE RATE MAP NO. 48209C0405F EFFECTIVE 09-02-2009 AND ISSUED BY FEMA FOR HAYS COUNTY, TEXAS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR OR ENGINEER

THE ABOVE STATEMENT IS MEANT FOR FLOOD INSURANCE DETERMINATION ONLY AND THIS SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAP(S).

#### NOTES:

- THIS PROJECT IS IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SAN MARCOS, TEXAS.
- PUBLIC SIDEWALKS, BUILT TO CITY OF SAN MARCOS STANDARDS, ARE REQUIRED ALONG ALL STREETS. THESE SIDEWALKS SHALL BE IN PLACE PRIOR TO ADJOINING LOT BEING OCCUPIED. FAILURE TO CONSTRUCT THE REQUIRED SIDEWALKS MAY RESULT IN THE WITHHOLDING OF CERTIFICATES OF OCCUPANCY, BUILDING PERMITS, OR UTILITY CONNECTIONS BY THE GOVERNING BODY OR UTILITY COMPANY.
- HOA WILL MAINTAIN THE AMENITY CENTER AND THE SIDEWALK/TRAILS IN PUBLIC AREAS.
- THIS PLAT (AND THE LOTS THEREIN) ARE SUBJECT OT THE APPROVED WATERSTONE REGULATING PLAN (CITY OF SAN MARCOS REFERENCE NUMBER RP-19-01), DOCUMENT ID 22030049 O.P.R.H.C.T. RECORDED 06/14/2023.
- FIRE HYDRANT SPACING AND WATER FLOW WILL MEET CITY OF SAN MARCOS SPECIFICATIONS.
- AS USED HEREIN, THE TERM "DEVELOPER" SHALL MEAN "DRP TX 3, LLC" OR ITS SUCCESSORS OR ASSIGNS.
- OPEN SPACE LOTS 900-904 ARE HEREBY DEDICATED BY THIS PLAT AS PUBLIC ACCESS EASEMENTS AND SHALL BE PRIVATELY MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
- DRAINAGE EASEMENTS ARE TO BE PRIVATELY MAINTAINED.
- PROPOSED ROADWAYS ARE TO BE PUBLIC
- THIS PLAT LIES ENTIRELY OUTSIDE THE EDWARDS AQUIFER RECHARGE AND CONTRIBUTING ZONES.
- POST-DEVELOPMENT CONDITIONS RUNOFF RATE SHALL BE NO GREATER THAN THE PRE-DEVELOPED CONDITION FOR 2, 5, 10, 25, AND 100-YEAR STORM EVENTS. PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION.
- THIS PROJECT IS LOCATED WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, EMERGENCY SERVICE DISTRICTS #5 AND #9, AND PLUM CREEK GROUNDWATER CONSERVATION DISTRICT.
- ALL LOTS FRONTING ROADWAYS SHALL HAVE A 25-FOOT BUILDING SETBACK LINE PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 705 § 8.01 (F).
- POST-CONSTRUCTION STORMWATER CONTROL MEASURES SHALL HAVE A MAINTENANCE PLAN. THE MAINTENANCE PLAN MUST BE FILED IN THE REAL PROPERTY RECORDS OF HAYS COUNTY. THE OWNER OPERATOR OF ANY NEW DEVELOPMENT OR REDEVELOPMENT SITE SHALL DEVELOP AND IMPLEMENT A MAINTENANCE PLAN ADDRESSING MAINTENANCE REQUIREMENTS FOR ANY STRUTURAL CONTROL MEASURES INSTALLED ON SITE. OPERATION AND MAINTENANCE PERFORMED SHALL BE DOCUMENTED, RETAINED, AND MADE AVAILABLE FOR REVIEW UPON REQUEST.
- ALL ROADWAYS SHOULD BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH APPLICABLE HAYS COUNTY STANDARDS.
- DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 751.
- SIDEWALKS ARE REQUIRED ALONG ALL STREETS PER THE APPROVED WATERSTONE REGULATING PLAN
- THE FOLLOWING GPS BENCHMARKS ARE TIED TO AND REFERENCED ON THIS PLAT:  
CITY OF SAN MARCOS GPS CONTROL MONUMENT #10  
ALUMINUM DISK SET IN CONCRETE  
GRID N=13,888,162.95'  
GRID E=2,320,954.59'  
ELEV.=629.43'  
HAYS COUNTY GPS CONTROL MONUMENT #H120  
GRID N=13,895,235.43'  
GRID E=2,335,976.71'  
ELEV.=675.459'

#### WATER & WASTEWATER UTILITY APPROVAL:

##### WATER

CITY OF KYLE: LEON BARBA, CITY ENGINEER \_\_\_\_\_ DATE

##### WASTEWATER

CITY OF KYLE: LEON BARBA, CITY ENGINEER \_\_\_\_\_ DATE

# FIRST TEXAS FIDELITY COMPANY

5505 BLUE LAGOON DRIVE, 7TH FLOOR W

MIAMI, FLORIDA 33126

PHONE (305)553-8724



JUNE 5, 2023

IRREVOCABLE STANDBY LETTER OF CREDIT NO. FTFC-23234

**BENEFICIARY:** HAYS COUNTY  
712 S. STAGECOACH TRAIL  
SAN MARCOS, TX 78666

**APPLICANT:** LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.  
13620 N. FM 620, BLDG. B, SUITE 150  
AUSTIN, TX 78717

**LC AMOUNT:** USD \$2,553,164.45 (TWO MILLION FIVE HUNDRED FIFTY-THREE THOUSAND ONE HUNDRED SIXTY-FOUR AND 45/100 US DOLLARS)

**EXPIRATION DATE:** JUNE 4, 2024 AT OUR COUNTERS

**RE:** WATERSTONE UNIT B

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. FTFC-23234 IN YOUR FAVOR AT THE REQUEST AND FOR THE ACCOUNT OF LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD. IN AN AGGREGATE AMOUNT NOT TO EXCEED THE LC AMOUNT.

THIS LETTER OF CREDIT IS AVAILABLE BY YOUR DRAFT(S) DRAWN AT SIGHT ON FIRST TEXAS FIDELITY COMPANY DULY AND MANUALLY SIGNED AND MARKED: "DRAWN UNDER FIRST TEXAS FIDELITY COMPANY LETTER OF CREDIT NO. FTFC-23234 DATED JUNE 5, 2023" WHEN ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL ORIGINAL AMENDMENTS, IF ANY, AND THE FOLLOWING DOCUMENT(S):

BENEFICIARY'S AFFIDAVIT DULY AND MANUALLY SIGNED AND DATED BY HAYS COUNTY (THE "COUNTY") ENGINEER SIGNING AS SUCH ON ITS LETTERHEAD READING EXACTLY AS FOLLOWS:

"(I) THE AMOUNT REPRESENTED BY THE DRAFT ACCOMPANYING THIS STATEMENT IS THE AMOUNT REQUIRED TO BE PAID TO THE BENEFICIARY ON ACCOUNT OF THE FAILURE OF LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD. ("LENNAR") TO COMPLETE THE PUBLIC IMPROVEMENTS FOR WATERSTONE UNIT B CALLED FOR IN THE HAYS COUNTY LAND DEVELOPMENT CODE (THE "CODE") AND PURSUANT TO THE ENGINEER COST ESTIMATE PREPARED BY DOUCET & ASSOCIATES, INC. DATED APRIL 13, 2023; (II) THAT LENNAR HAS BEEN GIVEN WRITTEN NOTICE BY THE COUNTY DESCRIBING THE EVENT OR CONDITION OF SUCH DEFAULT IN REASONABLE DETAIL BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; ; (III) THE DEFAULT HAS NOT BEEN CURED WITHIN THE CURE PERIOD PROVIDED FOR THEREIN, IF ANY; AND (IV) THAT THE COUNTY IS NOT IN DEFAULT UNDER THE TERMS AND CONDITIONS OF THE CODE AND AS SUCH IS ENTITLED TO BE PAID THE PROCEEDS OF THIS LETTER OF CREDIT UNDER THE TERMS AND CONDITIONS OF THE CODE."

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN ANY SUCH DOCUMENT, INSTRUMENT OR AGREEMENT.

WE HEREBY ENGAGE WITH BENEFICIARY THAT ALL SIGHT DRAFTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT TOGETHER WITH THE DOCUMENTS REQUIRED HEREIN TO FIRST TEXAS FIDELITY COMPANY 5505 BLUE LAGOON DRIVE, 7TH FLOOR WEST, MIAMI, FLORIDA 33126, IF PRESENTED BEFORE OUR CLOSE OF BUSINESS ON OR BEFORE THE EXPIRATION DATE. PRESENTATIONS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR BY FEDERAL EXPRESS OR ANY OTHER NATIONALLY RECOGNIZED COURIER COMPANY.

# FIRST TEXAS FIDELITY COMPANY

5505 BLUE LAGOON DRIVE, 7TH FLOOR W

MIAMI, FLORIDA 33126

PHONE (305)553-8724




**THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NO. FTFC-23234**

**PAGE 2**

**THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE – PUBLICATION NO. 590 ("ISP98").**

**VERY TRULY YOURS,**

**FIRST TEXAS FIDELITY COMPANY**

  
**JACQUELINE DE SOUZA, VICE PRESIDENT**



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Colby Machacek, County Planner

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item

Discussion and possible action to accept fiscal surety for street and drainage improvements in the amount of \$2,252,601,.83 for the Waterstone, Unit C, Subdivision (Irrevocable Standby Letter of Credit No. FTFC-23233). **INGALSBE/BORCHERDING**

### Summary

The final plat for Waterstone, Unit C Subdivision is being reviewed under the interlocal cooperation agreement with the City of San Marcos.

Formal acceptance of fiscal surety is required by Commissioners Court action.

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### Attachments

Plat

Letter of Credit





**DOUCET**

Civil Engineering // Entitlements // Geospatial  
 7401 B. Highway 71 W, Ste. 160  
 Austin, TX 78735, Tel: (512)-583-2600  
[www.doucetengineers.com](http://www.doucetengineers.com)  
 TBPELS Firm Number: 3937  
 TBPELS Firm Number: 10194551

Date:	6-2-2023
Scale:	1"=100'
Drawn by:	SWP
Reviewer:	JB
Project:	913-004
Sheet:	1 of 2
Field Book:	-
Party Chief:	-
Survey Date:	-

KNOW ALL MEN BY THESE PRESENTS §

STATE OF TEXAS §  
COUNTY OF TRAVIS §

KNOWN ALL MEN BY THESE PRESENTS, THAT WE, DRP TX 3, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WITH ITS HOME ADDRESS AT 590 MADISON AVENUE, 13TH FLOOR, NEW YORK, NEW YORK 10022, BEING THE OWNERS OF 30.56 ACRES OF LAND IN THE WILLIAM HEMPHILL SURVEY NUMBER 4, ABSTRACT NUMBER 221, HAYS COUNTY, TEXAS, AND BEING A PART OF A CALLED 231.12 ACRE TRACT, DESCRIBED IN DOCUMENT NUMBER 22030063 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS;

DO HEREBY SUBDIVIDE 30.56 ACRES AS SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS

WATERSTONE UNIT C

IN WITNESS WHEREOF, DRP TX 3, LLC, HAVE CAUSED THESE PRESENTS TO BE

EXECUTED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ A.D.

PRELIMINARY

BRIAN CLAUDON \_\_\_\_\_ DATE  
DRP TX 3, LLC  
590 MADISON AVENUE  
13TH FLOOR  
NEW YORK, NEW YORK 10022

HAYS COUNTY:  
STATE OF TEXAS §  
COUNTY OF HAYS §

I, ELAINE HANSON CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D. AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., AND DULY RECORDED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D. AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., IN THE PLAT

RECORDS OF HAYS COUNTY, TEXAS IN INSTRUMENT NUMBER \_\_\_\_\_

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

PRELIMINARY

ELAINE HANSON CARDENAS, MBA, PHD, COUNTY CLERK  
HAYS COUNTY, TEXAS

HAYS COUNTY:  
STATE OF TEXAS §  
COUNTY OF HAYS §

I, THE UNDERSIGNED, DIRECTOR OF THE HAYS COUNTY DEVELOPMENT SERVICES DEPARTMENT, HEREBY CERTIFY THAT THIS SUBDIVISION PLAT CONFORMS TO ALL HAYS COUNTY REQUIREMENTS AS STATED IN THE INTERLOCAL COOPERATION AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS FOR SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SAN MARCOS.

PRELIMINARY

MARCUS PACHECO, DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES  
HAYS COUNTY, TEXAS

STATE OF TEXAS §  
COUNTY OF TRAVIS §

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED, \_\_\_\_\_, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSORIBED TO THE FOREGOING INSTRUMENT AND HAS ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE CAPACITY FOR THE PURPOSED AND CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

NOTARY PUBLIC MY COMMISSION EXPIRES:  
IN AND FOR THE STATE OF TEXAS

ENGINEER'S CERTIFICATION:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

I, TRACY A. BRATTON, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THE PLAT AND ALL PLANS AND SPECIFICATIONS WHICH ARE INCLUDED WITH THE PLAT ARE, TO THE BEST OF MY PROFESSIONAL CAPACITY, COMPLETE AND ACCURATE AND IN COMPLIANCE WITH ALL RELEVANT CITY ORDINANCES, CODES, PLANS, AND RELEVANT STATE STANDARDS.

PRELIMINARY

TRACY A. BRATTON, P.E.  
TEXAS REGISTRATION NO. 90095  
DOUCET & ASSOCIATES, INC.  
7401B HIGHWAY 71 WEST, SUITE 160  
AUSTIN, TEXAS 78735

06/02/2023  
DATE

SURVEYOR'S CERTIFICATION:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

I, JOHN BARNARD, REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THIS PLAT AND ACCOMPANYING LEGAL DESCRIPTION OF EVEN DATE REPRESENT AN ACTUAL SURVEY PERFORMED ON THE GROUND UNDER MY SUPERVISION.

PRELIMINARY

JOHN BARNARD \_\_\_\_\_ DATE  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 5749  
DOUCET & ASSOCIATES, INC.  
JBARNARD@DOUCETENGINEERS.COM

06/02/2023  
DATE

WATER & WASTEWATER UTILITY APPROVAL:

WATER

WASTEWATER

CITY OF KYLE: LEON BARBA, CITY ENGINEER \_\_\_\_\_ DATE

LOT SUMMARY	
TOTAL NUMBER OF BLOCKS	14
TOTAL NUMBER OF LOTS	147
RESIDENTIAL LOTS	140
DRAINAGE EASEMENT LOTS	0
LANDSCAPE LOTS	0
COMMERCIAL LOTS	0
OPEN SPACE LOTS	8
TOTAL OVERALL ACREAGE	30.56

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	98.87'	421.31'	13°26'47"	S50°31'02"W	98.65'
C2	113.65'	480.00'	13°33'57"	S50°28'43"W	113.38'
C3	30.65'	22.28'	78°49'44"	S88°42'10"W	28.29'
C4	31.41'	20.00'	89°59'09"	S01°17'50"E	28.28'
C5	148.59'	530.00'	16°03'49"	S35°39'50"W	148.11'
C6	78.04'	79.00'	56°35'54"	S55°55'52"W	74.90'
C7	16.40'	119.00'	7°53'51"	S80°16'54"W	16.39'
C8	65.37'	79.00'	47°24'30"	N79°57'47"W	63.52'
C9	174.89'	2,445.00'	4°05'54"	N54°12'34"W	174.85'
C10	50.03'	30.00'	95°32'42"	N04°23'16"W	44.43'
C11	45.64'	30.00'	87°09'57"	S86°58'08"W	41.36'
C12	97.30'	2,445.00'	2°16'48"	N48°18'30"W	97.29'
C13	20.12'	25.00'	46°06'20"	S69°20'35"E	19.58'
C14	166.86'	50.00'	19°12'38"	S03°12'35"W	99.52'
C15	20.12'	25.00'	46°06'20"	S75°45'44"W	19.58'
C16	87.35'	973.00'	5°08'37"	S50°08'16"W	87.32'
C17	24.57'	15.00'	93°51'22"	S00°38'16"W	21.91'
C18	23.56'	15.00'	90°00'01"	S88°42'35"W	21.21'
C19	20.12'	25.00'	46°06'20"	S20°39'25"W	19.58'
C20	155.53'	50.00'	178°13'31"	S86°43'00"W	99.99'
C21	20.12'	25.00'	46°06'20"	N27°13'24"W	19.58'
C22	22.60'	15.00'	86°20'21"	S86°33'16"W	20.52'
C23	24.52'	15.00'	93°39'39"	S03°26'44"E	21.88'
C24	20.12'	25.00'	46°06'20"	S73°19'44"E	19.58'
C25	162.20'	50.00'	185°52'18"	S03°26'44"E	99.87'
C26	20.12'	25.00'	46°06'20"	S66°28'15"W	19.58'
C27	23.48'	15.00'	89°40'30"	S01°27'10"E	21.15'
C28	23.65'	15.00'	90°19'30"	S88°32'50"W	21.27'
C29	39.74'	23.00'	98°59'59"	N03°12'35"E	34.98'
C30	7.07'	5.00'	81°00'01"	S86°47'25"E	6.49'
C31	7.83'	5.00'	89°40'30"	S01°27'10"E	7.05'
C32	7.88'	5.00'	90°19'30"	S88°32'50"W	7.09'
C33	8.60'	5.00'	98°36'21"	N03°00'46"E	7.58'
C34	90.72'	1,027.00'	5°03'40"	N49°47'07"E	90.69'
C35	22.63'	15.00'	86°27'19"	S89°31'04"E	20.55'
C36	23.48'	15.00'	89°40'30"	S01°27'10"E	21.15'
C37	23.65'	15.00'	90°19'30"	N88°32'50"E	21.27'
C38	7.83'	5.00'	89°40'30"	S01°27'10"E	7.05'
C39	7.88'	5.00'	90°19'30"	S88°32'50"W	7.09'

HAYS COUNTY:  
STATE OF TEXAS §  
COUNTY OF HAYS §

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER SUPPLY OR STATE-APPROVED COMMUNITY WATER SYSTEM. DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY HAYS COUNTY TO QUESTION THE SELLER CONCERNING GROUNDWATER AVAILABILITY. RAINWATER COLLECTION IS ENCOURAGED AND IN SOME AREAS MAY OFFER THE BEST RENEWABLE WATER RESOURCE. NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPMENT SERVICES. NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL HAYS COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

PRELIMINARY

MARCUS PACHECO, DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES  
HAYS COUNTY, TEXAS

PRELIMINARY

ERIC VAN GAASBEEK, R.S., C.F.M., FLOODPLAIN ADMINISTRATOR  
HAYS COUNTY DEVELOPMENT SERVICES  
HAYS COUNTY, TEXAS

CITY OF SAN MARCOS

APPROVAL CERTIFICATE

APPROVED AND AUTHORIZED TO BE RECORDED ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ BY THE PLANNING ZONING COMMISSION OF THE CITY OF SAN MARCOS, TEXAS.

CIP & ENGINEERING \_\_\_\_\_ DATE

DIRECTOR OF PLANNING & DEVELOPMENT SERVICES \_\_\_\_\_ DATE

RECORDING SECRETARY \_\_\_\_\_ DATE

CHAIRMAN, PLANNING & ZONING COMMISSION \_\_\_\_\_ DATE

AREA TABLE:

- TOTAL LOT ACREAGE: 23.88 ACRES.  
THIS PROJECT CONTAINS 147 LOTS, AVERAGING 0.1626 AC. THERE ARE:  
0 LOTS > 10 AC;  
0 LOT BETWEEN 10 AC AND 5 AC;  
1 LOTS BETWEEN 5 AC AND 2 AC;  
1 LOTS BETWEEN 2 AC AND 1 AC;  
145 LOTS < 1 AC.
  - THE TOTAL AREA OF STREET IN THIS SUBDIVISION IS 6.68 ACRES.
  - THE TOTAL LENGTH OF ALL STREETS IN THIS SUBDIVISION IS 6,399 LINEAR FEET.
- TOTAL ACREAGE: 30.56 ACRES.

FLOOD NOTE:

THIS PROPERTY IS LOCATED WITHIN UNSHADED ZONE "X" (AREA OF MINIMAL FLOOD HAZARD) AS SHOWN ON THE FLOOD INSURANCE RATE MAP NO. 48209C0405F EFFECTIVE 09-02-2005 AND ISSUED BY FEMA FOR HAYS COUNTY, TEXAS. THIS FLOOD STATEMENT SHALL NOT GREATLY LIABILITY ON THE PART OF THE SURVEYOR OR ENGINEER

THE ABOVE STATEMENT IS MEANT FOR FLOOD INSURANCE DETERMINATION ONLY AND THIS SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAP(S).

NOTES:

- THIS PROJECT IS IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF SAN MARCOS, TEXAS.
- PUBLIC SIDEWALKS, BUILT TO CITY OF SAN MARCOS STANDARDS, ARE REQUIRED ALONG ALL STREETS. THESE SIDEWALKS SHALL BE IN PLACE PRIOR TO ADJOINING LOT BEING OCCUPIED. FAILURE TO CONSTRUCT THE REQUIRED SIDEWALKS MAY RESULT IN THE WITHHOLDING OF CERTIFICATES OF OCCUPANCY, BUILDING PERMITS, OR UTILITY CONNECTIONS BY THE GOVERNING BODY OR UTILITY COMPANY.
- THIS PLAT (AND THE LOTS THEREIN) ARE SUBJECT OF THE APPROVED WATERSTONE REGULATING PLAN (CITY OF SAN MARCOS REFERENCE NUMBER RP-19-01), DOCUMENT ID 22030049 O.P.R.H.C.T. RECORDED 06/14/2023.
- FIRE HYDRANT SPACING AND WATER FLOW WILL MEET CITY OF SAN MARCOS SPECIFICATIONS.
- AS USED HEREIN, THE TERM "DEVELOPER" SHALL MEAN "DRP TX 3, LLC" OR ITS SUCCESSORS OR ASSIGNS.
- OPEN SPACE LOTS 900-904 ARE HEREBY DEDICATED BY THIS PLAT AS PUBLIC ACCESS EASEMENTS AND SHALL BE PRIVATELY MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
- DRAINAGE EASEMENTS ARE TO BE PRIVATELY MAINTAINED.
- PROPOSED ROADWAYS ARE TO BE PUBLIC
- THIS PLAT LIES ENTIRELY OUTSIDE THE EDWARDS AQUIFER RECHARGE AND CONTRIBUTING ZONES.
- POST-DEVELOPMENT CONDITIONS RUNOFF RATE SHALL BE NO GREATER THAN THE PRE-DEVELOPED CONDITION FOR 2, 5, 10, 25, AND 100-YEAR STORM EVENTS. PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION.
- THIS PROJECT IS LOCATED WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, EMERGENCY SERVICE DISTRICTS #5 AND #9, AND PLUM CREEK GROUNDWATER CONSERVATION DISTRICT.
- ALL LOTS FRONTING ROADWAYS SHALL HAVE A 25-FOOT BUILDING SETBACK LINE PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 705 § 8.01 (F).
- POST-CONSTRUCTION STORMWATER CONTROL MEASURES SHALL HAVE A MAINTENANCE PLAN. THE MAINTENANCE PLAN MUST BE FILED IN THE REAL PROPERTY RECORDS OF HAYS COUNTY. THE OWNER OPERATOR OF ANY NEW DEVELOPMENT OR REDEVELOPMENT SITE SHALL DEVELOP AND IMPLEMENT A MAINTENANCE PLAN ADDRESSING MAINTENANCE REQUIREMENTS FOR ANY STRUCTURAL CONTROL MEASURES INSTALLED ON SITE. OPERATION AND MAINTENANCE PERFORMED SHALL BE DOCUMENTED, RETAINED, AND MADE AVAILABLE FOR REVIEW UPON REQUEST.
- ALL ROADWAYS SHOULD BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH APPLICABLE HAYS COUNTY STANDARDS.
- DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 751.
- SIDEWALKS ARE REQUIRED ALONG ALL STREETS PER THE APPROVED WATERSTONE REGULATING PLAN.
- THE FOLLOWING GPS BENCHMARKS ARE TIED TO AND REFERENCED ON THIS PLAT:  
18. CITY OF SAN MARCOS GPS CONTROL MONUMENT #10  
ALUMINUM DISK SET IN CONCRETE  
GRID N=13,688,162.95'  
ELEV =629.43'  
HAYS COUNTY GPS CONTROL MONUMENT #120  
GRID N=13,695,235.43'  
GRID E=2,335,976.71'  
ELEV =675.459'

FINAL PLAT  
WATERSTONE  
UNIT C  
HAYS COUNTY, TEXAS



Civil Engineering // Entilements // Geospatial  
7401 B. Highway 71 W, Ste. 160  
Austin, TX 78735, Tel: (512)-583-2600  
www.doucetengineers.com  
TBPELS Firm Number: 3937  
TBPELS Firm Number: 10194551

Date: 6-2-2023

Scale: 1"=100'

Drawn by: SWP

Reviewer: JB

Project: 913-004

Sheet: 1 OF 2

Field Book: --

Party Chief: --

Survey Date: --

# FIRST TEXAS FIDELITY COMPANY

5505 BLUE LAGOON DRIVE, 7TH FLOOR W

MIAMI, FLORIDA 33126

PHONE (305)553-8724



**JUNE 5, 2023**

## **IRREVOCABLE STANDBY LETTER OF CREDIT NO. FTFC-23233**

**BENEFICIARY:** HAYS COUNTY  
712 S. STAGECOACH TRAIL  
SAN MARCOS, TX 78666

**APPLICANT:** LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.  
13620 N. FM 620, BLDG. B, SUITE 150  
AUSTIN, TX 78717

**LC AMOUNT:** USD \$2,252,601.83 (TWO MILLION TWO HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED ONE AND 83/100 US DOLLARS)

**EXPIRATION DATE:** JUNE 4, 2024 AT OUR COUNTERS

**RE:** WATERSTONE UNIT C

### **GENTLEMEN:**

**WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. FTFC-23233 IN YOUR FAVOR AT THE REQUEST AND FOR THE ACCOUNT OF LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD. IN AN AGGREGATE AMOUNT NOT TO EXCEED THE LC AMOUNT.**

**THIS LETTER OF CREDIT IS AVAILABLE BY YOUR DRAFT(S) DRAWN AT SIGHT ON FIRST TEXAS FIDELITY COMPANY DULY AND MANUALLY SIGNED AND MARKED: "DRAWN UNDER FIRST TEXAS FIDELITY COMPANY LETTER OF CREDIT NO. FTFC-23233 DATED JUNE 5, 2023" WHEN ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL ORIGINAL AMENDMENTS, IF ANY, AND THE FOLLOWING DOCUMENT(S):**

**BENEFICIARY'S AFFIDAVIT DULY AND MANUALLY SIGNED AND DATED BY HAYS COUNTY (THE "COUNTY") ENGINEER SIGNING AS SUCH ON ITS LETTERHEAD READING EXACTLY AS FOLLOWS:**

**"(I) THE AMOUNT REPRESENTED BY THE DRAFT ACCOMPANYING THIS STATEMENT IS THE AMOUNT REQUIRED TO BE PAID TO THE BENEFICIARY ON ACCOUNT OF THE FAILURE OF LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD. ("LENNAR") TO COMPLETE THE PUBLIC IMPROVEMENTS FOR WATERSTONE UNIT C CALLED FOR IN THE HAYS COUNTY LAND DEVELOPMENT CODE (THE "CODE") AND PURSUANT TO THE ENGINEER COST ESTIMATE PREPARED BY DOUCET & ASSOCIATES, INC. DATED JANUARY 24, 2023; (II) THAT LENNAR HAS BEEN GIVEN WRITTEN NOTICE BY THE COUNTY DESCRIBING THE EVENT OR CONDITION OF SUCH DEFAULT IN REASONABLE DETAIL BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; ; (III) THE DEFAULT HAS NOT BEEN CURED WITHIN THE CURE PERIOD PROVIDED FOR THEREIN, IF ANY; AND (IV) THAT THE COUNTY IS NOT IN DEFAULT UNDER THE TERMS AND CONDITIONS OF THE CODE AND AS SUCH IS ENTITLED TO BE PAID THE PROCEEDS OF THIS LETTER OF CREDIT UNDER THE TERMS AND CONDITIONS OF THE CODE."**

**THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO OR TO WHICH THIS LETTER OF CREDIT RELATES, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN ANY SUCH DOCUMENT, INSTRUMENT OR AGREEMENT.**

**WE HEREBY ENGAGE WITH BENEFICIARY THAT ALL SIGHT DRAFTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT TOGETHER WITH THE DOCUMENTS REQUIRED HEREIN TO FIRST TEXAS FIDELITY COMPANY 5505 BLUE LAGOON DRIVE, 7TH FLOOR WEST, MIAMI, FLORIDA 33126, IF PRESENTED BEFORE OUR CLOSE OF BUSINESS ON OR BEFORE THE EXPIRATION DATE. PRESENTATIONS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR BY FEDERAL EXPRESS OR ANY OTHER NATIONALLY RECOGNIZED COURIER COMPANY.**



# FIRST TEXAS FIDELITY COMPANY

5505 BLUE LAGOON DRIVE, 7TH FLOOR W

MIAMI, FLORIDA 33126

PHONE (305)553-8724



**THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NO. FTFC-23233**

**PAGE 2**

**THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE – PUBLICATION NO. 590 (“ISP98”).**

**VERY TRULY YOURS,**

**FIRST TEXAS FIDELITY COMPANY**

**JACQUELINE DE SOUZA, VICE PRESIDENT**



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 4-way stop at the intersection of Sparrow Lane and Skyview Terrace. **INGALSBE/BORCHERDING**

### Summary

In response to a request from local residents, there is a need to establish a 4-way stop location at this intersection for ease of traffic flow and safety on Skyview Terrace.

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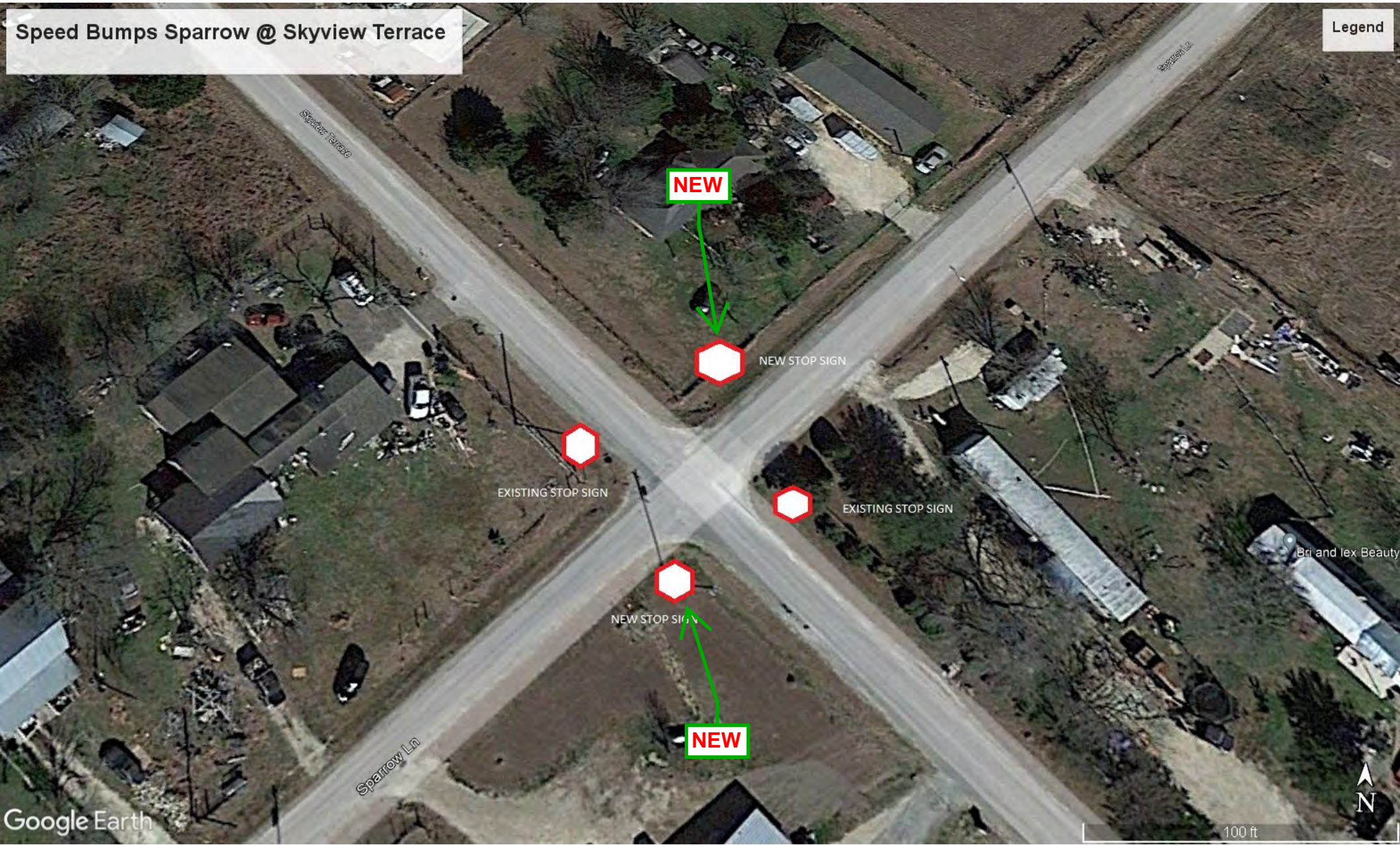
### Attachments

Skyview Terrace Map



Speed Bumps Sparrow @ Skyview Terrace

Legend





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item

Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 3-way stop at the intersection of Jennifer Drive and Christopher Drive. **INGALSBE/BORCHERDING**

### Summary

In response to a request from local residents, there is a need to establish a 3-way stop location at this intersection for ease of traffic flow and safety on Christopher Drive.

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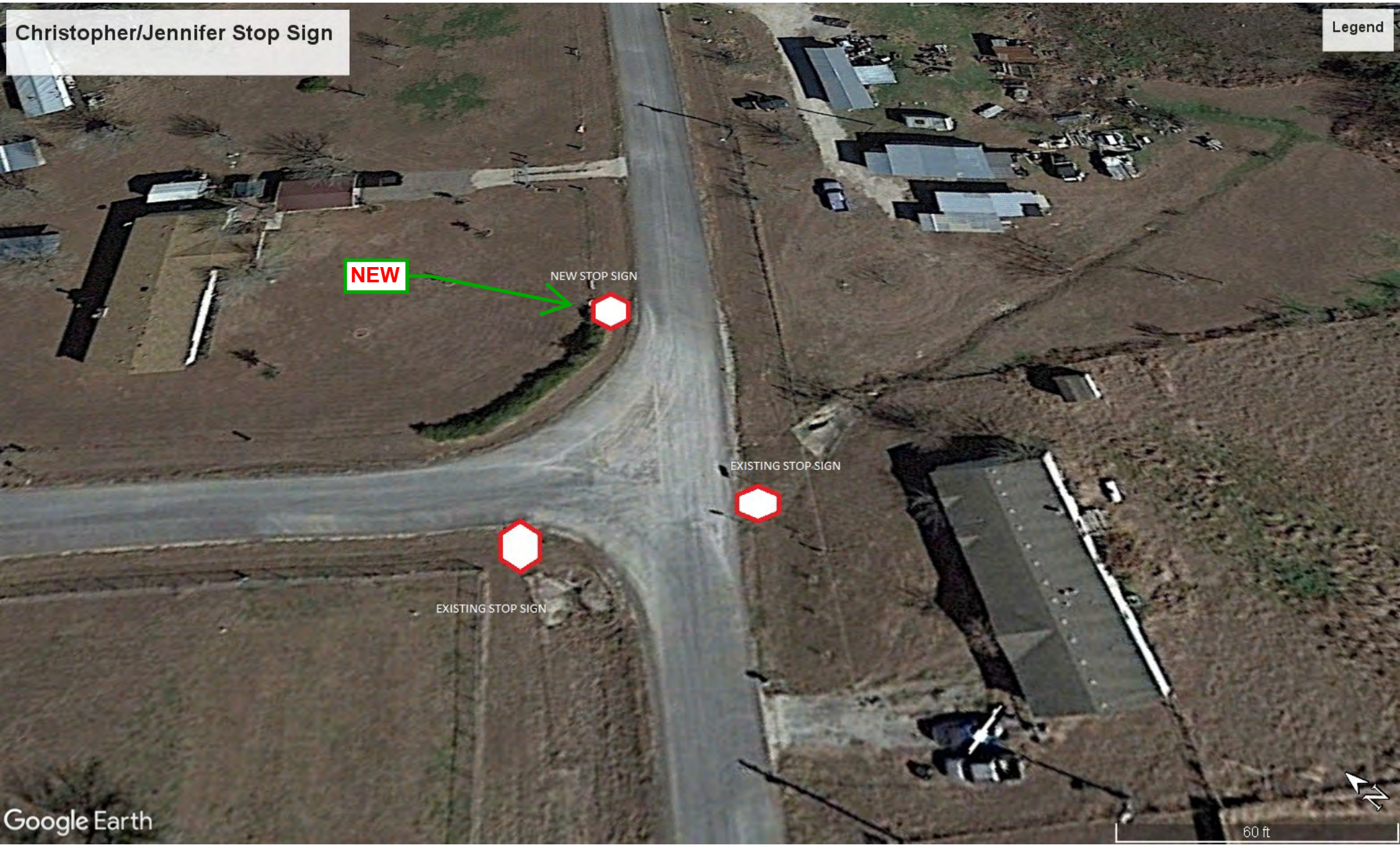
### Attachments

Christopher Drive Map



Christopher/Jennifer Stop Sign

Legend





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

---

### Agenda Item

Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 4-way stop at the intersection of Skyview Terrace and Green Pastures Road. **INGALSBE/BORCHERDING**

### Summary

In response to a request from local residents, there is a need to establish a 4-way stop location at this intersection for ease of traffic flow and safety on Green Pastures Road.

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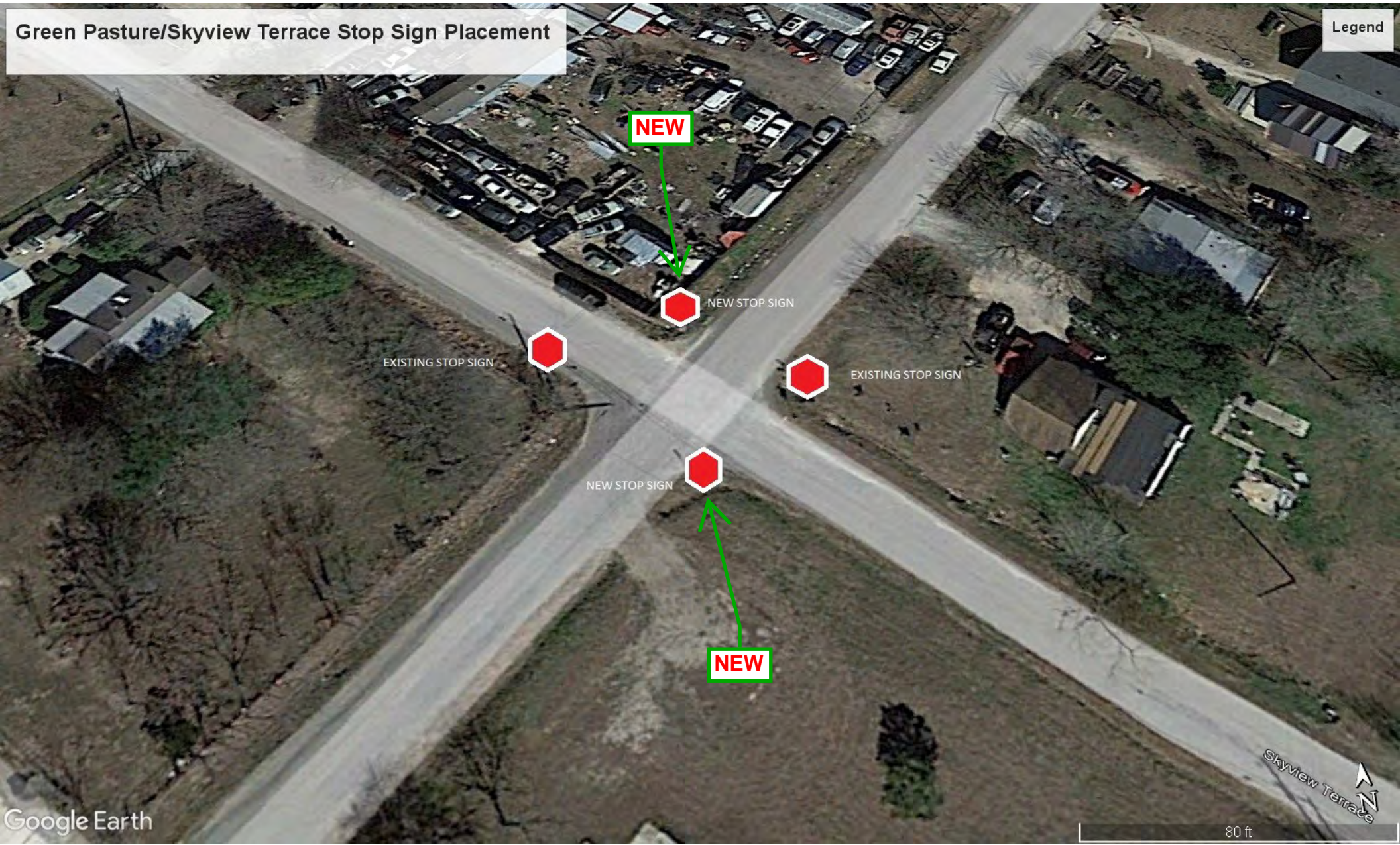
### Attachments

Green Pastures Map



Green Pasture/Skyview Terrace Stop Sign Placement

Legend





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Discussion and possible action to call for a public hearing on July 25, 2023, to establish a 3-way stop at the intersection of Miller Lane and Country Lane. **INGALSBE/BORCHERDING**

### Summary

In response to a request from local residents, there is a need to establish a 3-way stop location at this intersection for ease of traffic flow and safety on Country Lane.

---

### Attachments

Country Lane Map



# Miller Ln / Country Ln Stop Signs

Green Pastures Sub.

Legend

 Miller Ln







## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Marcus Pacheco, Development Services Director

Sponsor:

Commissioner Smith

---

### Agenda Item

PLN-2093-PRE; Discussion and possible action to consider granting a variance from Chapter 721 § 5.03 and Table 721.02 of the Hays County Development Regulations regarding the Hawk Ridge, Phase 2, Preliminary Plan. **SMITH/PACHECO**

### Summary

Hawk Ridge, Phase 2, Preliminary Plan is a proposed subdivision located off of Evergreen Way in Precinct 4.

The subject property falls in the Austin postal area within Hays County.

The project will consist of 27 single family residence lots across 38.50 acres.

Water utility will be accomplished through West Travis County PUA.

Wastewater treatment will be accomplished by individual on-site sewage facilities.

The Owner and Applicant are seeking a variance to Hays County Development Regulations, Chapter 721 § 5.03 and Table 721.02 regarding roadway standards and cul-de-sac radius requirements.

Cover Letter, Preliminary Plan, Variance Request and Justification are provided in the back-up.

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### Attachments

Cover Letter

Plan

Variance Request

Location Map



## **Hays County Commissioners Court Agenda Request**

**Meeting Date:** July 11<sup>th</sup>, 2023

**Requested By:** Marcus Pacheco, Director

**Prepared By:** Colby Machacek, Planner

**Department Director:** Marcus Pacheco, Director

**Sponsoring Court Member:** Commissioner Walt Smith, Precinct 4

### **AGENDA ITEM LANGUAGE:**

PLN-2093-PRE; Discussion and possible action to consider granting a variance from the Hays County Development Regulations, Chapter 721 § 5.03 and Table 721.02 concerning cul-de-sac radii requirements within the Hays Ridge, Phase 2, Preliminary Plan.

### **BACKGROUND/SUMMARY OF REQUEST:**

- A) Hawk Ridge, Phase 2, Preliminary Plan is a proposed subdivision located off of Evergreen Way in Precinct 4.
- B) The subject property falls in the Austin postal area within Hays County.
- C) The project will consist of 27 single family residence lots across 38.50 acres.
- D) Water utility will be accomplished through West Travis County PUA.
- E) Wastewater treatment will be accomplished by individual on-site sewage facilities.

### **STAFF COMMENTS:**

Hays County Development Services staff are in review of the resubmission for the Preliminary Plan following a Commissioners Court determination provided on December 20<sup>th</sup>, 2022.

The Owner and Applicant are seeking a variance to Hays County Development Regulations, Chapter 721 § 5.03 and Table 721.02 regarding roadway standards and cul-de-sac radius requirements.

Variance request application and justification is provided in the back-up.

### **ATTACHMENTS/EXHIBITS:**

Plan Submission

Location Map

Variance Request

SCALE: 1" = 100'

AMENDED PLAT OF LOTS 6 & S  
RESUB OF LOT 1, WILDWOOD  
Volume 6 Page 17



# Hawk Ridge

## Phase 2

LOT 4B

RESUB. OF LOT 4 WILDWOOD  
Volume 5 Page 214

LOT 2  
WILDWOOD  
Volume 5 Page 71

LOT 8a

LOT 6a

capped iron rod found  
marked "Survcon Inc."  
(not used) bears  
S81°46'W 0.75'

N88°46'21"E 534.17'

N88°39'10"E 535.04'

N88°36'10"E 507.98'

400.36'  
(400.45')

393.30'

330.56'

177.42'

at position of PK nail found  
in top of corner post  
in March of 2004

N89°30'17"E 230.15'

S87°04'33"E 184.30'

275.00'

394.62'

113.00'

119.15'

76.40'

553°10'15"E

233.03'

550.04'

340.77'

156.47'

340.77'

149.92'

332°12"E

334.23'

N78°33'45"E

1.000 Acres

1.003 Acres

1.005 Acres

1.000 Acres

1.000 Acres

1.002 Acres

1.002 Acres

1.002 Acres

1.004 Acres

1.002 Acres

1.002 Acres

1.020 Acres

1.000 Acres

348.35'

N4°39'48"W

400.79'

M-30.86+0.05

-88.04'E

241.20'

307.30'

307.30'

303.57'

N04°33'47"E

303.57'

303.57'

303.57'

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-88.04'E

241.20'

307.30'

307.30'

303.57'

N04°33'47"E

303.57'

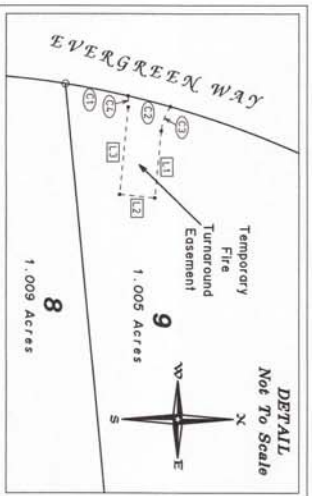
# Flauk Ridge

## Phase 2

### CURVE DATA

① A= 27'48.31" R= 330.00" T= 81.69" C= 158.60" A= 160.17" CB=S75°46'21"E	② A= 2'27.19" R= 330.00" T= 7.07" C= 14.14" A= 14.14" CB=S67°07'45"E	③ A= 25'21.12" R= 330.00" T= 74.23" C= 144.84" A= 146.02" CB=S77°02'01"E	④ A= 23'30.08" R= 281.00" T= 58.54" C= 114.62" A= 119.43" CB=S73°40'09"E	⑤ A= 87'21.54" R= 25.00" T= 23.89" C= 34.53" CB=N41°45'16"W	⑥ A= 93'25.47" R= 450.00" T= 26.35" C= 36.40" A= 189.84" CB=N10°09'27"W	⑦ A= 24'10.16" R= 450.00" T= 96.35" C= 188.43" A= 189.84" CB=N10°09'27"W
⑧ A= 33'40.06" R= 450.00" T= 53.93" C= 107.10" A= 107.35" CB=N4°54'22"W	⑨ A= 0°30.10" R= 450.00" T= 41.36" C= 82.37" A= 82.49" CB=N16°59'30"W	⑩ A= 26'12.08" R= 450.00" T= 76.52" C= 150.18" A= 151.13" CB=S9°58'05"E	⑪ A= 25'58.51" R= 25.00" T= 10.52" C= 19.39" A= 19.92" CB=N0°34'51"E	⑫ A= 54'35.37" R= 54.00" T= 12.90" C= 22.93" A= 23.82" CB=S48°21'57"E	⑬ A= 27°04.02" R= 54.00" T= 12.90" C= 22.93" A= 23.82" CB=S48°21'57"E	⑭ A= 6°53.54" R= 54.00" T= 3.62" C= 7.22" A= 7.22" CB=N19°57'19"E
⑬ A= 63°07.45" R= 60.00" T= 38.17" C= 65.81" A= 66.11" CB=N15°03'30"W	⑭ A= 49°20.34" R= 60.00" T= 41.53" C= 50.09" A= 51.67" CB=N71°17'39"W	⑰ A= 38°50.19" R= 60.00" T= 31.90" C= 40.67" CB=S64°36'54"W	⑱ A= 44°41.22" R= 60.00" T= 24.62" C= 46.80" CB=S22°51'04"W	⑲ A= 76°10.09" R= 60.00" T= 12.90" C= 22.93" A= 23.82" CB=S37°34'41"E	⑳ A= 23°01.07" R= 540.00" T= 12.90" C= 21.45" A= 216.95" CB=N83°03'13"E	㉑ A= 47°52.15" R= 600.00" T= 181.76" C= 344.53" CB=N40°39'25"E
㉒ A= 7°16.51" R= 600.00" T= 38.17" C= 76.18" A= 76.18" CB=N89°04'39"W	㉓ A= 7°55.09" R= 600.00" T= 41.53" C= 82.08" A= 82.08" CB=S83°19'21"W	㉔ A= 32°40.14" R= 600.00" T= 179.85" C= 337.91" CB=S83°01'39"W	㉕ A= 57°17.97" R= 540.00" T= 299.02" C= 517.81" CB=N30°36'38"E	㉖ A= 7°05.01" R= 540.00" T= 33.42" C= 66.72" CB=N5°30'10"E	㉗ A= 13°00.33" R= 540.00" T= 61.97" C= 122.35" CB=N19°32'57"E	㉘ A= 37°12.23" R= 540.00" T= 181.76" C= 344.53" CB=N40°39'25"E
㉚ A= 34°59.51" R= 600.00" T= 189.16" C= 360.82" A= 366.49" CB=S19°05'47"W	㉛ A= 12°38.51" R= 600.00" T= 66.49" C= 132.17" A= 132.44" CB=S30°16'17"W	㉜ A= 22°21.00" R= 600.00" T= 118.53" C= 233.57" A= 234.05" CB=S12°46'22"W	㉝ A= 99°37.28" R= 25.00" T= 29.60" C= 38.20" A= 43.47" CB=N21°43'56"E	㉞ A= 92°39.35" R= 25.00" T= 26.19" C= 36.17" A= 40.43" CB=S74°24'36"E	㉟ A= 25°00.02" R= 11.00" T= 2.44" C= 4.76" A= 4.80" CB=N19°54'48"W	㊱ A= 25°00.01" R= 58.00" T= 12.86" C= 25.11" A= 25.31" CB=S19°54'47"E
㊲ A= 208°04.02" R= 208.00" T= N/A C= 116.42" A= 217.89" CB=S71°43.30"E	㊳ A= 22°16.50" R= 60.00" T= 108.87" C= 105.10" A= 128.05" CB=S28°49'54"E	㊴ A= 60°18.21" R= 60.00" T= 34.88" C= 63.18" A= 63.18" CB=N59°32'30"E	㊵ A= 25°28.51" R= 64.00" T= 13.57" C= 26.46" A= 26.68" CB=N16°58'54"E	㊶ A= 48°02.35" R= 60.00" T= 26.68" C= 50.31" A= 50.31" CB=S81°26'57"W	㊷ A= 48°02.53" R= 60.00" T= 26.68" C= 50.32" A= 50.32" CB=S33°24'13"W	㊸ A= 107°21.39" R= 60.00" T= 81.65" A= 112°43.3" CB=S44°18'03"E
㊹ A= 49°40.47" R= 25.00" T= 25.00" C= 21.00" A= 21.68" CB=N23°27'42"W	㊺ A= 49°40.47" R= 25.00" T= 25.00" C= 21.00" A= 21.68" CB=S73°08'29"E	㊻ A= 279°21.34" R= 60.00" T= 60.00" C= 72.65" A= 292.94" CB=S41°41'54"W	㊼ A= 75°54.26" R= 60.00" T= 75.80" C= 72.65" A= 79.49" CB=N36°34'32"W	㊽ A= 48°02.35" R= 60.00" T= 26.68" C= 50.31" A= 50.31" CB=S81°26'57"W	㊾ A= 48°02.53" R= 60.00" T= 26.68" C= 50.32" A= 50.32" CB=S33°24'13"W	㊿ A= 107°21.39" R= 60.00" T= 81.65" A= 112°43.3" CB=S44°18'03"E

### DETAIL Not To Scale



### DRAINAGE EASEMENT NUMBERED COURSES

T11N 85°26'13" W - 30.90'	T12N 07°53'24" W - 56.25'	T13N 45°00'37" E - 18.65'	T14S 43°10'37" E - 150.178'	T15S 23°18'08" E - 25.05'	T16S 27°49'08" E - 25.05'	T17N 65°26'13" W - 29.78'	T18S 85°26'13" E - 211.49'	T19S 85°26'13" E - 158.99'	T20S 24°02'46" E - 132.74'	T21S 30°43'39" E - 65.59'	T22S 24°12'38" E - 77.65'	T23S 43°17'16" E - 51.05'	T24S 60°32'54" E - 51.05'	T25S 60°32'54" E - 59.47'	T26S 02°16'08" W - 46.61'	T27S 88°20'00" W - 52.04'	T28S 88°20'00" W - 74.56'	T29N 33°07'01" W - 60.67'	T30N 77°55'17" W - 159.98'	T31N 25°11'18" W - 114.85'	T32N 02°36'25" W - 71.25'	T33N 35°05'40" W - 91.03'	T34N 35°05'40" W - 104.37'	T35N 24°59'34" W - 76.33'
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### TURNAROUND EASEMENT NUMBERED COURSES

L1S 84°20'52" E - 38.08'	L2S 05°59'08" W - 20.00'	L3N 84°20'51" W - 49.61'
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### TURNAROUND EASEMENT CURVE DATA

㉑ A= 3°50.37" R= 540.00" T= 18.12" C= 38.22" CB=N10°57'59"E	㉒ A= 2°37.58" R= 540.00" T= 12.41" C= 24.81" CB=N14°12'18"E	㉓ A= 30°17.32" R= 28.00" T= 7.58" A= 14.83" CB=S69°12'05"E	㉔ A= 12°57.16" R= 28.00" T= 3.18" A= 6.32" CB=S89°10'29"W
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### PLAT INFORMATION:

TOTAL AREA, 3650 ACRES  
TOTAL NUMBER OF LOTS, 27  
AVERAGE SIZE OF LOTS, 1426 ACRES  
NUMBER OF LOTS OVER 10 ACRES, 0  
NUMBER OF LOTS 5-10 ACRES, 1  
NUMBER OF LOTS 2-5 ACRES, 0  
NUMBER OF LOTS 1-2 ACRES, 26  
NUMBER OF LOTS LESS THAN 1 ACRE, 0

### STREETS

ROW WIDTH	LENGTH	TYPE
EVERGREEN WAY	1,687'	Local Street
KESTREL COVE	260'	Local Street
TALON COVE	60'	Local Street
KRIDERS COVE	60'	Local Street

ORIENTATION NOTE:  
The orientation for this plat was based upon the State Plane Coordinate System, 14204 -- Texas South Central Zone)





THE STATE OF TEXAS  
KNOW ALL MEN BY THESE PRESENTS,  
THAT, CATHERINE STEVEN VENTURES, LLC, OWNER OF THAT CERTAIN 38.50 ACRES TRACT OF LAND OUT OF THE LAMAR MOORE SURVEY ABSTRACT NO. 323 IN HAYS COUNTY, TEXAS, AS CONVEYED TO IT BY GENERAL WARRANTY DEED RECORDED IN INSTRUMENT NO. 20059201 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE SAID TRACT OF LAND IN ACCORDANCE WITH THE ATTACHED MAP OR PLAT TO BE KNOWN AS

## Hawk Ridge Phase 2

SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED.

WITNESS MY HAND THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_.

KIRBY WALLS Authorized Agent for  
CATHERINE STEVEN VENTURES, LLC  
1904 FORTVIEW ROAD, SUITE 100  
AUSTIN, TEXAS 78737

THE STATE OF TEXAS  
THE COUNTY OF HAYS  
BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY, HAYS, TEXAS, DO HEREBY CERTIFY THAT CATHERINE STEVEN VENTURES, LLC, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_.

NOTARY PUBLIC IN AND FOR HAYS COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF TRAVIS  
KNOW ALL MEN BY THESE PRESENTS:  
THAT I, THE UNDERSIGNED, A PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT COMPLES WITH THE ENGINEERING RELATED REQUIREMENTS OF THE HAYS COUNTY SUBDIVISION REGULATIONS.

ANDREW DOOSON, PE  
DOOSON CIVIL GROUP  
TX FIRM 20870

DATE

HOLT CARSON  
REGISTERED PROFESSIONAL LAND SURVEYOR No. 5166  
HOLT CARSON, INC.  
1904 FORTVIEW ROAD AUSTIN, TEXAS 78704  
FIRM 10050700



DATE

6-01-2023

PLAT NOTES:

1. THIS FINAL PLAT IS NOT LOCATED WITHIN THE JURISDICTION OF ANY MUNICIPALITY.
2. NO PORTION OF THIS PLAT LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE.
3. THIS PLAT LIES WITHIN THE BOUNDARIES OF THE CONTRIBUTING ZONE OF THE EDWARDS AQUIFER.
4. THIS PLAT IS LOCATED WITHIN THE BOUNDARY OF THE DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT.
5. A PORTION OF THIS PROPERTY IS LOCATED WITHIN ZONE A 100-YEAR FLOOD PLAIN AS DELINEATED ON THE FLOOD INSURANCE RATE MAP PANEL NO. 48209C DATED 7/1/05, EFFECTIVE DATE OF SEPTEMBER 2, 2005, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
6. WATER SERVICE WILL BE PROVIDED TO EACH LOT FROM WEST TRAVIS COUNTY PUA.
7. WASTEWATER SERVICE WILL BE PROVIDED TO EACH LOT BY AN ADVANCED ON-SITE SEWAGE FACILITY.
8. ELECTRIC SERVICE WILL BE PROVIDED BY THE PEDERNALES ELECTRIC COOPERATIVE.
9. DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 791.
10. THIS SUBDIVISION IS LOCATED WITHIN HAYS-TRINITY GROUNDWATER CONSERVATION DISTRICT 2.
11. ALL CULVERTS, WHEN REQUIRED, SHALL COMPLY WITH THE HAYS COUNTY STANDARD.
12. MAILBOXES PLACED WITHIN THE ROW, SHALL BE OF AN APPROVED T-POST OR FHWA DESIGN.
13. POST CONSTRUCTION STORMWATER CONTROL MEASURES SHALL HAVE A MAINTENANCE PLAN. THE MAINTENANCE PLAN MUST BE FILED IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY. THE OWNER/OPERATOR OF ANY NEW DEVELOPMENT OR REDEVELOPMENT SITE SHALL DEVELOP AND IMPLEMENT A MAINTENANCE PLAN ADDRESSING MAINTENANCE REQUIREMENTS FOR ANY STRUCTURAL CONTROL MEASURES INSTALLED ON SITE. OPERATION AND MAINTENANCE PERFORMED SHALL BE DOCUMENTED AND RETAINED AND MADE AVAILABLE FOR REVIEW UPON REQUEST.
14. POST DEVELOPMENT CONDITION FOR 2, 3, 10, 15 AND 100 YEAR STORM EVENTS, PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION.
15. ALL ROADWAYS SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH APPLICABLE HAYS COUNTY STANDARDS.
16. THIS SUBDIVISION LIES WITHIN THE HAYS COUNTY EMERGENCY SERVICES DISTRICT NO. 1 AND 6.

# Hawk Ridge Phase 2

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION, TO-WIT:

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER SUPPLY OR A STATE APPROVED COMMUNITY WATER SYSTEM, DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY HAYS COUNTY TO QUESTION THE SELLER CONCERNING GROUND WATER AVAILABILITY. RAIN WATER COLLECTION IS ENCOURAGED AND IN SOME AREAS MAY OFFER THE BEST RENEWABLE WATER RESOURCE.

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPMENT SERVICES DEPARTMENT. NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGON UNTIL ALL HAYS COUNTY DEVELOPMENT AUTHORIZATION REQUIREMENTS HAVE BEEN SATISFIED.

MARCUS PACHECO DIRECTOR  
HAYS COUNTY DEVELOPMENT  
SERVICES DEPARTMENT

ERIC VAN GAASBEK R.S., C.E.M.  
HAYS COUNTY FLOODPLAIN ADMINISTRATOR

THE STATE OF TEXAS  
THE COUNTY OF HAYS  
I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_ AT \_\_\_\_ O'CLOCK \_\_\_\_ M IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN INSTRUMENT NO. \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_.

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS.

STATE OF TEXAS  
COUNTY OF HAYS  
I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT ON THE \_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_, THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, PASSED AN ORDER AUTHORIZING THE FILING FOR RECORD OF THIS PLAT, AND SAID ORDER HAS BEEN DULY ENTERED IN THE MINUTES OF THE SAID COURT IN INSTRUMENT NO. \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ A.D., 20\_\_.

RUBEN BECERRA  
COUNTY JUDGE  
HAYS COUNTY, TEXAS

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS.

IN ORDER TO PROMOTE SAFE USE OF ROADWAYS AND PRESERVE THE CHANNELS OF RIVERS, CREEKS, AND DRAINAGE CONSTRUCTED ON ANY LOT WITHIN THIS SUBDIVISION SHALL BE OPEN TO PUBLIC ACCESS, PUBLICLY DEDICATED ROADWAY UNLESS (A) A DRIVEWAY PERMIT HAS BEEN ISSUED BY THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY AND (B) THE DRIVEWAY SATISFIES THE REQUIREMENT FOR DRIVEWAYS SET FORTH IN TABLE 721.02 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS.

IN APPROVING THIS PLAT BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, IT IS UNDERSTOOD THAT THE BUILDING OF ALL STREETS, ROADS, AND OTHER PUBLIC THOROUGHFARES DELINEATED AND SHOWN ON THIS PLAT, AND ALL BRIDGES AND CULVERTS NECESSARY TO BE CONSTRUCTED OR PLACED IN SUCH STREETS, ROADS, OR OTHER PUBLIC THOROUGHFARES, OR IN CONNECTION THEREWITH SHALL BE THE RESPONSIBILITY OF THE OWNER AND/OR THE DEVELOPER OF THE TRACT OF LAND COVERED BY THIS PLAT IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PRESCRIBED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, AND THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, AS WELL AS THE LOCAL LAWS, ORDINANCES, RULES, AND REGULATIONS OF HAYS COUNTY, TEXAS, AND THE STATE OF TEXAS, AND THE FEDERAL HIGHWAY ACT, AND THE FEDERAL AID TO HIGHWAYS ACT, AND ANY OTHER PUBLIC THOROUGHFARES SHOWN ON THIS PLAT OR OF CONSTRUCTING ANY BRIDGES OR CULVERTS IN CONNECTION THEREWITH.

PRIVATELY MAINTAINED PAVED STREETS:

CATHERINE STEVEN VENTURES, LLC, BY FILING THIS PLAT OF RECORD AND ALL FUTURE OWNERS OF PROPERTY WITHIN THIS SUBDIVISION, BY PURCHASING SUCH PROPERTY, ACKNOWLEDGE AND AGREE THAT HAYS COUNTY SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR OR ACCEPT MAINTENANCE OF THE ROADS SHOWN ON THIS SUBDIVISION UNTIL, AND UNLESS CATHERINE STEVEN VENTURES, LLC AND/OR THE HAWK RIDGE HOMEOWNERS ASSOCIATION HAS IMPROVED THE ROADWAYS TO THE THEN CURRENT STANDARDS REQUIRED BY HAYS COUNTY AND THE ROADS HAVE BEEN ACCEPTED FOR MAINTENANCE BY FORMAL WRITTEN ACTION OF THE COMMISSIONERS COURT AND THE ROADWAY, WITH ALL REQUIRED RIGHT-OF-WAY, HAS BEEN DEDICATED BY THE OWNERS THEREOF, AND ALL ACCREDITED BY THE COUNTY, AS A PUBLIC STREET. CATHERINE STEVEN VENTURES, LLC AND ALL FUTURE OWNERS OF PROPERTY WITHIN THIS SUBDIVISION SHALL LOOK SOLELY TO THE HAWK RIDGE HOMEOWNERS ASSOCIATION FOR FUTURE MAINTENANCE AND REPAIR OF THE ROADS AND STREETS SHOWN ON THIS SUBDIVISION.



## **REQUEST FOR VARIANCE APPLICATION PACKET**

**NOTICE TO APPLICANTS: IT IS YOUR RESPONSIBILITY TO THOROUGHLY READ AND UNDERSTAND THIS APPLICATION PACKET AND TO PROVIDE ALL INFORMATION REQUIRED HEREIN BEFORE THIS APPLICATION WILL BE ACCEPTED. INCOMPLETE APPLICATIONS WILL BE RETURNED.**

### **WHAT IS A VARIANCE?**

A variance is an adjustment in the application of the Hays County Development Regulations to a specific project based on special conditions or circumstances peculiar (unique) to the project where a literal enforcement of the Regulations will result in unnecessary hardship. A variance is in the nature of a waiver of the strict letter of the Regulations but in substantial compliance with them and without sacrificing their spirit and purpose where the variance is necessary to allow the property owner to enjoy the same or similar rights enjoyed by other similarly submitted applications for Development Authorizations.

### **WHO MAY SEEK A VARIANCE?**

Variances may be requested by the Owner of the Subject Property (the holder(s) of a legal or equitable interest in real property as shown by the deed records of Hays County) or the Applicant (the person seeking approval of an Application on behalf of an Owner). If an application is submitted by an Applicant other than the Owner, the Owner must certify that the Applicant has his permission to submit the application on his behalf.

### **ON WHAT GROUNDS MAY I SEEK A VARIANCE?**

Variances may be granted from any provision of the Hays County Development Regulations when the public interest or the requirements of justice demands relaxation of the strict requirements thereof or to avoid a regulatory taking. However, the Commissioners Court cannot grant any variance which conflicts with State or Federal law.

### **UNDER WHAT CIRCUMSTANCE MIGHT A REQUEST FOR VARIANCE NOT BE GRANTED?**

Pecuniary hardship standing alone shall not be deemed to constitute undue hardship.

### **HOW DO I APPLY FOR A VARIANCE?**

1. **COMPLETE THE APPLICATION FOR A VARIANCE:** After reviewing the entire Application packet carefully, prepare all the information requested on the Application. A complete Application must include all the information listed therein.
2. **SUBMIT APPLICATION:** Submit all the required application materials, along with a Subdivision Plat Submittal Form or Application for Development Authorization, to the Hays County Development Services Division at 2171 Yarrington Road, San Marcos, Texas. The Development Services staff cannot accept an incomplete application.

### **HOW LONG DOES IT TAKE TO COMPLETE THE VARIANCE PROCESS?**

Variances are approved along the same timeline as the Applicant's Subdivision Plan Submittal or Application for Development Permit. Refer to those application packets for more information. If the Development Services Division determines that a proposed administrative variance does not or may not meet the criteria identified in Sec. 701.08.06 of the Regulations, approval of such proposed administrative variance will be deferred to the Commissioners Court.

### **HOW MUCH DOES A VARIANCE REQUEST COST?**

A fee of \$100.00 must be paid at the time of the application is submitted and is non-refundable even if the application is denied.





# **REQUEST FOR VARIANCE** **Hays County, Texas**

To be included with Plat Submittal  
or Application for Development Authorization

*For Office Use Only*

Tracking Number: \_\_\_\_\_  
Date App. Received: \_\_\_\_\_  
Precinct # in which located: \_\_\_\_\_

**INSTRUCTIONS:** Complete all questions in this application. If an item does not apply, indicate by placing "NA" in the blank. Do not leave any blank empty.

## **OWNER INFORMATION:**

Property Owner's Full Legal Name: Catharine Steven Ventures, LLC (POC: Kirby Walls)  
Property Owner's Mailing Address: 801 Polo Club Drive, Austin, Texas 78737  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Cell Phone: (512) 466-5774 e-Mail Address: kirby@kirbywalls.com

**IF APPLICABLE:** Owner hereby gives Jon Thompson, J Thompson Professional Consulting, LLC permission to seek the variance stated herein, and any appeals thereof, if necessary, and to represent him/her at the meeting of the Hays County Commissioners Court.

I hereby certify that the above statements are true and correct to the best of my knowledge.

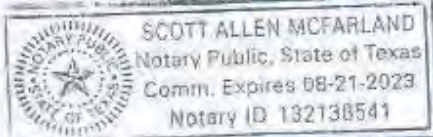
[Signature]  
Owner's Signature

STATE OF TEXAS

COUNTY OF ITAVLS

Subscribed and sworn to before me this 23 day of January, 2023

(seal)



[Signature]  
Notary Public  
My Commission expires: 8-21-23

## **APPLICANT INFORMATION (if different from Owner):**

Applicant's Full Legal Name: Jon Thompson, J Thompson Professional Consulting, LLC  
Applicant's Mailing Address: PO Box 172, Dripping Springs, Texas 78620  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
Cell Phone: (512) 568-2184 e-Mail Address: jthompsonconsultingds@gmail.com

## **PROPERTY INFORMATION:**

Proposed Name of Subdivision (if applicable): Hawk Ridge, Phase 2  
911 street address for the Subject Property, if established: (Not addressed) Evergreen Way, Dripping Springs, Texas 78620



Legal description:

Lot \_\_\_\_\_, Block \_\_\_\_\_, Subdivision \_\_\_\_\_, Sec \_\_\_\_\_, Phase \_\_\_\_\_

If not located in a subdivision: Survey Lamar Moore Survey, Abs 0323, 38.5 acres,

Abstract 0323, Recorded (Vol/Page) 20059211 (Instrument Number)

Hays Central Appraisal District Property ID Number: R16618

*This number can be obtained by searching the on-line property records for the Subject Property at [www.hayscad.com](http://www.hayscad.com) or by calling the HCAD at (512) 268-2522.*

Hays County Precinct in which the subject property is located: 4

*This information can be obtained by calling (512) 393-2160.*

**ACTION REQUESTED:**

☐ Administrative Variance as follows (check all that apply):

- ☐ Variance in the design and construction associated with a Flood Hazard Area Permit (FHAP) issued under Chapters 711 and 735 of the Regulations that does not result in a change of classification for the FHAP.
- ☐ Variance in the design, construction, and operation for an OSSF permitted under Chapters 711 and 741 of the Regulations that is specifically authorized under TCEQ regulations and involves minimum lot size requirements under County regulations for existing residential OSSFs that are required to be re-certified.
- ☐ Variance in the design, construction, and operation of a Manufactured Home Rental Community permitted under Chapters 711 and 745 of the Regulations that involve roadway alignments and widths.
- ☐ Variance in the alignment, design, and materials of construction for Minor County Facility Use permits issued under Chapters 711 and 751 of the Regulations that otherwise comply with those Chapters.
- ☐ Variance for Conservation Developments issued under Chapter 765 of the Regulations as allowed in Sec. 701.8.05 (1) through (8).

☐ Variance from the Regulations as they apply to the subdivision of property in Hays County.

☒ Other (specify): Variance from road standards

**All Applicants complete the following:**

Seeking a variance from the Hays County Development Regulations as follows (attach additional sheets if necessary):

Section of Regulations being Appealed	Requirements of Regulations	Variance Sought from Requirements
Chapter 721.05.03 "Minimum Rights of Way and Building Setbacks"	The Transportation requirements for Hays County requires the ROW radius to be 70'.	To continue the same ROW in Phase 2 as is in Phase 1 for uniformity purposes. The paving section for Phase 2 will be the same radius as is required and is the same in Phase 1.


**HARDSHIP FINDINGS (attach additional sheets if necessary):**

1. Describe the actual situation of the Subject Property and any special or unique condition(s) found thereon which may cause unusual and practical difficulty or unnecessary hardship if Applicant is made to comply with strict enforcement of the Development Regulations:

The first phase of the Hawk Ridge Subdivision was approved with sixty-foot radii. Several other projects in or near proximity were similarly approved with radii of sixty (60) foot for the ROWs but are compliant with the paving radius requirement.

2. Describe how strict enforcement of the provisions of the Development Regulations that are sought to be varied will (a) deny the Applicant the privileges or safety commonly enjoyed by neighboring or similarly situated property in Hays County with similarly timed development and (b) deprive the Applicant the reasonable use of his land, and that failure to approve the variance would result in undue hardship to the Applicant and/or a regulatory taking:

As stated above, the first phase was approved for sixty-foot radius as are several other developments near Hawk Ridge (Parten Ranch for example). It would be unfairly burdening Hawk Ridge, Phase 2, with a standard not applied equally among other subdivisions.

3. Describe how the granting of a variance will not be detrimental to public health, safety, and welfare, will not be injurious to other property, or will not prevent the orderly development of the land in the area in accordance with the Development Regulations:

The reduction of the ROW radius from seventy (70) feet to sixty (60) feet is not detrimental to the public health, safety, and welfare since the actual pavement radius of fifty (50) feet is still being met which is greater than the required pavement radius by five feet. (The published standard Table 721.02 "Design Requirements Based On Roadway Classification" lists Cul-de-sac / Paving radius as 70'/45'; we're proposing 60'/50'.)

4. The hardship sought to be avoided is NOT the result of (a) the Applicant's own actions (self-imposed or self-created) and/or (b) economic or financial hardship because:

The design for Phase 2 was prepared based on the approved standards for Phase 1 and what was seen as approved for other single family residential developments in near proximity to Hawk Ridge, Phase 2.

5. Describe how the variance will improve the functionality of the development on the Subject Property:

The functionality will remain the same since the health, safety, and welfare standards are not being violated.

6. Describe how the variance will improve the viability or sustainability of the conservation space for the purposes for which it is set aside, if applicable:

Not applicable.

7. Describe how the variance will resolve a conflict between the provisions of the Development Regulations and any other applicable governmental requirements (specify the source of the other requirements):

Not applicable as there are no other regulations with which there is a conflict in need of resolving, unless it is the International Fire Code as adopted by Hays County. However, I believe there is not a conflict between the County Development Regulations and the adopted Fire Code.

\*\*\*\*\*

### PRE-SUBMITTAL CHECKLIST

CHECK EACH ITEM TO INDICATE THAT IS HAS BEEN COMPLETED. IF AN ITEM DOES NOT APPLY, INDICATE BY PLACING "NA" IN THE CHECK BOX.

- ☒ Completed Subdivision Plat Submittal Form or Application for Development Authorization.
- ☒ Review fee. Make checks payable to the "Hays County Treasurer" and write your Driver's License Number on the check.
- ☒ Other – List any other supplemental information submitted with this Application:

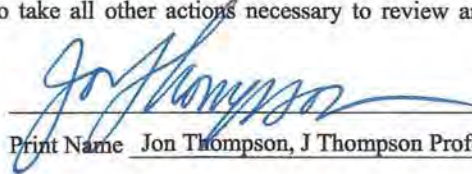
Copy of proposed Phase 2 preliminary plat.

\*\*\*\*\*



**OWNER'S/APPLICANT'S CERTIFICATION:**

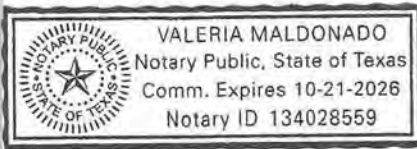
I hereby certify that I have carefully read the complete application and know the same is true and correct. I hereby agree to comply with all provisions of local, State, and Federal Laws whether they are herein specified or not. As the Owner of the above property or a duly authorized Applicant, I hereby grant permission to the County to enter the premises and make all necessary inspections and to take all other actions necessary to review and act upon this Application.

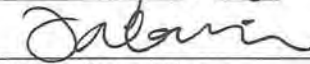
  
Print Name Jon Thompson, J Thompson Professional Consulting

STATE OF TEXAS     §  
COUNTY OF HAYS   §

Subscribed and sworn to before me this 24 day of January, 2023.

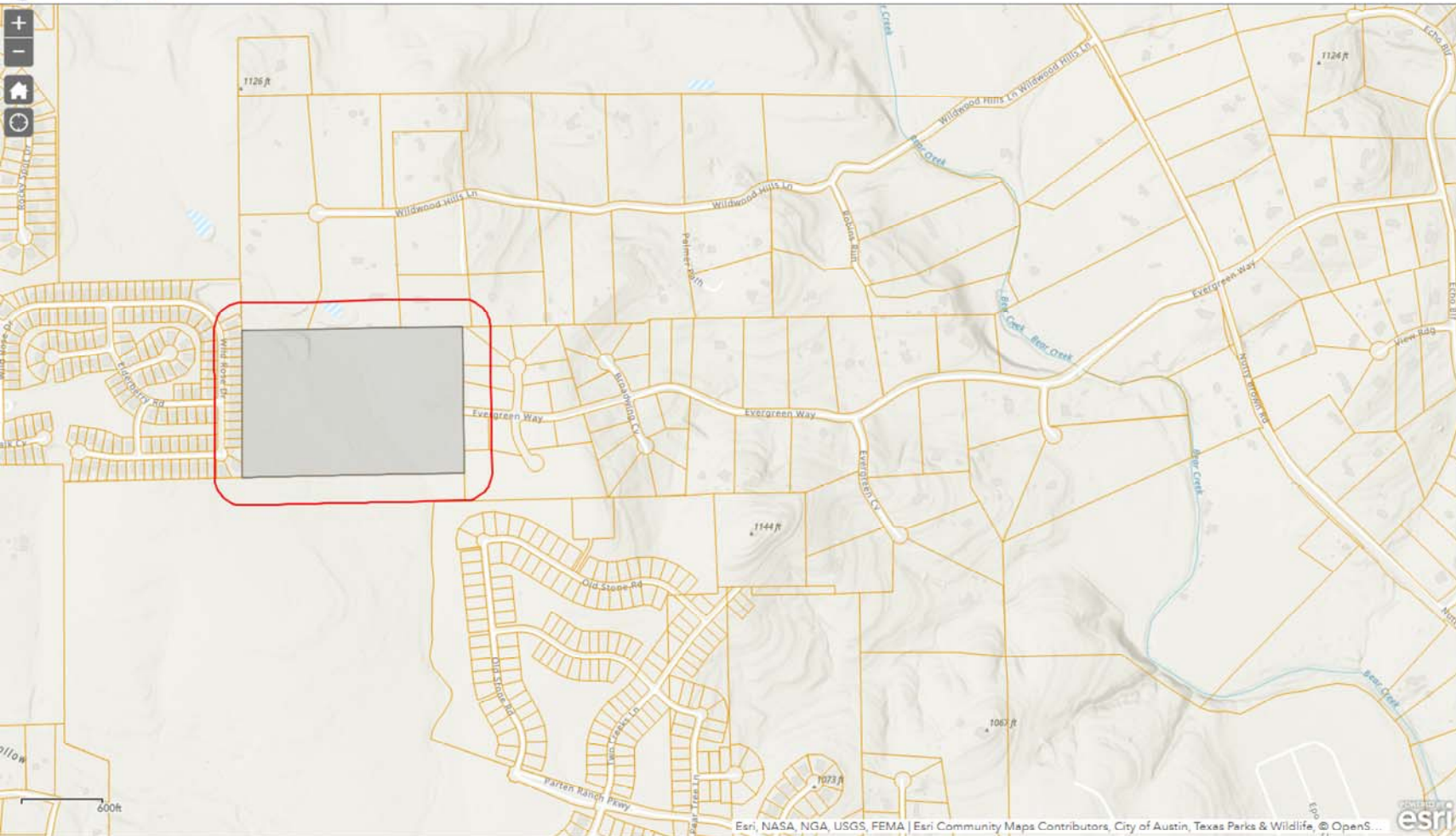
(seal)



  
Notary Public, State of Texas

My Commission expires: 10-21-2026





Screening

AOI

Place name Draw

Search for a location

R16618

Buffer distance (optional)

Show results within

200 Feet

Report Start Over



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Marcus Pacheco, Director

Sponsor:

Commissioner Smith

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### Agenda Item

PLN-2218-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Douglas Estates, D-11 Replat. **SMITH/PACHECO**

### Summary

Douglas Estates, D-11 Replat, is a proposed subdivision plat consisting of 2 lots across 10.02 acres located along Harmon Hills Road in Dripping Springs and Precinct 4. Water utility will be accomplished by private wells and/or rainwater collection. Wastewater utility will be accomplished by on-site sewage facilities.

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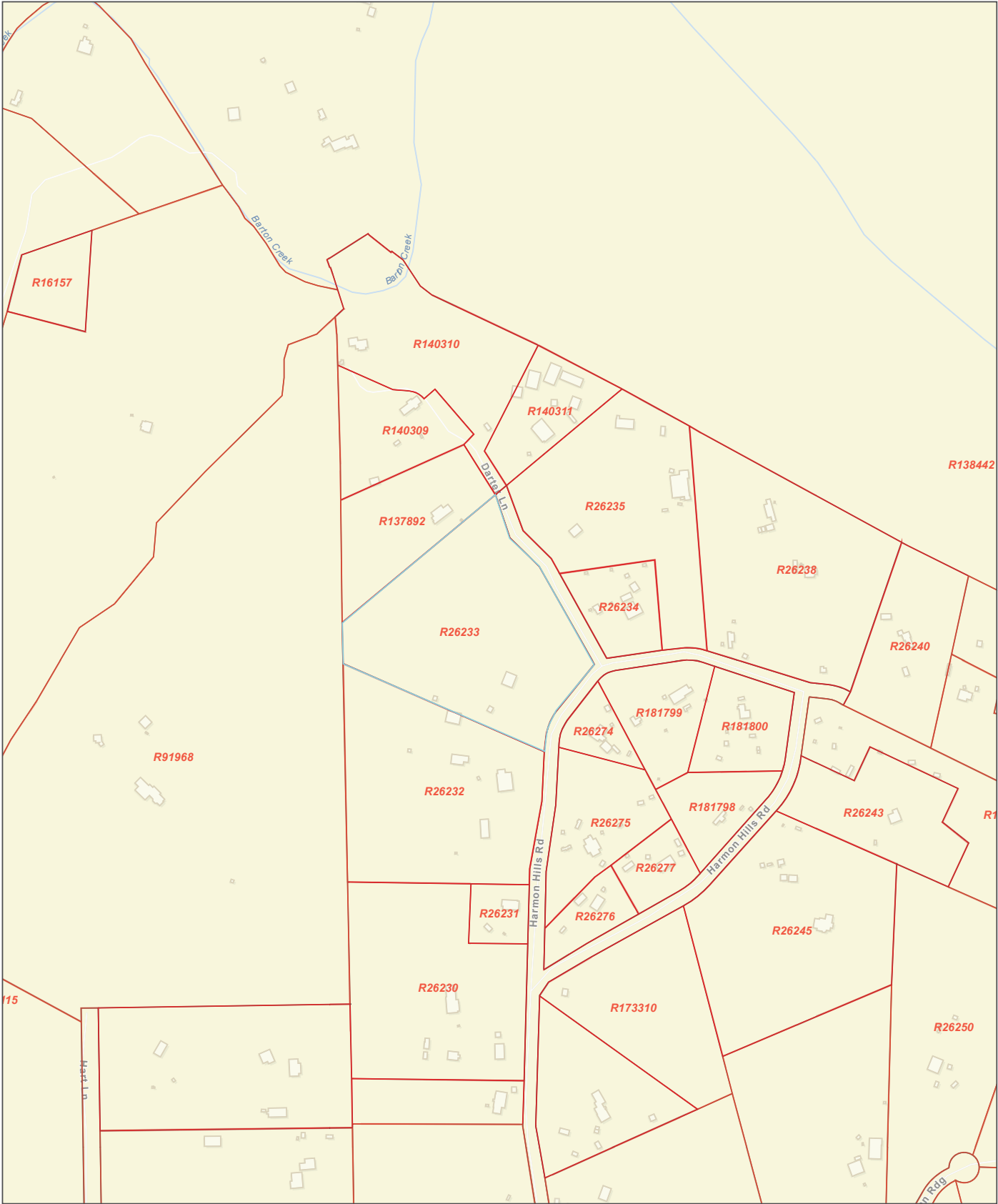
### Attachments

Plat  
Location Map  
Cover Letter  
Application Disapproved Letter







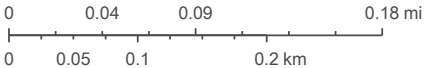
# Hays CAD Web Map



6/14/2023, 4:23:47 PM

 Parcels  
 Lot Lines

1:4,514



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Parks & Wildlife, © OpenStreetMap, Microsoft, CONANP,  
Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc,  
METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA



## **Hays County Commissioners Court Agenda Request**

**Meeting Date:** July 11<sup>th</sup>, 2023

**Requested By:** Marcus Pacheco, Director

**Prepared By:** Efren Chavez, County Planner

**Department Director:** Marcus Pacheco

**Sponsoring Court Member:** Commissioner Walt Smith, Precinct 4

### **AGENDA ITEM LANGUAGE:**

PLN-2218-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Douglas Estates, D-11, Replat.

### **BACKGROUND/SUMMARY OF REQUEST:**

- A) Douglas Estates, D-11, Replat is a recorded subdivision plat located along Harmon Hills Road in Dripping Springs and Precinct 4.
- B) The proposed replat will establish 2 lots across 10.02 acres.
- C) Water utility will be accomplished by individual private wells and/or rainwater collection. Wastewater utility will be accomplished by on-site sewage facilities.

### **STAFF COMMENTS:**

Staff has initiated review pursuant to Texas Local Gov't Code Chapter 232 and the Development Regulations of Hays County as set forth. The items remaining are to hold the public hearing, followed by discussion and possible action on the final determination for the Replat.

The application has no variances requested.

Staff recommends Disapproval for Douglas Estates, D-11, Replat based on the deficiencies as outlined in the backup. Staff is willing to work with the Owner/Applicant through the deficiencies and provide administrative approval once remedied pursuant to Texas Local Gov't Code Chapter 232.0028(c).

### **ATTACHMENTS/EXHIBITS:**

Plat

Location Map

Application Disapproval Letter



# Hays County Development Services

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## Application Disapproved

Owner Information:

c/o Dustin Day (Stephen Kuykendall & Linda Turner)  
1953 Harmon Hills Road, Dripping Springs TX 78620  
dustinbday@icloud.com

Date: 7/3/2023

Project ID: PLN-2218-PC

Application Type: Replat/Revision

Application Status: Application Disapproved

To whom it may concern,

Hays County staff has completed a detailed review for the above Application. In accordance with Texas Local Government Code, Chapter 232, the Application has been Disapproved. Below are the remaining deficiencies listed with the Application. A written response to each comment below is required. In addition to the written response, any updated documents, files, or information must be uploaded to the [MyGovernmentOnline](http://MyGovernmentOnline) Customer Portal.

### Digital Data Review

1. The digital data is denied due to the following:  
Add an additional ground control point (GCP) tie. Per Section 4.1 of the Hays County Digital Data Submission Standards, a minimum of two GCPs tied to at least two exterior corners of the overall replatted lots are required.  
Northing/Easting coordinate annotation at the subdivision corners need to be in plain text and not grouped with the leader line.  
You can find the most up-to-date Hays County Digital Data Submission Standards here:  
<https://hays-county-haysgis.hub.arcgis.com/pages/development-services>

### Floodplain Technical Review

1. Refraze note 10: No portion of this subdivision lies within the boundaries of the shaded Zone X, as delineated by FEMA FIRM Panel 48209C0101F, effective 9/2/2005.
2. Remove "interim" for Eric Van Gaasbeek's signature block.

### Planning Review

1. **Per Hays County Development Regulations Chapter 705 § 4.02 Fees:** Fees for Applications for Subdivisions shall be based on the number of lots and shall be as established by the Commissioners Court.  
The review Planning fees invoice has been released to the customer portal on 6/30/2023.
2. **General:** Please relabel the lots to D-11A and D-11B.
3. **Per Hays County Development Regulations Chapter 705 § 5.01 (F) General Information:** Names of adjoining subdivisions or owners contiguous to the proposed subdivision. Please list the property owners and/or subdivisions for the following parcel IDs:
  1. R140311
  2. R181799
  3. R26274
  4. R26275



## **Hays County Development Services**

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

- 4. Per Hays County Development Regulations Chapter 701 § 9.09 and 705 § 12.05: Conduct and provide proof of Posted Notice.**

If you have any questions, please contact the Hays County Planning Division at 512-393-2150 (ext. 4) or by emailing [planning@co.hays.tx.us](mailto:planning@co.hays.tx.us).

Thank you,

Efren Chavez

Planning Division

Hays County Development Services



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Marcus Pacheco, Director

Sponsor:

Commissioner Shell

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### Agenda Item

PLN-2235-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Hurlbut Ranch West, PT of Tract 23, Replat. **SHELL/PACHECO**

### Summary

Hurlbut Ranch West, PT of Tract 23, Replat is a recorded subdivision located off Roy Creek Trail in Dripping Springs and Precinct 3. Water utility will be accomplished by individual private wells and rainwater collection. Wastewater utility will be accomplished by on-site sewage facilities.

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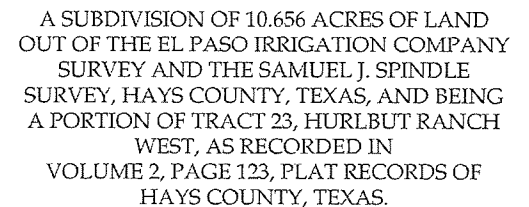
### Attachments

Plat

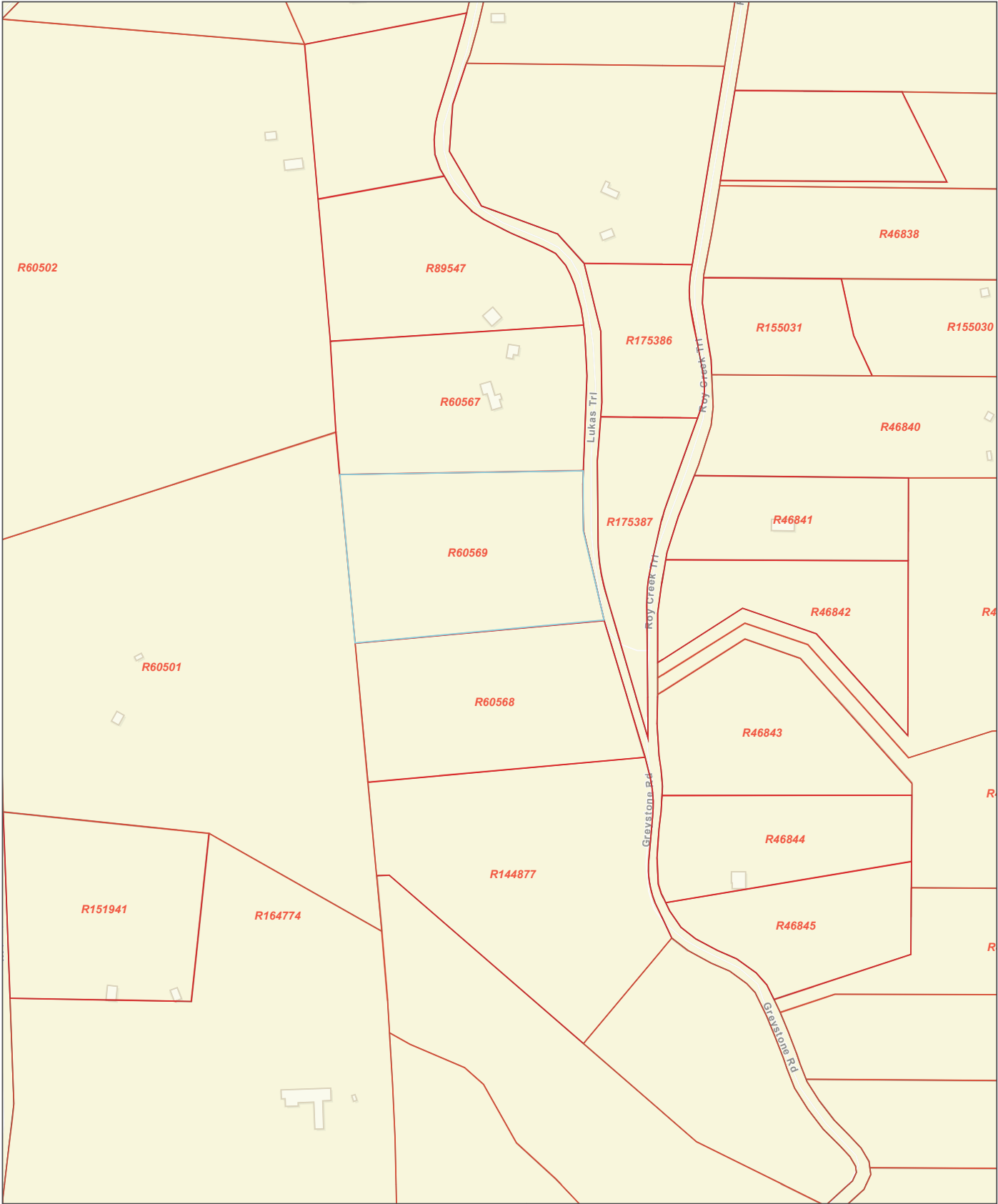
Location Map

Cover Letter



Application Disapproval Letter

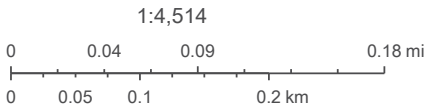


# Hays CAD Web Map



6/14/2023, 4:52:01 PM

 Parcels  
 Lot Lines



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Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc,  
METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only



## **Hays County Commissioners Court Agenda Request**

**Meeting Date:** July 11<sup>th</sup>, 2023

**Requested By:** Marcus Pacheco, Director

**Prepared By:** Efren Chavez, County Planner

**Department Director:** Marcus Pacheco

**Sponsoring Court Member:** Commissioner Lon Shell, Precinct 3

### **AGENDA ITEM LANGUAGE:**

PLN-2235-PC; Hold a Public Hearing; Followed by discussion and possible action regarding the Hurlbut Ranch West, PT of Tract 23, Replat.

### **BACKGROUND/SUMMARY OF REQUEST:**

- A) Hurlbut Ranch West, PT of Tract 23, Replat is a recorded subdivision plat located off Roy Creek Trail in Dripping Springs and Precinct 3.
- B) The proposed replat will establish 2 lots across 10.656 acres.
- C) Water utility will be accomplished by individual private wells and rainwater collection. Wastewater utility will be accomplished by on-site sewage facilities.

### **STAFF COMMENTS:**

Staff has initiated review pursuant to Texas Local Gov't Code Chapter 232 and the Development Regulations of Hays County as set forth. The items remaining are to hold the public hearing, followed by discussion and possible action on the final determination for the Replat.

The application has no variances requested.

Staff recommends Disapproval for Hurlbut Ranch West, PT of Tract 23, Replat based on the deficiencies as outlined in the backup. Staff is willing to work with the Owner/Applicant through the deficiencies and provide administrative approval once remedied pursuant to Texas Local Gov't Code Chapter 232.0028(c).

### **ATTACHMENTS/EXHIBITS:**

Plat

Location Map

Application Disapproved Letter





# Hays County Development Services

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## Application Disapproved

Owner Information:

Michael & Janet McCann

16002 Oak Arbor Trail, Buda TX 78610

Date: 7/5/2023

Project ID: PLN-2235-PC

Application Type: Replat/Revision

Application Status: Application Disapproved

To whom it may concern,

Hays County staff has completed a detailed review for the above Application. In accordance with Texas Local Government Code, Chapter 232, the Application has been Disapproved. Below are the remaining deficiencies listed with the Application. A written response to each comment below is required. In addition to the written response, any updated documents, files, or information must be uploaded to the [MyGovernmentOnline](#) Customer Portal.

### Digital Data Review

1. The digital data is denied due to the following:

Annotate a second corner with northing/easting coordinates. Per Section 4.1 of the Hays County Digital Data Submission Standards, add northing/easting coordinates identified with annotation for at least *two* widely separated corners of the overall replatted lots.

Per Section 4.1 of the Hays County Digital Data Submission Standards, add a minimum of two ground control points (GCPs) tied to at least two exterior corners of the overall replatted lots. The GCPs shall be from a published source (Hays County, LCRA, NGS) and be annotated with the relevant benchmark identification.

Per Section 4.1 of the Hays County Digital Data Submission Standards, add a closed polygon for each lot being replatted. Use a layer name related to "lot".

You can find the most up-to-date Hays County Digital Data Submission Standards here:

<https://hays-county-haysgis.hub.arcgis.com/pages/development-services>

### Floodplain Technical Review

1. Correct note 4. No portion of this subdivision lies within the boundaries of the Edwards Aquifer Recharge Zone or the Edwards Aquifer Contributing Zone.
2. Correct note 9 to accurately identify FEMA, note should read: "... FLOOD HAZARD AREA AS IDENTIFIED BY FEMA FIRM PANEL NO. ..."

### On-Site Sewage Facility (OSSF) Review

1. Correct SEWAGE DISPOSAL signature block job descriptions.  
MARCUS PACHECO, DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES

ERIC VAN GAASBEEK  
FLOODPLAIN ADMINISTRATOR  
HAYS COUNTY DEVELOPMENT SERVICES



# Hays County Development Services

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## Planning Review

- 1. Per Hays County Development Regulations Chapter 705 § 4.02 Fees:** Fees for Applications for Subdivisions shall be based on the number of lots and shall be as established by the Commissioners Court.  
The review Planning fees invoice has been released to the customer portal on 6/30/2023.
- 2. Per Hays County Development Regulations Chapter 705 § 5.01 (B) General Information:**  
The boundary lines and total acreage of the Original Tract, the Subject Property and the proposed Subdivision. Please include an inset map that contains the original Subject Property configuration.
- 3. General:** Please retitle the plat document to "Hurlbut Ranch West, PT of Tract 23, Replat".
- 4. Per Hays County Development Regulations Chapter 705 § 5.01 (C) General Information:**  
Include a note stating the total number of Lots within the proposed subdivision, the average size of Lots, and the total number of Lots within the following size categories: 10 acres or larger, larger than 5.0 acres and smaller than 10 acres, 2.00 acres or larger up to 5.00 acres, larger than 1.00 acre and smaller than 2.0 acres and smaller than 1.00 acre.
- 5. Per Hays County Development Regulations Chapter 705 § 5.01 (I) General Information:**  
Name and address of the Owner(s) of the Subject Property, and Applicant if not the Owner. Please include the address for the Property Owner(s) under their respective signature block.
- 6. Per Hays County Development Regulations Chapter 705 § 5.01 (K) General Information:**  
North arrow, scale and date. The scale shall not exceed 1"=200'. Please clarify the scale.
- 7. Per Hays County Development Regulations Chapter 705 § 5.01 (M) General Information:**  
The location of Political Subdivision (e.g. school districts, municipal utility districts, groundwater conservation districts, emergency services districts, etc.) boundaries and/or a statement clearly indicating in which Political Subdivision(s) the Subdivision is located. In the event any Lot lies within more than one Political Subdivision then the plat shall clearly state the number of acres within the Lot that lies within each Political Subdivision. Please include a note stating that this subdivision lies within the Hays Trinity Groundwater Conservation District.
- 8. Per Hays County Development Regulations Chapter 705 § 8.01 (D) General Information:** Lot and block numbers for each Lot. Please redesignate the Lot number to reflect the parent tract. (*i.e.* Lots 23A & 23B)
- 9. Per Hays County Development Regulations Chapter 705 § 8.05 (A) Other Plat Notes and Certifications:** The following statement shall appear prominently on the plat: "*No construction or development within the subdivision may begin until all Hays County Development Authorization requirements have been satisfied.*"
- 10. Per Hays County Development Regulations Chapter 701 § 9.04 and 705 § 12.03 – Conduct and provide proof of Posted Notice.**

## Transportation Review

- 1. Per Hays County Development regulations, chapter 721.2.01,** add a note- Mailboxes placed within the ROW, shall be of an approved TxDOT or FHWA design.



## **Hays County Development Services**

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

If you have any questions, please contact the Hays County Planning Division at 512-393-2150 (ext. 4) or by emailing [planning@co.hays.tx.us](mailto:planning@co.hays.tx.us).

Thank you,

Efren Chavez

Planning Division

Hays County Development Services



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Marcus Pacheco, Director

Sponsor:

Commissioner Shell

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### Agenda Item

PLN-2115-PRE; Discussion and possible action regarding Vista West Ranches, Lots 12A & 12B, Preliminary Plan. **SHELL/PACHECO**

### Summary

Vista West Ranches, Lots 12A & 12B, Prelim, is a proposed subdivision consisting of 2 lots across 10.98 acres located off McGregor Lane in Dripping Springs and Precinct 3. Water utility will be accomplished by a private well or rainwater collection. Wastewater utility will be accomplished by an advanced on-site sewage facility.

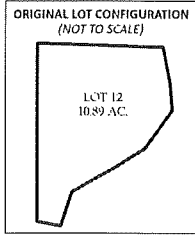
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### Attachments

Preliminary Plan  
Location Map  
Cover Letter

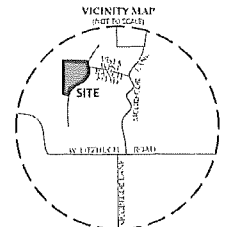


GRAPHIC SCALE  
1" = 100'  
S.M. BERRYMAN SURVEY, A-711  
J. BERRYMAN SURVEY, A-719  
HAYS COUNTY, TX



LOT	AREA
12A	5.00
12B	5.89

# LOT 12 VISTA WEST RANCHES



STATE OF TEXAS  
COUNTY OF HAYS

THAT LODEWELL PROPERTIES, LLC, OWNERS OF LOT 12, VISTA WEST RANCHES (UNRECORDED), AS DESCRIBED IN DOCUMENT NO. 22027163, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS DO HEREBY REPEAT SAID LOT 12, VISTA WEST RANCHES, IN ACCORDANCE WITH THE MAP OR PLAT ATTACHED HERETO, TO BE KNOWN AS:

REPLAT OF LOT 12, VISTA WEST RANCHES

AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF ALL STREETS AND EASEMENTS SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED AND NOT RELEASED.

WITNESS MY HAND, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

MEMBER  
119 E 6TH STREET, SUITE 205  
AUSTIN, TX 78701

MEMBER  
119 E 6TH STREET, SUITE 205  
AUSTIN, TX 78701

BEFORE ME, THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED (MEMBER NAME), KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SWORN AND SUBSCRIBED TO THIS INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY HAVE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, A.D.

NOTARY PUBLIC, STATE OF TEXAS

PRINTED NAME

EXPIRATION DATE

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION, TO-WIT:

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER SUPPLY OR A STATE APPROVED COMMUNITY WATER SYSTEM. DUE TO DECLINING WATER SUPPLIES AND DIMINISHING WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY HAYS COUNTY TO QUESTION THE SELLER CONCERNING GROUND WATER AVAILABILITY. GROUND WATER COLLECTION IS ENCOURAGED AND IN SOME AREAS MAY OFFER THE BEST RENEWABLE WATER RESOURCE.

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A PUBLIC SEWER SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY HAYS COUNTY DEVELOPMENT SERVICES DEPARTMENT.

NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL HAYS COUNTY DEVELOPMENT AUTHORIZATION REQUIREMENTS HAVE BEEN SATISFIED.

MARCUS PACHECO, DIRECTOR  
HAYS COUNTY DEVELOPMENT  
SERVICES DEPARTMENT

ERIC VAN GAISBEEK, R.S., C.E.A.T.  
FLOODPLAIN ADMINISTRATOR

STATE OF TEXAS  
COUNTY OF HAYS

I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_, THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS PASSED AN ORDER AUTHORIZING THE FILING FOR RECORD OF THIS PLAT, AND SAID ORDER HAS BEEN DULY ENTERED IN THE MINUTES OF THE SAID COURT INSTRUMENT NUMBER \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_.

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS

RUBEN BECERRA  
COUNTY JUDGE  
HAYS COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF HAYS

I, ELAINE H. CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN INSTRUMENT NO. \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_.

ELAINE H. CARDENAS  
COUNTY CLERK  
HAYS COUNTY, TEXAS

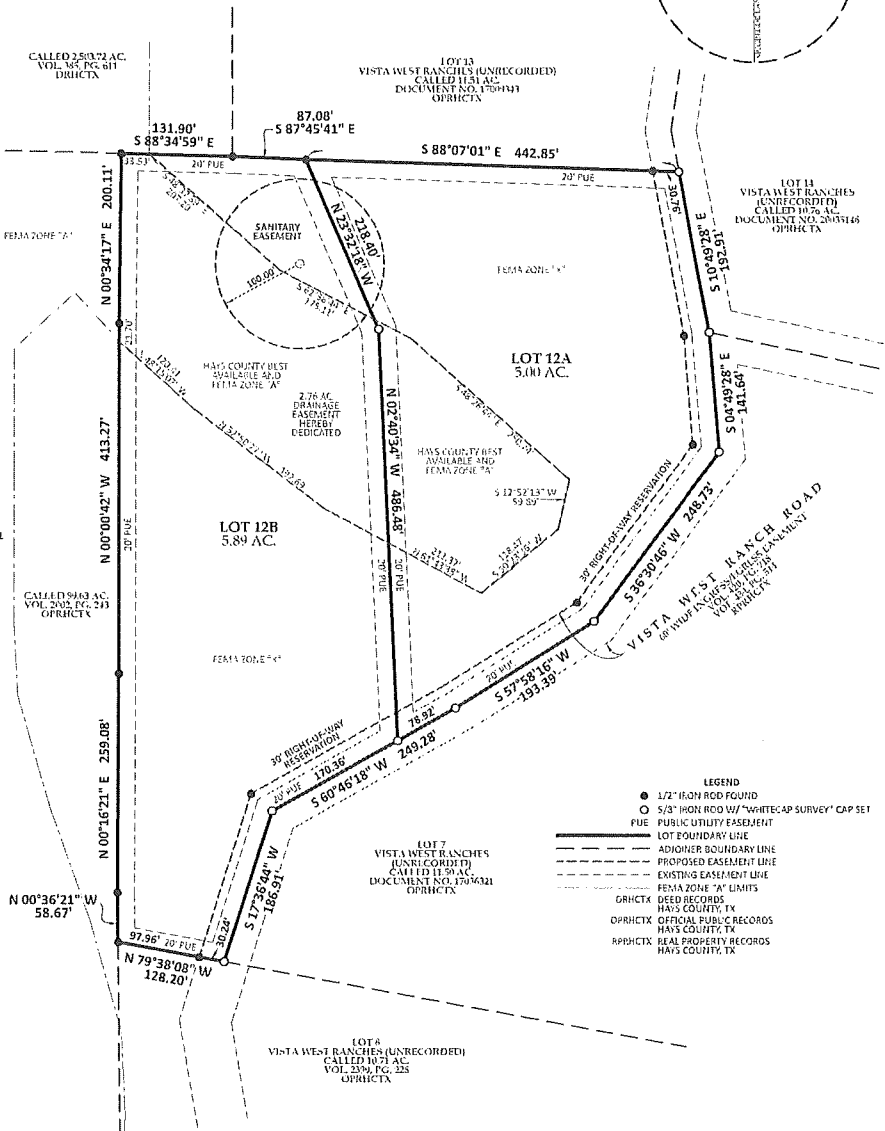
SURVEYOR'S CERTIFICATION:

I, WILLIAM R. HERRING, HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ON-THE-GROUND SURVEY OF THE PROPERTY SHOWN HEREON, CONDUCTED UNDER MY SUPERVISION, AND THAT THE CORNER MONUMENTS SHOWN HEREON WERE FOUND OR PLACED UNDER MY SUPERVISION.

PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT

WILLIAM R. HERRING  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 6355 - STATE OF TEXAS

DATE



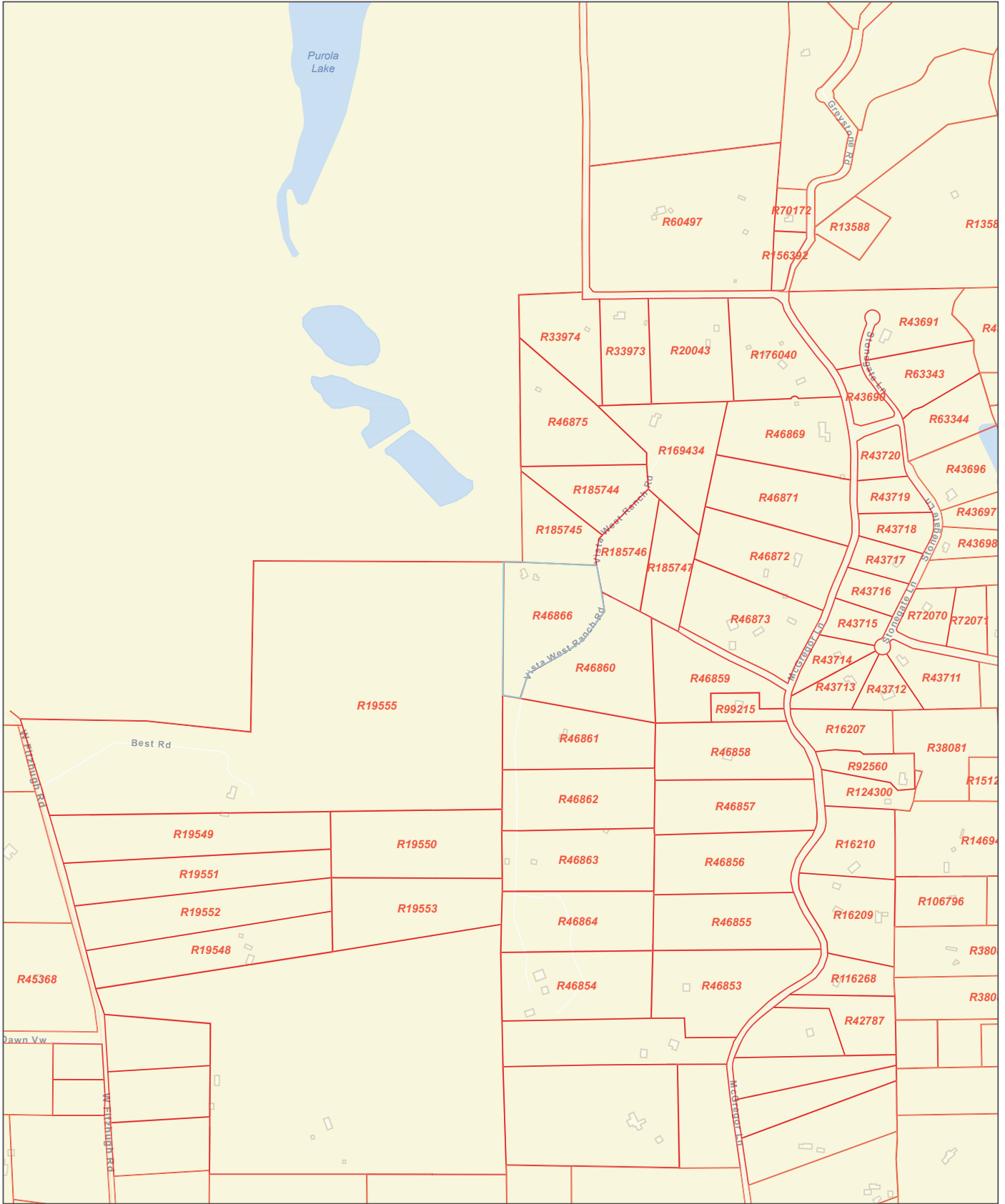
## PLAT NOTES:

1. BEARING BASIS IS GRID NORTH, TEXAS COORDINATE SYSTEM, NAD83 (2011) SOUTH CENTRAL ZONE. UNITS = US SURVEY FEET.
2. THIS PROPERTY LIES PARTIALLY WITHIN ZONE "A" AND PARTIALLY WITHIN ZONE "X", ACCORDING TO FEMA MAP NO. 4820/02056, DATED SEPTEMBER 2, 2005. THIS STATEMENT IS DERIVED SOLELY UPON THE ABOVE LISTED FEMA MAP AND IS NOT A GUARANTEE THE SUBJECT TRACT WILL OR WILL NOT FLOOD.
3. NO PORTION OF THIS PLAT LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE OR CONTRIBUTING ZONE.
4. THIS PLAT LIES WITHIN THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT.
5. NO PORTION OF THIS PLAT LIES WITHIN THE BOUNDARIES OF THE CITY OF ANY INCORPORATED MUNICIPALITY.
6. THIS PLAT IS LOCATED WITHIN THE BOUNDARY OF THE DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT.
7. WATER SERVICE WILL BE PROVIDED TO EACH LOT FROM PRIVATE WATER WELLS OR RAINWATER COLLECTION.
8. ELECTRIC SERVICE WILL BE PROVIDED BY THE PIEDRAS BLANCAS ELECTRIC COOPERATIVE.
9. THIS SUBDIVISION IS SUBJECT TO ALL GENERAL NOTES AND COVENANTS AND RESTRICTIONS RECORDED IN VOLUME 262, PAGE 227, AND VOLUME 420, PAGE 716, AND VOLUME 434, PAGE 513, REAL PROPERTY RECORDS, HAYS COUNTY, TEXAS. THIS REPEAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT OR TITLE COMMITMENT; THERE MAY BE EASEMENTS OR OTHER MATTERS OF RECORDS NOT SHOWN HEREON.
10. UNDER DEPARTMENT REGULATIONS, THIS SUBDIVISION IS EXEMPT FROM THE REQUIREMENTS TO DEMONSTRATE THE AVAILABILITY OF WATER SERVICE. FURTHER SUBDIVISION IS PROHIBITED FOR A DURATION OF FIVE (5) YEARS FOLLOWING THE FILING OF THE PLAT.
11. A 20' PUBLIC UTILITY EASEMENT SHALL BE DEDICATED ADJACENT TO THE RIGHT-OF-WAYS OF ALL STREETS IN THIS SUBDIVISION.
12. DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 751.
13. WASTEWATER TREATMENT FOR THIS SUBDIVISION IS TO BE PROVIDED BY INDIVIDUAL ADVANCED ON-SITE SEWAGE FACILITIES AS APPROVED BY HAYS COUNTY DEVELOPMENT SERVICES.
14. IN ORDER TO PROMOTE SAFE USE OF ROADWAYS AND PRESERVE THE CONDITIONS OF PUBLIC ROADWAYS, NO DRIVEWAY CONSTRUCTED ON ANY LOT WITHIN THIS SUBDIVISION SHALL BE PERMITTED TO ACCESS ONTO A PUBLICLY DEDICATED ROADWAY UNLESS (A) A DRIVEWAY PERMIT HAS BEEN ISSUED BY THE ROAD DEPARTMENT OF HAYS COUNTY AND (B) THE DRIVEWAY SATISFIES THE MINIMUM SPACING REQUIREMENT FOR DRIVEWAYS SET FORTH SECTIONS 7.4 AND 7.5 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 721.
15. THIS SUBDIVISION LIES WITHIN HAYS COUNTY ESD #1 AND ESD #5.
16. ALL CULVERTS, WHEN REQUIRED SHALL COMPLY WITH THE CURRENT HAYS COUNTY STANDARD.
17. MAIL BOXES PLACED WITHIN THE ROW, SHALL BE OF AN APPROVED DESIGN OR FHWA DESIGN, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 721, SUBCHAPTER 2.01.
18. THE PURPOSE OF THIS REPEAT IS TO DIVIDE THE ORIGINAL LOT (LOT 12) INTO TWO SEPARATE LOTS.
19. NUMBER OF LOTS IN THIS REPEAT - 2  
AVERAGE SIZE OF LOTS - 5.45 AC  
NUMBER OF LOTS SMALLER THAN 1 AC - 0  
NUMBER OF LOTS LARGER THAN 10 AC, BUT SMALLER THAN 20 AC - 0  
NUMBER OF LOTS LARGER THAN 20 AC, BUT SMALLER THAN 50 AC - 0  
NUMBER OF LOTS LARGER THAN 50 AC, BUT SMALLER THAN 100 AC - 2  
NUMBER OF LOTS LARGER THAN 100 AC - 0

**WHITECAP**  
SURVEY COMPANY

WHITECAP SURVEY COMPANY, LLC  
TEPELS FIRM NO. 10164424  
PO BOX 1225  
DRIPPING SPRINGS, TX 76630  
6512/808-0102  
EMAIL: INFO@WHITECAPSURVEY.COM

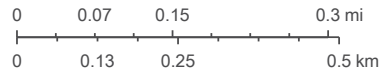
# Hays CAD Web Map



6/14/2023, 3:09:39 PM

 Parcels

1:9,028



Esri Community Maps Contributors, City of Austin, Texas  
Parks & Wildlife, © OpenStreetMap, Microsoft, CONANP,  
Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc,  
METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Hays County Appraisal District, BIS Consulting -

Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only



## **Hays County Commissioners Court Agenda Request**

**Meeting Date:** July 11<sup>th</sup>, 2023

**Requested By:** Marcus Pacheco, Director

**Prepared By:** Efren Chavez, County Planner

**Department Director:** Marcus Pacheco, Development Services Director

**Sponsoring Court Member:** Commissioner Lon Shell, Precinct 3

### **AGENDA ITEM LANGUAGE:**

PLN-2115-PRE; Discussion and possible action regarding Vista West Ranches, Lots 12A & 12B, Prelim.

### **BACKGROUND/SUMMARY OF REQUEST:**

A.) Vista West Ranches, Lots 12A & 12B, Prelim, is a proposed subdivision consisting of 2 lots across 10.89 acres located off McGregor Lane in Dripping Springs and in Precinct 3.

B.) Water utility will be accomplished by a private well or rainwater collection.

C.) Wastewater utility will be accomplished by an advanced on-site sewage facility.

### **STAFF COMMENTS:**

Staff has completed review for the Vista West Ranches pursuant to the current Development Regulations of Hays County as set forth. The item remaining is action on the final determination for the Preliminary Plan.

The application has no variances requested.

Staff recommends Approval for Vista West Ranches, Lots 12A & 12B, Preliminary Plan.

### **ATTACHMENTS/EXHIBITS:**

Plan

Location Map



AGENDA ITEM REQUEST FORM: K. 1.

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Shell

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### Agenda Item

Discussion and possible action to adopt an Order Authorizing Extraordinary Optional Redemption of a Portion of the Hays County, Texas Special Assessment Revenue Bonds, Series 2015 (La Cima Public Improvement District Major Public Improvement Project) and the Hays County, Texas Special Assessment Revenue Bonds, Series 2020 (La Cima Public Improvement District Neighborhood Improvement Areas #1-2 Project). **SHELL**

### Summary

See attachments.

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### Attachments

Order Optional Redemption



## CERTIFICATE OF COUNTY CLERK

THE STATE OF TEXAS                   §  
   §  
COUNTY OF HAYS                   §

THE UNDERSIGNED HEREBY CERTIFIES that:

The Commissioners Court (the “Court”) of Hays County, Texas (the “County”), convened on the 11th day of July, 2023 in regular session at the regular meeting place of the Court in the County Courthouse, Room 301, 111 E. San Antonio Street, San Marcos, Texas (the “Meeting”), which Meeting was at all times open to the public, the duly constituted officers and members of the Court being as follows:

Ruben Becerra	County Judge
Debbie Gonzales Ingalsbe	Commissioner, Precinct No. 1
Michelle Cohen	Commissioner, Precinct No. 2
Lon Shell	Commissioner, Precinct No. 3
Walt Smith	Commissioner, Precinct No. 4

and all of such persons were present at the Meeting, [except \_\_\_\_\_], thus constituting a quorum. Among other business considered at the Meeting, the attached order (the “Order”) entitled:

**AN ORDER AUTHORIZING EXTRAORDINARY OPTIONAL REDEMPTION OF A PORTION OF THE HAYS COUNTY, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2015 (LA CIMA PUBLIC IMPROVEMENT DISTRICT MAJOR PUBLIC IMPROVEMENT PROJECT) AND THE HAYS COUNTY, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020 (LA CIMA PUBLIC IMPROVEMENT DISTRICT NEIGHBORHOOD IMPROVEMENT AREAS #1-2 PROJECT)**

was introduced for the due consideration of the Court. After presentation and discussion of the Order, a motion was made by Commissioner \_\_\_\_\_ that the Order be passed and adopted. The motion was seconded by Commissioner \_\_\_\_\_ and carried by the following vote:

\_\_\_ voted “For”    \_\_\_ voted “Against”    \_\_\_ “Abstained”

all as shown in the official Minutes of the Court for the Meeting.

The attached Order is a true and correct copy of the original on file in the official records of the County; the duly qualified and acting members of the Court on the date of the Meeting are those persons shown above, and, according to the records of my office, each member of the Court was given actual notice of the time, place, and purpose of the Meeting and had actual notice that the Order would be considered; and the Meeting and deliberation of the aforesaid public business,

including the subject of the Order, was posted and given in advance thereof in compliance with the provisions of Chapter 551, as amended, Texas Government Code.

IN WITNESS WHEREOF, I have signed my name officially and affixed the seal of the Commissioners Court, this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

County Clerk and Ex-Officio Clerk of the  
Commissioners Court of Hays County, Texas

(SEAL OF THE COMMISSIONERS COURT)

## **HAYS COUNTY, TEXAS**

### **AN ORDER AUTHORIZING EXTRAORDINARY OPTIONAL REDEMPTION OF A PORTION OF THE HAYS COUNTY, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2015 (LA CIMA PUBLIC IMPROVEMENT DISTRICT MAJOR PUBLIC IMPROVEMENT PROJECT) AND THE HAYS COUNTY, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020 (LA CIMA PUBLIC IMPROVEMENT DISTRICT NEIGHBORHOOD IMPROVEMENT AREAS #1-2 PROJECT)**

**WHEREAS**, Hays County, Texas (the “County”) has duly issued and there is now outstanding the following obligations:

Hays County, Texas Special Assessment Revenue Bonds, Series 2015 (La Cima Public Improvement District Major Public Improvement Project) dated August 5, 2015, in the aggregate principal amount of \$19,200,000 (the “MIA Bonds”); and

Hays County, Texas Special Assessment Revenue Bonds, Series 2020 (La Cima Public Improvement District Neighborhood Improvement Areas #1-2 Project) dated November 12, 2020, in the aggregate principal amount of \$9,345,000 (the “NIA #1-2 Bonds”); and

**WHEREAS**, pursuant to Section 4.4 of the Indenture of Trust for the MIA Bonds (the “MIA Indenture”) dated as of July 15, 2015 between the County and BOKF, NA dba Bank of Texas, as trustee (the “MIA Trustee”), the Commissioners Court (the “Commissioners Court”) of the County deems it to be in the best interest of the County to use amounts on deposit in the Redemption Fund established under the MIA Indenture as a result of Prepayments (as defined in the MIA Indenture) to redeem a portion of the MIA Bonds, as set forth in Exhibit “A” (the “MIA Redeemed Bonds”), on the first of the month following the provision of notice as required by Section 4.6 of the MIA Indenture; and

**WHEREAS**, pursuant to Section 4.4 of the Indenture of Trust for the NIA #1-2 Bonds (the “NIA #1-2 Indenture”) dated as of November 1, 2020 between the County and BOKF, NA, as trustee (the “NIA #1-2 Trustee”), the Commissioners Court deems it to be in the best interest of the County to use amounts on deposit in the Redemption Fund established under the NIA #1-2 Indenture as a result of Prepayments (as defined in the NIA #1-2 Indenture) to redeem a portion of the NIA #1-2 Bonds, as set forth in Exhibit “B” (the “NIA #1-2 Redeemed Bonds” and, together with the MIA Redeemed Bonds, the “Redeemed Bonds”), on the first of the month following the provision of notice as required by Section 4.6 of the NIA #1-2 Indenture; and

**WHEREAS**, the meeting at which this Order is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF THE HAYS COUNTY, TEXAS, TEXAS:**

SECTION 1. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings assigned to them in the MIA Indenture or NIA #1-2 Indenture, as applicable.

SECTION 2. The County hereby calls for redemption, pursuant to Section 4.4 of the MIA Indenture, the MIA Redeemed Bonds on the first of the month following the provision of notice as required by Section 4.6 of the MIA Indenture. Attached to this Order as Exhibit "A" and made a part hereof for all purposes, is a copy of the notice of redemption for the MIA Redeemed Bonds, in substantially final form. The County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, the County Clerk of the County, the Administrator, the City's Financial Advisor, the City's Bond Counsel and/or the MIA Trustee are hereby authorized to take all actions necessary to effectuate the redemption of such obligations, including finalizing the notice of redemption and sending all notices of such redemption required by the MIA Indenture.

SECTION 3. The County hereby calls for redemption, pursuant to Section 4.4 of the NIA #1-2 Indenture, the NIA #1-2 Redeemed Bonds on the first of the month following the provision of notice as required by Section 4.6 of the NIA #1-2 Indenture. Attached to this Order as Exhibit "B" and made a part hereof for all purposes, is a copy of the notice of redemption for the NIA #1-2 Redeemed Bonds, in substantially final form. The County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, the County Clerk of the County, the Administrator, the City's Financial Advisor, the City's Bond Counsel and/or the NIA #1-2 Trustee are hereby authorized to take all actions necessary to effectuate the redemption of such obligations, including finalizing the notice of redemption and sending all notices of such redemption required by the NIA #1-2 Indenture.

SECTION 4. In accordance with Section 6.7(d) of the MIA Indenture and a County Certificate, the MIA Trustee is hereby authorized to transfer a proportionate amount in the Reserve Account of the Reserve Fund to the Redemption Fund, and if such amounts are not sufficient for the payment of accrued and unpaid interest on the MIA Redeemed Bonds, transfer the amount of the shortfall from the Prepayment Reserve Account of the Reserve Fund to the Redemption Fund (as each of those terms is defined in the MIA Indenture) to be applied to the redemption of the MIA Redeemed Bonds. The MIA Trustee is hereby authorized to transfer the Prepayments, along with any other amounts required to be transferred to and on deposit in the Redemption Fund, from the Redemption Fund (as each of those terms is defined in the MIA Indenture) as necessary to redeem the MIA Redeemed Bonds.

SECTION 5. In accordance with Section 6.7(d) of the NIA #1-2 Indenture and a County Certificate, the NIA #1-2 Trustee is hereby authorized to transfer a proportionate amount in the Reserve Account of the Reserve Fund to the Redemption Fund, and if such amounts are not sufficient for the payment of accrued and unpaid interest on the NIA #1-2 Redeemed Bonds, transfer the amount of the shortfall from the Additional Interest Account of the Reserve Fund to the Redemption Fund (as each of those terms is defined in the NIA #1-2 Indenture) to be applied to the redemption of the NIA #1-2 Redeemed Bonds. The NIA #1-2 Trustee is hereby authorized to transfer the Prepayments, along with any other amounts required to be transferred to and on

deposit in the Redemption Fund, from the Redemption Fund (as each of those terms is defined in the NIA #1-2 Indenture) as necessary to redeem the NIA #1-2 Redeemed Bonds.

SECTION 6. The County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, and the County Clerk of the County are hereby authorized and directed to take any and all actions on behalf of the County necessary or desirable to carry out the intent and purposes of this Order. The County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, and the County Clerk of the County are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents, including delivering any notices as may be required by the County's continuing disclosure obligations, if any, with respect to the Redeemed Bonds, which may be necessary or advisable in the carrying out of the purposes and intent of this Order

SECTION 7. This Order shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 8. If any provision of this Order or the application thereof to any circumstance shall be held to be invalid, the remainder of this Order or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Order would have been enacted without such invalid provision.

SECTION 9. If appropriate in the context of this Order, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 10. This Order shall be in full force and effect immediately upon its passage and approval.

*[Execution page follows.]*

DULY PASSED AND APPROVED BY THE COMMISSIONERS COURT ON JULY 11,  
2023.

HAYS COUNTY, TEXAS

---

RUBEN BECERRA, County Judge of Hays County,  
Texas

(COUNTY SEAL)

ATTEST:

---

ELAINE H. CÁRDENAS, County Clerk and  
Ex-Officio Clerk of the Commissioners Court  
of Hays County, Texas

Signature Page to Order Approving and Authorizing  
Redemption of the La Cima MIA and NIA #1-2 Bonds

## EXHIBIT A

### FORM OF NOTICE OF EXTRAORDINARY OPTIONAL REDEMPTION

Notice is hereby given that Hays County, Texas, acting through its Commissioners Court (the “Commissioners Court”), pursuant to Section 4.4 of the Indenture of Trust (the “Indenture”) of the below captioned bonds (the “Bonds”), has called for redemption the portion of the Bonds described below (the “Redeemed Bonds”) at a price of par plus accrued interest to such Redemption Date (defined below), to-wit:

“Hays County, Texas Special Assessment Revenue Bonds, Series 2015 (La Cima Public Improvement District Major Public Improvement Project)” dated August 5, 2015, as shown below:

<u>Maturity Date</u>	<u>Principal Amount Outstanding</u>	<u>Amount Being Redeemed</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
September 15, 2027	\$ 2,120,000	\$ 290,000	6.250%	420894AF4
September 15, 2045	\$16,040,000	\$3,035,000	7.000%	420894AE7

The date fixed for redemption of the Redeemed Bonds is September 1, 2023 (the “Redemption Date”). You are hereby notified that the Redeemed Bonds should be presented for redemption on or before the Redemption Date and that interest on the Redeemed Bonds shall cease to accrue from the Redemption Date.

Notice is further given that the Redeemed Bonds will be payable at and should be submitted either in person or by certified or registered mail to BOKF, NA at the following address:

BOKF, NA  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attn: Rachel Roy

In compliance with section 3406 of the Internal Revenue Code of 1986, as amended, payors making certain payments due on debt securities may be obligated to deduct and withhold a portion of such payment from the remittance to any payee who has failed to provide such payor with a valid taxpayer identification number. To avoid the imposition of this withholding tax, such payees should submit a certified taxpayer identification number when surrendering bonds for redemption.

WITNESS MY OFFICIAL SIGNATURE this July 11, 2023.

HAYS COUTY, TEXAS

By: /s/ Ruben Becerra  
County Judge

## EXHIBIT B

### FORM OF NOTICE OF EXTRAORDINARY OPTIONAL REDEMPTION

Notice is hereby given that Hays County, Texas, acting through its Commissioners Court (the "Commissioners Court"), pursuant to Section 4.4 of the Indenture of Trust (the "Indenture") of the below captioned bonds (the "Bonds"), has called for redemption the portion of the Bonds described below (the "Redeemed Bonds") at a price of par plus accrued interest to such Redemption Date (defined below), to-wit:

"Hays County, Texas Special Assessment Revenue Bonds, Series 2020 (La Cima Public Improvement District Neighborhood Improvement Areas #1-2 Project)" dated November 12, 2020, as shown below:

<u>Maturity Date</u>	<u>Principal Amount Outstanding</u>	<u>Amount Being Redeemed</u>	<u>Interest Rate</u>	<u>CUSIP No.</u>
September 15, 2050	\$4,900,000	\$115,000	4.000%	420894AK3

The date fixed for redemption of the Redeemed Bonds is September 1, 2023 (the "Redemption Date"). You are hereby notified that the Redeemed Bonds should be presented for redemption on or before the Redemption Date and that interest on the Redeemed Bonds shall cease to accrue from the Redemption Date.

Notice is further given that the Redeemed Bonds will be payable at and should be submitted either in person or by certified or registered mail to BOKF, NA at the following address:

BOKF, NA  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attn: Rachel Roy

In compliance with section 3406 of the Internal Revenue Code of 1986, as amended, payors making certain payments due on debt securities may be obligated to deduct and withhold a portion of such payment from the remittance to any payee who has failed to provide such payor with a valid taxpayer identification number. To avoid the imposition of this withholding tax, such payees should submit a certified taxpayer identification number when surrendering bonds for redemption.

WITNESS MY OFFICIAL SIGNATURE this July 11, 2023.

HAYS COUTY, TEXAS

By: /s/ Ruben Becerra  
County Judge





AGENDA ITEM REQUEST FORM: K. 2.

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor: Commissioner Shell

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### Agenda Item

Discussion and possible action to adopt a Resolution Approving a La Cima South Public Improvement District Financing Agreement; Authorizing the Execution and Delivery of such Agreement; and Approving any Additional Actions Necessary in Connection Therewith. **SHELL**

### Summary

See attached.

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### Attachments

La Cima South Financing Agreement

## CERTIFICATE OF COUNTY CLERK

THE STATE OF TEXAS                   §  
  §  
COUNTY OF HAYS                   §

THE UNDERSIGNED HEREBY CERTIFIES that:

The Commissioners Court (the “Court”) of Hays County, Texas (the “County”), convened on the 11th day of July, 2023 in regular session at the regular meeting place of the Court in the County Courthouse, Room 301, 111 E. San Antonio Street, San Marcos, Texas (the “Meeting”), which Meeting was at all times open to the public, the duly constituted officers and members of the Court being as follows:

Ruben Becerra	County Judge
Debbie Gonzales Ingalsbe	Commissioner, Precinct No. 1
Michelle Cohen	Commissioner, Precinct No. 2
Lon Shell	Commissioner, Precinct No. 3
Walt Smith	Commissioner, Precinct No. 4

and all of such persons were present at the Meeting, [except \_\_\_\_\_], thus constituting a quorum. Among other business considered at the Meeting, the attached resolution (the “Resolution”) entitled:

**A RESOLUTION APPROVING A LA CIMA SOUTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH AGREEMENT; AND APPROVING ANY ADDITIONAL ACTIONS NECESSARY IN CONNECTION THEREWITH**

was introduced for the due consideration of the Court. After presentation and discussion of the Resolution, a motion was made by Commissioner \_\_\_\_\_ that the Resolution be passed and adopted. The motion was seconded by Commissioner \_\_\_\_\_ and carried by the following vote:

\_\_\_ voted “For”    \_\_\_ voted “Against”    \_\_\_ “Abstained”

all as shown in the official Minutes of the Court for the Meeting.

The attached Resolution is a true and correct copy of the original on file in the official records of the County; the duly qualified and acting members of the Court on the date of the Meeting are those persons shown above, and, according to the records of my office, each member of the Court was given actual notice of the time, place, and purpose of the Meeting and had actual notice that the Resolution would be considered; and the Meeting and deliberation of the aforesaid public business, including the subject of the Resolution, was posted and given in

advance thereof in compliance with the provisions of Chapter 551, as amended, Texas Government Code.

IN WITNESS WHEREOF, I have signed my name officially and affixed the seal of the Commissioners Court, this \_\_\_\_ day of \_\_\_\_\_, 2023.

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County Clerk and Ex-Officio Clerk of the  
Commissioners Court of Hays County, Texas

(SEAL OF THE COMMISSIONERS COURT)

## **HAYS COUNTY, TEXAS**

### **A RESOLUTION APPROVING A LA CIMA SOUTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH AGREEMENT; AND APPROVING ANY ADDITIONAL ACTIONS NECESSARY IN CONNECTION THEREWITH**

**WHEREAS**, the Commissioners Court of Hays County, Texas (the “County”), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the “PID Act”), authorized the creation of the “La Cima South Public Improvement District” (the “District”) pursuant to a resolution adopted by the Commissioners Court of the County (the “Commissioners Court”) on August 30, 2022; and

**WHEREAS**, the County authorized the creation of the District to finance certain public improvements authorized by the PID Act for the benefit of the property within the District (the “Authorized Improvements”); and

**WHEREAS**, in connection with the development of property within the District and the construction of the Authorized Improvements therein, the County desires to approve the form, terms and provisions of the Financing Agreement, which is defined and described more fully below; and

**WHEREAS**, the meeting at which this Resolution is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

### **NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF THE HAYS COUNTY, TEXAS, TEXAS:**

SECTION 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein. Capitalized terms used in this Resolution and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

SECTION 2. Approval of Financing Agreement. That certain “La Cima South Public Improvement District Financing Agreement” by and between the County and Lazy Oaks Ranch, LP, a Texas limited partnership (the “Financing Agreement”) is hereby authorized and approved in substantially the form attached hereto as Exhibit A which is incorporated herein as a part hereof for all purposes and the County Judge of the County is hereby authorized and directed to execute and deliver such Financing Agreement with such changes as may be required to carry out the purposes of this Resolution and approved by the County Judge of the County, such approval to be evidenced by the execution thereof.

SECTION 3. Additional Actions. The County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney’s Office, and the County Clerk of the

County are hereby authorized and directed to take any and all actions on behalf of the County necessary or desirable to carry out the intent and purposes of this Resolution. County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, and the County Clerk of the County are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in the carrying out of the purposes and intent of this Resolution

SECTION 4. Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 5. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 6. Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. Construction of Terms. If appropriate in the context of this Resolution, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

*[Execution page follows.]*

DULY PASSED AND APPROVED BY THE COMMISSIONERS COURT ON JULY 11, 2023.

HAYS COUNTY, TEXAS

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RUBEN BECERRA, County Judge of Hays County,  
Texas

(COUNTY SEAL)

ATTEST:

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ELAINE H. CÁRDENAS, County Clerk and  
Ex-Officio Clerk of the Commissioners Court  
of Hays County, Texas

Signature Page to Resolution Approving and Authorizing  
Financing Agreement

**EXHIBIT A**

**LA CIMA SOUTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT**

[See attached]

LA CIMA SOUTH PUBLIC IMPROVEMENT DISTRICT  
FINANCING AGREEMENT

BETWEEN

LAZY OAKS RANCH, LP, a Texas limited partnership

AND

HAYS COUNTY, TEXAS



## LA CIMA SOUTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT

This La Cima South Public Improvement District Financing Agreement (this “**Agreement**”), dated as of [\_\_\_\_\_], 2023, (the “**Effective Date**”), is entered into between Lazy Oaks Ranch, LP, a Texas limited partnership, and as more fully described and defined in Exhibit “A” hereto, (the “**Owner**”), and Hays County, Texas (the “**County**”), acting by and through its duly authorized representative.

### Recitals:

WHEREAS, Owner owns a total of approximately 320.964 acres of land located within Hays County, Texas which is more particularly described in Exhibit “B” attached hereto and made a part hereof (the “**Property**”);

WHEREAS, it is intended that the Property will be developed as a single-family residential development (the “**Project**”);

WHEREAS, on September 23, 2014, the Commissioners Court authorized the formation of the La Cima Public Improvement District (the “**Original La Cima District**”) consisting of that certain approximately 2,044 acres of land located within Hays County, Texas, pursuant to a County resolution in accordance with Chapter 372, Texas Local Government Code, as amended (the “**PID Act**”);

WHEREAS, the Property is also located within the Original La Cima District;

WHEREAS, the County and the Owner entered into the La Cima Public Improvement District Financing Agreement, effective July 21, 2015, relating to the construction and financing of public improvements within the Original La Cima District;

WHEREAS, on July 21, 2015, the Commissioners Court by order approved the La Cima Public Improvement District Service and Assessment Plan (as amended, supplemented or updated from time to time, the “**Original La Cima PID Service and Assessment Plan**”) and levied special assessments (the “**Original La Cima PID Assessments**”) against all benefited parcels in the Original La Cima District, including the Property, to finance the costs of public improvements conferring a special benefit on such assessed parcels;

WHEREAS, on August 5, 2015, the Commissioners Court issued the Hays County, Texas Special Assessment Revenue Bonds, Series 2015 (La Cima Public Improvement District Major Public Improvement Project) (the “**Original La Cima Major PID Bonds**”) secured by the Original La Cima PID Assessments;

WHEREAS, on May 12, 2020, the Commissioners Court, by resolution, approved the First Amendment to La Cima Public Improvement District Financing Agreement;

WHEREAS, due to the unique topography and location, including proximity to Purgatory Creek and surrounding conservation land, the development of the Property requires construction

of public improvements and costs not originally contemplated by the Owner at the time of the creation of the Original La Cima District;

WHEREAS, on April 27, 2022, the Owner submitted and filed with the County Clerk of the County a petition requesting the establishment of the La Cima South Public Improvement District (the “**District**”) consisting of the Property;

WHEREAS, the County, the City of San Marcos, Texas (the “**City**”), the Owner and certain affiliates of the Owner entered into the Seventh Amended and Restated Development Agreement, effective as of May 17, 2022 (the “**Development Agreement**”), which, among other things, sets forth certain development standards for the Project;

WHEREAS, pursuant to the Development Agreement, the City agreed that, if the Owner submitted a petition to the County requesting that one or more new public improvement districts be created for any portion of the land subject to the Development Agreement, including the Original La Cima District and the Property, it would not oppose any such petition;

WHEREAS, on August 9, 2022, the Commissioners Court, by resolution, called a public hearing to be held on the creation of the proposed District and the advisability of the public improvements (as more fully described and defined in Exhibit “A” hereto, the “**Public Improvements**”) and services for the District;

WHEREAS, on August 30, 2022, the Commissioners Court convened a public hearing on the creation of the District and, after giving the Owner and other interested persons the opportunity to speak for or against the creation of the District, closed the public hearing;

WHEREAS, on August 30, 2022, the Commissioners Court, by resolution, authorized the formation of the District in accordance with the PID Act;

WHEREAS, on August 30, 2022, the Commissioners Court, by resolution, approved the Second Amendment to La Cima Public Improvement District Financing Agreement (together with the La Cima Public Improvement District Financing Agreement and First Amendment thereto, the “**Original La Cima PID Financing Agreement**”), pursuant to which the County and La Cima San Marcos, LLC, a Texas limited liability company, successor in interest to Owner, agreed that no special assessments would be levied and no bonds would be issued by the County to finance the costs of public improvements benefiting the Property via the Original La Cima District and that such public improvements, after the effective date thereof, would be financed via the District;

WHEREAS, pursuant to the terms of this Agreement, the County has agreed to allow financing of the costs of the Public Improvements conferring special benefits to the Property via the District;

WHEREAS, the Owner proposes to construct, or have its Designated Successors and Assigns (as defined in Exhibit “A” hereto) construct, Public Improvements over time to serve Property located in the District (or portions thereof) and transfer some or all of those improvements to the County or City in accordance with the terms and provisions of this Agreement and the Development Agreement;

WHEREAS, the County intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) levy special assessments on all or a portion of the property located within the District and issue bonds in one or more series for payment of costs associated with construction and/or acquisition of the Public Improvements included in a service and assessment plan to be approved by the Commissioners Court, as such plan may be amended from time to time (the “**Service and Assessment Plan**” as further defined in Exhibit “A” attached hereto); and

WHEREAS, the County has determined that it is in its best interests to contract with the Owner, or its Designated Successors and Assigns, for the construction of the Public Improvements, which will result in the efficient and effective implementation of the Service and Assessment Plan.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

## **ARTICLE I. SCOPE OF AGREEMENT**

### **Section 1.01. Definitions.**

Definitions used herein are set forth in Exhibit “A” attached hereto and made a part hereof.

### **Section 1.02. Overview of Agreement**

This Agreement establishes provisions for the apportionment, levying, and collection of Special Assessments on the Property (Article II), the construction of Public Improvements to be acquired by the County or City (Article III), the payment of Public Improvements within the District (Article IV), the issuance of bonds for the financing of the Public Improvements (Article V), representations, warranties and indemnification (Article VI), default and remedies (Article VII) and general provisions (Article VIII).

## **ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS**

### **Section 2.01. Preliminary Matters**

(a) The Recital set forth in the preamble of this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

(b) On August 30, 2022, the County authorized the formation of the District by resolution. The District includes all of the Property.

(c) The Owner may develop the Property in phases. It is anticipated that some Public Improvements will be constructed that benefit only a Neighborhood Improvement Area, while other Public Improvements will benefit the entire District. As a result, Special Assessments may be levied on benefited property within the District or only on certain Neighborhood Improvement Areas from time to time as the development in the District progresses. As such, it is currently contemplated that there will be (i) bonds issued for the entire District, the “**Major Public Improvement PID Bonds**” (as further defined in Exhibit “A”) and (ii) bonds issued for different

Neighborhood Improvement Areas, the “**Neighborhood Improvement PID Bonds**” (as further defined in Exhibit “A”) and potentially “**Additional Neighborhood Improvement PID Bonds**” (as further defined in Exhibit “A”).

(d) The Owner acknowledges and agrees that to finance the costs of the Public Improvements through the levy of Special Assessments, County staff or the Administrator will prepare and the Commissioners Court will consider the approval of a Service and Assessment Plan that meets the requirements of Texas Local Government Code Sections 372.013 and 372.014. Thereafter, the Service and Assessment Plan will be updated and amended by the County or its Administrator at least once per year and submitted for the Commissioners Court’s review and approval.

(e) Special Assessments on any portion of the Property will bear a direct proportional relationship to and be less than or equal to the special benefit of the Public Improvements within the District (or Neighborhood Improvement Area, as applicable).

(f) Special Assessments on any portion of the Property may be adjusted in connection with subsequent PID Bond issues or otherwise so long as the Special Assessments are determined in accordance with the Service and Assessment Plan and the PID Act.

(g) The Property may also be subject to an Owners’ Association assessment.

(h) Following preparation of the initial Service and Assessment Plan acceptable in form and substance to the County and to the Owner with respect to the matters therein that require approval by the Owner as provided in this Agreement, the Commissioners Court shall, by resolution, approve the preliminary Service and Assessment Plan and call a public hearing on the levy of Special Assessments. After conducting the public hearing, the Commissioners Court may consider approval of an Assessment Order relating to Service and Assessment Plan. If an Assessment Order is adopted, the County shall use reasonable efforts to expeditiously initiate and approve all necessary documents and orders required to effectuate the Service and Assessment Plan and Assessment Order. The Commissioners Court, by order, will update, amend and/or restate the Service and Assessment Plan each time Special Assessments are levied.

#### Section 2.02. Apportionment and Levy of Special Assessments

Prior to or in connection with the issuance of PID Bonds, the Owner may submit to the County one or more Special Assessment Levy Requests to finance the costs of Public Improvements in accordance with Section 4.02 hereof. Upon the receipt of a Special Assessment Levy Request, the Commissioners Court will consider the adoption of an Assessment Order, which levies Special Assessments on the Property or a Neighborhood Improvement Area in accordance herewith and with the Service and Assessment Plan. The County’s apportionment of the costs of Public Improvements and levy of Special Assessments will be made in accordance with the PID Act.

#### Section 2.03. Collection of Assessments

(a) The County covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied

pursuant to the Service and Assessment Plan during the term of this Agreement or, if PID Bonds are issued, during the term of the applicable PID Bonds, in the manner and to the maximum extent permitted by applicable law. If PID Bonds are issued, the County covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until the PID Bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full, defeasance, or otherwise. The County shall use best efforts to collect the Special Assessments consistent with the County's policies and standard practices applicable to the collection of County ad valorem taxes and assessments.

(b) Notwithstanding anything to the contrary contained herein or in the Service and Assessment Plan, the Special Assessment Revenues collected annually from the Property, or any portion thereof, will be deposited in accordance with the applicable Acquisition and Reimbursement Agreement or, if PID Bonds are issued, the applicable Indenture.

(c) Owner will be reimbursed for Actual Costs associated with Public Improvements from Special Assessments collected by the County and held by the County pursuant to an applicable Acquisition and Reimbursement Agreement or, if PID Bonds are issued, from the proceeds of PID Bonds, until Owner is fully reimbursed by Special Assessments and/or the proceeds of PID Bonds. The balance of any reimbursement obligation due to Owner under an Acquisition and Reimbursement Agreement will be subordinate to payment of the applicable PID Bonds.

#### Section 2.04. Approval and Recordation of Special Assessments through Landowner Agreement and recording of the Service and Assessment Plan

(a) Concurrently with the levy of the Special Assessments for any portion of the Property, the Owner and any other landowner at the time of such assessment levy shall execute (and shall cause any other owner of any of the Property at the time of such assessment levy that will be subject to the Special Assessments to execute) a Landowner Agreement (herein so called), in recordable form, in which the Owner (and any other landowner, if applicable) shall approve and accept the apportionment of the cost of the Public Improvements in the Service and Assessment Plan and the levy of the Special Assessments by the County.

(b) The Landowner Agreement further shall (a) evidence the Owner's intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property or portions thereof to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Special Assessments; and (b) provide that the liens created by the levy of the Special Assessments are a first and prior lien on the Property or portions thereof, subject only to liens for ad valorem taxes of the State or municipality, County, or school district.

(c) After the Landowner Agreement is fully executed, the Owner shall file the Landowner Agreement in the Official Public Records of the County.

(d) Further, in accordance with the PID Act, the County shall file a copy of the Service and Assessment Plan and any updates thereto with the County Clerk.

#### Section 2.05. Reimbursement of Actual Costs

(a) Notwithstanding anything to the contrary contained herein, the Parties hereby acknowledge and agree that the Actual Costs expended by the Owner to construct the Public Improvements may not be fully reimbursed from the Special Assessment Revenues or the proceeds of PID Bonds. The Actual Costs expended by the Owner, but not funded by a series of PID Bonds, are payable solely from available Special Assessment Revenue pursuant to the applicable Acquisition and Reimbursement Agreement; provided, however that sufficient Special Assessment Revenues are available to make the payments.

(b) **The Owner reimbursement provisions contained in this Section 2.05 shall not, under any circumstances, give rise to or create (i) a charge against the general credit or taxing power of the County or (ii) a debt or other obligation of the County payable from any source other than proceeds from the PID Bonds and Special Assessment Revenues.**

### ARTICLE III. CONSTRUCTION AND ACQUISITION

#### Section 3.01. Acquisition of Public Improvements

(a) With respect to those Public Improvements to be dedicated and owned by the County under the Development Agreement, the Owner will dedicate such Public Improvements to the County upon completion of said Public Improvements, and the County will accept dedication of such Public Improvements after confirming that such Public Improvements have been completed in accordance with this Agreement and the Development Agreement. The County's Subdivision Ordinance and the Development Agreement shall govern the procedure for inspection, dedication, and acceptance of such Public Improvements being conveyed to the County.

(b) With respect to those Public Improvements to be dedicated and owned by the City under the Development Agreement, the Owner will dedicate such Public Improvements to the City upon completion of said Public Improvements, and the City will accept dedication of such Public Improvements after confirming that such Public Improvements have been completed in accordance with this Agreement and the Development Agreement. The City's Land Development Code and the Development Agreement shall govern the procedure for inspection, dedication, and acceptance of such Public Improvements being conveyed to the City.

#### Section 3.02. Designation of Construction Manager, Construction Engineers

(a) The County hereby designates the Owner, or its assignees, as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, the supervision of construction, and the bidding and letting of construction contracts for the construction of the Public Improvements in accordance with the provisions of this Agreement.

(b) Except as otherwise provided herein, inspection of the construction of any Public Improvement being conveyed to the County will be by County Construction Representative or its

designee. Any City inspection of a Public Improvement being conveyed to the City will be in accordance with any requirements of the City. The Owner agrees to notify the County within 24 hours of the scheduling of any City Inspection, and at that same to provide any design or construction-related documents to be used as part of the inspection. The Owner agrees that the County Construction Representative may be present at any City inspection and is responsible for ensuring the County Construction Representative is informed of the date, time, and location of each City inspection.

(c) The Owner shall be entitled to a separate Construction Management Fee for the construction of each Public Improvement (or Segment thereof) unless Owner contracts with a third party to act as the Construction Manager with respect to construction of the Public Improvements.

(d) The County shall cooperate with the Owner in connection with its services as Construction Manager.

(e) The Owner shall designate the consulting engineers for the Public Improvements for the compensation specified by the Owner. Any fees paid to a consulting engineer must be reasonable and customary.

#### Section 3.03. Designation of Construction Manager Subcontractor

The County acknowledges and agrees that Owner may subcontract out all or some of the duties of Construction Manager to a third party. Owner may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Public Improvements or distinct Segments thereof provided that such designee has the technical capacity, experience and expertise to perform such construction management duties or obligations. Owner may make such designation under the same terms as set out in Section 8.03(a) of this Agreement.

#### Section 3.04. Real Property Interests

(a) For each Neighborhood Improvement Area, the Public Improvements shall be constructed in public rights-of-way and/or easements (“**Real Property Interests**”) conveyed to the County or the City. The Owner hereby grants the County the right to enter the Property for purposes of implementing this Agreement.

(b) The Owner shall cause all Real Property Interests necessary to construct each phase of the Public Improvements to be conveyed free of all liens, encumbrances, and title defects unacceptable to County or City, as applicable, in its reasonable discretion and at no cost to the County or the City. All Real Property Interests shall be conveyed by deeds or other instruments acceptable to the County or the City, as applicable, in its reasonable discretion, or by plat (if plat dedication is required by the County or City).

(c) All title insurance premium fees, costs to cure title defects, closing costs, and other acquisition costs shall be borne solely by the Owner.

(d) If a Real Property Interest is subordinate to existing easements for utilities or other facilities, the Owner shall, in addition to conveying the Real Property Interests, coordinate the

execution of a joint use agreement between the County or City, as applicable, and the owner of the existing easement in a form that is acceptable to the County or City.

### Section 3.05. Fiscal Surety

(a) Prior to the issuance of PID Bonds, the Owner shall post fiscal security for the construction of a given Public Improvement in accordance with applicable County or City regulations. The County acknowledges that it will accept fiscal security, if required, for the Public Improvements in the form of an irrevocable letter of credit, surety bond, cash deposit, or other security acceptable to the County.

(b) Upon the issuance of PID Bonds, the Owner shall not be required to post fiscal security for the Public Improvements to be financed with the proceeds of such PID Bonds, unless, at the closing of the PID Bonds or any time thereafter, there are not sufficient funds in the Project Fund established pursuant to the applicable Indenture to complete all Public Improvements for the District or in the given Neighborhood Improvement Area. In such event, the Owner shall post fiscal security in an amount sufficient to complete all Public Improvements in the District or given Neighborhood Improvement Area. The County will accept fiscal security for the Public Improvements in the form of an irrevocable letter of credit, closed loan, cash deposit, or other security acceptable to the County.

(c) If subcontractors providing labor or materials for the Public Improvements file claims or otherwise give notice asserting failure to receive payment for such labor or materials, the County may require the Owner to post fiscal security bond for the estimated cost of constructing the Public Improvements. The Owner shall give the County a copy of any such claims within three (3) business days of receipt of the claim.

(1) If the Owner has commenced construction but fails or refuses to complete the construction of a particular Public Improvement (or Segment thereof) in accordance with the terms and conditions set forth in this Agreement, such failure or refusal shall be considered an event of default and, after giving notice of default and reasonable opportunity to cure as herein provided, the County will have the right, but not the obligation, to draw on the funds within the Project Fund (or any fiscal security posted by the Owner for the applicable Public Improvement, if applicable) and complete (or cause the completion of) the applicable Public Improvement (or Segment thereof).

(2) In the event the County elects to complete a Public Improvement (or Segment thereof), all plans and specifications, designs, easements, real and personal property, and improvements acquired, produced, or installed in aid of completing such component of the Public Improvement (or Segment thereof) by the Owner or its engineers or contractors before such default, will become the property of the County. In such event, the Owner will provide, within five (5) business days of the County's request, documentation to the County that the above listed items have been conveyed and have become the property of the County. Notwithstanding anything to the contrary contained herein if the Owner fails or refuses to timely complete the construction of a Public Improvement (or Segment thereof) and such default cannot reasonably be cured in 30 days, Owner shall have such additional time as is reasonably necessary to cure as long



as the Owner commences the cure within 30 days and diligently pursues the same to completion. If Owner has still not completed the applicable component of the Public Improvement (or Segment thereof) after the notice and cure periods provided for above, the County shall either:

(i) Assume the construction management role and direct the completion of the applicable Public Improvement (or Segment thereof); or

(ii) Assume the construction management role and direct the closeout of the applicable Public Improvement (or Segment thereof).

(3) In the event the County assumes the construction management role for a given Public Improvement (or Segment thereof) (as provided above) then the Owner agrees as follows:

(i) The County may draw down funds from the Project Fund to complete the Public Improvement (or Segment thereof) in question;

(ii) All construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such Public Improvement (or Segment thereof) by the Owner or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Public Improvement (or Segment thereof), will automatically without further action by the Owner become the property of the County;

(iii) The Owner will automatically forgo and release any claims or rights to those items listed in (ii) above; and

(iv) The County may draw down on any fiscal security posted to complete such component of the Public Improvement (or Segment thereof).

(d) The County may also request that the Owner provide fiscal security for the completion of improvements, other than the Public Improvements financed via the District, the construction of which are necessary to complete lots.

#### Section 3.06. Maintenance of Project, Warranties

Unless otherwise provided for, the Owner shall maintain each Public Improvement (or Segment thereof) in good and safe condition until such Public Improvement (or Segment thereof) is accepted by the County or the City. The County's and City's acceptance of Public Improvements shall be in accordance with the County's (or City's, as applicable) standard rules and procedures for the type of improvements being constructed, including as set forth in Section 3.01(a) and (b). Prior to such acceptance, the Owner shall be responsible for performing any required maintenance on such Public Improvement. On or before the acceptance by the County or the City of a Public Improvement (or Segment thereof), the Owner shall assign to the County or the City, as applicable, all of the Owner's rights in any warranties, guarantees, maintenance

obligations, or other evidences of contingent obligations of third persons with respect to such Public Improvement (or Segment thereof). Prior to or concurrently with the County's or City's acceptance of a Public Improvement (or Segment thereof), Owner shall provide a two-year maintenance bond for said Public Improvement.

#### Section 3.07. Sales and Use Tax Exemptions

(a) The parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Public Improvements to be acquired by the County are exempt under the Texas Tax Code from sales and use taxes levied by the State of Texas, or by any city, county, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309.

(b) The County will provide such certifications to the Owner and/or to suppliers and contractors as may be required to assure the exemptions claimed herein.

(c) The County and the Owner shall cooperate in structuring the construction contracts for the Public Improvements to comply with requirements (including those set forth in Texas Tax Code Section 151.309) for exemption from sales and use taxes.

#### Section 3.08. Public Bidding Requirements/County Cooperation in Plan Review

(a) There is currently no County analog to Texas Local Government Code Section 252.022(a)(9), which allows the District to be exempt from any public bidding or other City purchasing and procurement policies for "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements." It is agreed that if statutory authorization is enacted by the Texas Legislature which would make such an exemption applicable to construction of Public Improvements under this Agreement, the County will review the enacted statute and, if the County determines the statute is applicable to this Agreement, the new County exemption statute will apply.

(b) The County Construction Representative agrees to cooperate with the Owner to the extent reasonably possible without detriment to proper engineering review, comment, and revision on the review and approval of the engineering, design, plans, and specifications of all Public Improvements submitted by the Owner.

#### Section 3.09. Additional Requirements for Public Improvements

(a) The Construction Manager will maintain an ongoing monthly updated accounting of funds disbursed, work progress and remaining funding needed to complete each applicable Public Improvements. The Construction Manager will provide such monthly reports to the Owner, the County Construction Representative, the Administrator, the Underwriter, and the Trustee, as applicable.

(b) After bids and construction contracts have been executed for the applicable Public Improvements, all change orders or costs increases for such applicable Public Improvements must be approved by the Owner, Construction Manager and the County Construction Representative, to

the extent any such change order is in excess of \$100,000.00 for any Segment of such applicable Public Improvement. The Construction Manager shall provide copies of all approved change orders to the Underwriter and Trustee within ten (10) days after approval.

#### **ARTICLE IV. PAYMENT FOR PUBLIC IMPROVEMENTS**

##### **Section 4.01. Overall Requirements**

(a) The County shall not be obligated to provide funds for any Public Improvement except from Special Assessments or, if PID Bonds are issued, the proceeds of the PID Bonds. The County makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment of the Actual Cost of the Public Improvements to be constructed for or acquired by the County or the City will be sufficient for the construction or acquisition of all of those particular Public Improvements. The Parties anticipate that the Actual Cost to construct the Public Improvements may be greater than the proceeds of the PID Bonds available for Public Improvements.

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period, the County or City, as applicable, shall be responsible for all operation and maintenance of such Public Improvement, including all costs thereof and relating thereto.

(c) The Parties hereby acknowledge and agree that:

(1) Owner will construct or cause the construction of the applicable Public Improvements.

(2) Public Improvements are initially intended to be constructed pursuant to one or more Acquisition and Reimbursement Agreements and paid for by the Owner prior to the levy of Special Assessment and the issuance of the PID Bonds intended to fund the Actual Costs of such Public Improvements. Such funding of the Public Improvements will be governed by the applicable Acquisition and Reimbursement Agreement and Section 4.02 of this Agreement.

(3) Upon satisfying the conditions precedent described in Section 5.01 of this Agreement, the Commissioners Court intends to consider the issuance of the PID Bonds to refinance any Unpaid Balance under an Acquisition and Reimbursement Agreement and, if applicable, to finance the Actual Costs of any Public Improvement not completed at the time of PID Bond issuance. Such funding of the Public Improvements will be governed by the Indenture and Section 4.03 of this Agreement.

(4) The County's current policy requires the Owner to pay for and construct 75% the Public Improvements associated with the applicable Acquisition and Reimbursement Agreement and Neighborhood Improvement Area and compliance with the applicable Bond Test before a PID Bond Issuance Request be submitted to the County. The County, in its discretion, may allow for construction and funding of Public Improvements to be handled in a manner other than specified in this Agreement. If the County so elects, this Agreement shall be modified accordingly to reflect such terms.

#### Section 4.02. Payments for Public Improvements upon entering an Acquisition and Reimbursement Agreement

(a) Pursuant to the terms of an Acquisition and Reimbursement Agreement, the Owner shall convey, and the County or the City (as applicable) shall acquire, the given Public Improvement for the Actual Cost, after such Public Improvement is completed and has been accepted by the County or the City (as applicable). The general process for funding of Public Improvements under an Acquisition and Reimbursement Agreement is as follows:

(1) Any time after the commencement of construction of Public Improvements benefiting the District or a particular Neighborhood Improvement Area, Owner may submit a Special Assessment Levy Request to finance the costs of Public Improvements to the County via the Hays County Office of General Counsel Hays. In its request, the Owner shall submit legal descriptions of the Neighborhood Improvement Areas to be assessed, an engineer's opinion of probable costs, or Actual Costs, if available, of the Public Improvements, and maps showing the location of the Public Improvements to be funded by such Special Assessments

(2) The Commissioners Court shall consider an order levying the Special Assessments and adopting or amending the Service and Assessment Plan to reflect the Special Assessments and the applicable Public Improvements, and as contemplated by the applicable Acquisition and Reimbursement Agreement. The County will levy the Special Assessment for the associated benefitted Property in the case of Master Public Improvements or the Neighborhood Improvement Area in the case of Neighborhood Public Improvements. The Assessment Order approving the Special Assessment for the associated benefitted Property or Neighborhood Improvement Area, as the case may be, shall set forth the collection date for such Special Assessment.

(3) If a PID Bond Issuance Request will not be requested concurrently with a Special Assessment Levy Request, the Owner and the County shall enter into an Acquisition and Reimbursement Agreement to finance the applicable Public Improvements, which will provide for Special Assessments that will reimburse the Owner for Actual Costs incurred in connection with the applicable Public Improvements until the applicable PID Bonds are issued in amount necessary to reimburse Owner for the Actual Costs of the applicable Public Improvements less any amounts already reimbursed to Owner pursuant to the applicable Acquisition and Reimbursement Agreement. An Acquisition and Reimbursement Agreement shall be a form mutually acceptable to the County and the Owner and comply with the PID Act and other applicable laws. In addition, an Acquisition and Reimbursement Agreement shall provide that: (i) the Acquisition and Reimbursement Agreement may be assigned in whole but not in part; (ii) the Owner may assign the Acquisition and Reimbursement Agreement to Owner's lender or, if assigned for cash, only to an Accredited Investor or Qualified Institutional Buyer; (ii) no assignment of the Acquisition and Reimbursement Agreement may be made to another governmental entity without the consent of the County.

(4) The County will begin collecting the Special Assessments for the associated Public Improvement that benefit the District or Neighborhood Improvement

Area, as the case may be, in accordance with the order approving such Special Assessments. Upon collection of such Special Assessments, the County will place such Special Assessments in a designated account separate from the County's other accounts (the "**Reimbursement Account**"). The funds within the Reimbursement Account will be used to reimburse the Owner for the Actual Costs of the applicable Public Improvements pursuant to the terms of the Acquisition and Reimbursement Agreement.

(5) Payments for the Actual Cost of Public Improvements that benefit the District or a Neighborhood Improvement Area will be made in accordance with this Agreement and the applicable Acquisition and Reimbursement Agreement, including submittal to the County Construction Representative and Project Engineer (with a copy to the Administrator) of a correct and complete Certification for Payment, substantially in the form attached hereto in Exhibit "C". The deliverables identified in the form of Certification for Payment cannot be modified with the written consent of the County.

#### Section 4.03. Payments for Public Improvements upon the Issuance of PID Bonds

(a) Upon completion of at least 75% of the applicable Public Improvements associated with the applicable Acquisition and Reimbursement Agreement and compliance with Section 5.01 of this Agreement, including the applicable Bond Test, the Owner may submit a PID Bond Issuance Request to the County via the Hays County Office of General Counsel Hays. If the foregoing conditions have been satisfied, the Commissioners Court shall consider the issuance of PID Bonds to fund the Actual Costs of such Public Improvements less any amounts already reimbursed to Owner pursuant to the applicable Acquisition and Reimbursement Agreement, as applicable.

(b) Prior to the issuance of a series of PID Bonds, the Project Engineer shall review all plans and specifications, construction contract and related materials for the applicable Public Improvements, and shall certify to the Owner, County, Underwriter, and Trustee, that the amount of fiscal security referenced in Section 3.05(b) above, is sufficient to fund the full cost of design and construction of the applicable Public Improvements as set forth in the Service and Assessment Plan, if applicable.

(c) If the applicable Neighborhood Improvement PID Bonds are not sufficient to fully reimburse the Owner for the Actual Costs of the applicable Neighborhood Improvement Public Improvements less any amounts already reimbursed to Owner pursuant to the Acquisition and Reimbursement Agreement (if applicable), then, so long as the applicable Bond Test and any additional bonds test set forth in an Indenture, if applicable, are satisfied, Additional Neighborhood Improvement PID Bonds may be issued to reimburse the Owner for any Actual Costs not reimbursed by the applicable Neighborhood Improvement PID Bonds and the applicable Acquisition and Reimbursement Agreement.

(d) To receive funds from the proceeds of the applicable PID Bonds to pay the Actual Cost of a given Public Improvement, the Owner shall deliver a correct and complete Certification for Payment to the County Construction Representative and the Project Engineer (with a copy to the Administrator), substantially in the form attached hereto in Exhibit "C", as the same may be

modified by an applicable Indenture. The deliverables identified in the form of Certification for Payment cannot be modified without the written consent of the County.

(e) Prior to the issuance of PID Bonds, the Owner may have expended funds for the formation of the District (which were not previously reimbursed under the applicable Acquisition and Reimbursement Agreement) and Bond Issuance Costs reimbursable under the PID Act (“**Owner Expended Funds**”). The total amount of Owner Expended Funds approved by the County pursuant to this Section shall be referred to herein as the “**Closing Reimbursement Payment.**”

(f) At least thirty days prior to the issuance of the PID Bonds, the Owner shall submit a Closing Disbursement Request (substantially in the form attached hereto as Exhibit “D”), including any supporting documentation requested by the County (with a copy to the Administrator) for the Closing Reimbursement Payment. Upon approval, the County will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. Upon the closing of the PID Bonds, the Owner or the Owner’s designee shall be reimbursed an amount equal to the portion of the Closing Reimbursement Payment attributable to such PID Bonds from the appropriate account of the Project Fund.

#### Section 4.04. Certifications for Payments

(a) The following procedures set forth in this Section 4.04 shall apply to all Certifications for Payment. These requirements are in addition to any conditions precedent specified in an Acquisition and Reimbursement Agreement for the release of funds from the Reimbursement Account or an applicable Indenture for the release of funds from the Project Fund or similar provisions under any Owner loan agreement.

(b) Owner shall be entitled to submit and receive draws (not to exceed one (1) per month) based on the Actual Cost for completed Public Improvements or portions thereof. Each draw request shall be comprised of a Certification for Payment, in substantially the form attached hereto as Exhibit “C”, executed by the Project Engineer and Construction Manager, specifying that the identified work has been performed and the Actual Cost thereof and include the deliverables set forth therein.

(c) The Owner request for final payment of the Actual Costs of a Public Improvement shall include written evidence of the Owner’s assignment to the County or the City, as applicable, of the warranties and guaranties, as and if applicable, for the subject Public Improvement.

(d) Upon receipt of a completed Certification for Payment accompanied by the requisite deliverables identified in this Section 4.04 and therein, the County Construction Representative or its designee shall, within fifteen (15) calendar days of its determination of receipt of a Certification for Payment that is compliant with the applicable provisions of this Agreement, execute the Certification for Payment evidencing its approval and deliver to the County Auditor his/her concurrence to pay pursuant to a correct and complete Certification for Payment. The County Auditor shall then have up to fifteen (15) calendar days to pay the Owner from amounts on deposit in the Reimbursement Account in accordance with the applicable Acquisition and

Reimbursement Agreement or, if PID Bonds are issued, to forward the executed Certification for Payment to the Trustee for payment in accordance with the applicable Indenture.

(e) If the County disapproves any Certification for Payment, the County shall provide a written explanation of the reasons for such disapproval so that the Owner may revise the Certification for Payment in accordance with County's comments and resubmit for County approval. The County shall only disapprove a Certification for Payment in good faith for a material reason. Notwithstanding anything to the contrary contained herein, if the monthly reconciliation provided by the Construction Manager pursuant to Section 3.09(a) above for a particular Public Improvement shows there are not enough funds in the Project Fund, together with any fiscal security provided in accordance with Section 3.05(b), to fund the remaining design and construction costs of that Public Improvement, the County Construction Representative shall not be obligated to authorize payments of funds exceeding the balance in the Project Fund until such time as Owner provides evidence satisfactory to the County Construction Representative that Owner has or will provide funds in an amount sufficient to fully fund the remaining design and construction costs of that Public Improvement.

## ARTICLE V. PID BONDS

### Section 5.01. Issuance of PID Bonds

(a) Subject to the terms and conditions set forth in this Section V, the County intends to pay for the Public Improvements, by issuing PID Bonds in one or more series. The County will use reasonable and good faith efforts to issue PID Bonds after receiving a PID Bond Issuance Request from Owner, provided that Owner can reasonably demonstrate to the County and its financial advisor that the terms and conditions to the issuance of PID Bonds set forth in this Article V have been satisfied. In addition to the criteria outlined in this Article V, the County may consider additional requirements prior to authorizing the issuance of any PID Bonds, including but not limited to a market condition assessment (including market study update), development of the Original La Cima District, development of the District, and current status of Owner and any other related entity involved in developing the Project ("**Related Development Entity**"), and related builder positions. The Commissioners Court may require a recommendation from County staff, advisors and consultants.

(b) The "Bond Tests" consists of condition precedent and investment and underwriting criteria which must be met prior to the issuance of PID Bonds:

(1) County shall receive a certificate from the Owner certifying that the Public Improvements to be funded with the proceeds of the PID Bonds to be issued are at least seventy-five percent (75%) completed as evidenced by either (i) submitted Certifications for Payment that equal at least seventy-five percent (75%) of the budget for the Public Improvements to be funded with such PID Bonds, as shown in the Service and Assessment Plan or (ii) a letter from the Project Engineer certifying that at least seventy-five percent (75%) of the Public Improvements to be funded with such PID Bonds are complete, which letter must be signed by a County Construction Representative;

(2) County shall receive a certificate from the Owner certifying that it is not in default beyond any applicable notice and cure period in the performance and observance of any of the terms, provisions and conditions applicable to the Owner contained in this Agreement, the Development Agreement, the Acquisition and Reimbursement Agreement applicable to such Public Improvements or any continuing disclosure agreement entered into by Owner (or its Related Development Entity) relating to the PID Bonds, unless any defaults under the foregoing agreements (except for defaults under any continuing disclosure agreements entered into by Owner (or its affiliate developer entities) which defaults shall be cured) are disclosed in a certificate from Owner to the County, and the Commissioners Court elects to proceed with the issuance of the PID Bonds regardless of the existence of such default or defaults;

(3) County shall receive a certificate from the Administrator certifying that there is no default by the Owner or any landowner of more than five percent (5%) of the assessed parcels in the applicable Neighborhood Improvement Area for failure to pay special assessments or ad valorem taxes on assessed parcels in such Neighborhood Improvement Area owed by the Owner or such other landowner prior to the delinquency date thereof;

(4) With respect to Major Improvement Public PID Bonds, the County shall receive an Independent Appraisal from Owner evidencing that the average Value to Lien Ratio of all Assessed Parcels within the District is not less than 3:1;

(5) With respect to Neighborhood Improvement PID Bonds, the County shall receive an Independent Appraisal from Owner evidencing that (i) the average Neighborhood Improvement Value to Lien Ratio of all Assessed Parcels in the Neighborhood Improvement Area for which Neighborhood Improvement PID Bonds will be issued is not less than 2:1 and (ii) at least 50% of the residential lots in such Neighborhood Improvement Area are either under contract or closed with third-party merchant homebuilders and/or homeowners;

(6) With respect to Additional Neighborhood Improvement PID Bonds, the County shall receive evidence of meeting any conditions precedent or tests under the Indenture applicable to such Neighborhood Improvements and related Neighborhood Improvement Area; and

(7) With respect to Refunding PID Bonds, the County shall receive evidence of meeting any conditions precedent or tests under the Indenture applicable to PID Bonds to be refunded.

(c) The aggregate principal amount of PID Bonds issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Public Improvements; (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction of the applicable Public Improvements funded by the PID Bond issue in question and in no event for a period greater than 18 months from the date of the initial delivery of the applicable PID Bonds; (iii) first year's Administrative Expenses; and (iii) Bond Issuance Costs. Provided, however that to the extent the law(s) which limit the period of capitalized interest



to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances.

(d) The final maturity for each series of PID Bonds shall occur no later than 30 years from the issuance date of said PID Bonds.

(e) Evidence of fiscal security required under Section 3.05 of this Agreement, if any.

(f) PID Bonds are not required to be issued under this Article V unless (i) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied, (ii) the County receives at the time of issuance of such PID Bonds an opinion of counsel selected by the County stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their issuance under State law have been satisfied, and (iii) the Attorney General has issued an opinion approving issuance of the bonds as required by the PID Act.

(g) Notwithstanding any provision in this Agreement to the contrary, in connection with the issuance of PID Bonds, the Owner shall execute and deliver any documents, agreements, or certificates requested by the County, counsel to the County, the Underwriter, or Underwriter's counsel in order to demonstrate that the PID Bonds will be issued in compliance with State and federal law.

(h) The foregoing requirements apply to each series of PID Bonds issued.

(i) If proceeds from PID Bonds are still available after all the Public Improvements are accepted by the County or City, as applicable, and Owner has been reimbursed for all unreimbursed Actual Costs incurred in connection therewith, the proceeds may be utilized to finance other Public Improvements within the Property as allowed by the PID Act, if approved by the County.

#### Section 5.02. Project Fund

The County hereby covenants and agrees that if PID Bonds are issued, the Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The portion of the proceeds of the PID Bonds issued to pay Actual Costs of Public Improvements and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund, which will be held by the Trustee under the Indenture.

#### Section 5.03. Denomination, Maturity, Interest, and Security for Bonds

(a) Each series of PID Bonds shall be finally authorized by the Commissioners Court and shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the PID Bond Security, all to be as described and provided in the PID Bond Order or Indenture, as applicable.

(b) The final and adopted versions of the PID Bond Order and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the PID Bonds when and as issued and delivered and

otherwise contain such terms and provisions as are mutually approved by the County and the Owner.

#### Section 5.04. Sale of PID Bonds.

The PID Bonds, if issued by the County, shall be marketed and sold through negotiated sale to an underwriter selected by the County with the cooperation and assistance of the Owner in all respects with respect to the preparation of marketing documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the County and the Owner. The Owner agrees to fully cooperate with County with respect to the preparation of the offering document.

#### Section 5.05. Phased Assessments

(a) In connection with the execution of an Acquisition and Reimbursement Agreement or the issuance of PID Bonds, the Service and Assessment Plan will be adopted or updated to reflect the special benefit each Assessed Parcel within the District or a Neighborhood Improvement Area, as applicable, receives from the specific Public Improvements funded with those Special Assessments and/or the proceeds of PID Bonds.

(b) It is hereby acknowledged and agreed that one or more of the following types of PID Bonds contemplated to be issued for this Project (Major Public Improvement PID Bonds, Neighborhood Improvement PID Bonds, and Additional Neighborhood Improvement PID Bonds) may be issued under separate Indentures; however, unless issued on a subordinate basis, all of the Special Assessments levied and pledged for the payment of PID Bonds will have the same lien priority against the Assessed Parcels.

(c) Subject to the processes and procedures of the Hays County Tax Assessor-Collector, if the total Special Assessments levied on a particular Parcel within the Project consist of Special Assessments stemming from an Acquisition and Reimbursement Agreement and/or one or more series of PID Bonds and an owner of an Assessed Parcel pays only a portion of the Annual Installment due for such Special Assessments, then such payment will be allocated pro-rata to the payment of the Annual Installment based on the portions of each Annual Installment due as it relates to the total Annual Installment due. For example, assume that a Parcel has an Annual Installment due relating to Major Improvement Area Bonds in the amount of \$600 and an Annual Installment due relating to a Neighborhood Improvement Area in the amount of \$400. Further assume that the landowner pays only \$900 of the combined Annual Installment due of \$1,000. The \$900 payment will be allocated as follows:

\$540 (60% of \$900) will go towards the Annual Installment due for the Major Improvement PID Bonds; and

\$360 (40% of \$900) will go towards the Annual Installment due for the Neighborhood Improvement Area Bonds

Total: \$900

(d) Further detail regarding partial payments of the Annual Installments will be contained in the Service and Assessment Plan and the applicable Indenture relating to Major Improvement PID Bonds, Neighborhood Improvement PID Bonds, or Additional Neighborhood Improvement PID Bonds.

#### Section 5.06. Original La Cima District Bond Covenants

The Owner understands and acknowledges that so long as the Original La Cima PID Assessments levied against the Property, securing, in part, the Original La Cima Major PID Bonds are outstanding, all covenants and representations made by the County or affecting the Property relating to the Original La Cima Major PID Bonds, including covenants and representations made in the indenture and offering document relating to the Original La Cima Major PID Bonds, remain in full force and affect. Pursuant to the PID Act, the Owner may prepay the Original La Cima PID Assessments, and if prepaid, the lien imposed by the Original La Cima PID Assessments allocable to the Property will be released and a like amount of the Original La Cima Major PID Bonds will be redeemed pursuant to the indenture relating to the Original La Cima Major PID Bonds.

#### Section 5.07. Original La Cima Major Improvements.

The Original La Cima Major Improvements are not governed by this Agreement and shall continue to be governed by the Original La Cima PID Financing Agreement and administered by the County through the Original La Cima PID Service and Assessment Plan.

### **ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION**

#### Section 6.01. Representations and Warranties of County

The County makes the following covenants, representations and warranties for the benefit of the Owner:

(a) The County is a political subdivision of the State of Texas and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute and deliver this Agreement, (ii) to consider one or more Assessment Orders, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

(b) The County will deliver a certificate relating to the PID Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the “Tax Certificate”) containing covenants and agreements designed to satisfy the requirements of Sections 103 and 141 through 150, inclusive, of the Tax Code and the income tax regulations issued thereunder relating to the use of the proceeds of the PID Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of Section 148 of the Tax Code (collectively, “**Bond Proceeds**”).

## Section 6.02. Covenants, Representation, and Warranties of Owner

The Owner makes the following representations, warranties, and covenants for the benefit of the County:

(a) The Owner represents and warrants that the Owner is a limited partnership duly organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Owner represents and warrants that the Owner has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Owner.

(c) The Owner represents and warrants that this Agreement is valid and enforceable obligation of the Owner and is enforceable against the Owner in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Owner covenants that once it commences construction of a Public Improvement (or a Segment thereof) it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Public Improvements (or Segment thereof) to be completed in accordance with this Agreement.

(e) The Owner covenants that it will not commit or knowingly permit any act in, upon or to the Property or the Project in violation of any law, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition, or restriction now or hereafter affecting the Property or the Project.

(f) The Owner represents and warrants that (i) it will not request payment from the County for the acquisition or financing of any Public Improvements that are not part of the Project, and (ii) it will diligently follow all procedures set forth in this Agreement, including each Certification for Payment.

(g) For a period of four (4) years after (1) the final Acceptance Date of each applicable Public Improvement, or (2) claims filed upon completion, whichever is later, the Owner covenants to maintain proper books of record and account for the Public Improvements and all costs related thereto. The Owner covenants that such accounting books will be maintained in accordance with sound accounting practices. The Owner shall provide copies (including electronic copies in a form acceptable to the County if electronic copies are requested) of such records to the County upon written request to the Owner, and those copies shall be provided no later than ten (10) business days after receipt of a written request from the County at a cost that is no more than the rates applicable to copies provided pursuant to the Texas Public Information Act.

(h) The Owner agrees to provide the information required pursuant to an Owner Continuing Disclosure Agreement executed by the Owner in connection with the PID Bonds.

(i) The Owner covenants to provide, or cause to be provided, such facts and estimates as the County reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Owner further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Owner providing such facts and estimates, true, correct, and complete as of that date, and (ii) the Owner will make reasonable inquiries to ensure such truth, correctness, and completeness. The Owner covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds that would cause any of the covenants or agreements of the County contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

(j) The Owner agrees not to take any action or actions to reduce the total amount of such Special Assessments to be levied as of the Effective Date.

#### Section 6.03. Buyer Disclosures.

(a) The Owner shall comply with Chapter 5 of the Property Code, as amended, and shall contractually obligate (and promptly provide written evidence of such contractual provisions to the County) any party who purchases any Parcel owned by the Owner, or any portion thereof, to comply with the notice requirements set forth in Chapter 5 of the Property Code regarding any subsequent sale or conveyance of the Parcel. The Owner's compliance obligation shall terminate as to each Lot (as defined in the Service and Assessment Plan) if and when there is a sale of a Lot to a purchaser.

(b) The Owner shall contractually obligate each commercial builder who is in the business of constructing and/or selling residences to individual homebuyers (a "**Builder**") to:

(1) Comply with the requirements set forth in Chapter 5 of the Property Code, including providing individual homebuyers written notice, at and before closing, of the homebuyer's obligation to pay public improvement district assessments to the County and to inform each homebuyer that the homebuyer may ask the homebuyer's mortgage company to include the Annual Installments in the homebuyer's monthly escrow payment. Notwithstanding any provision herein to the contrary, the notice that must be provided to buyers of Parcels located within the boundaries of the District must comply with Chapter 5 of the Property Code; and

(2) Prominently display signage utilizing language and information provided by the Administrator in the Builder's model homes, if any, located within the Property.

#### Section 6.04. Indemnification and Hold Harmless by Owner

(a) THE OWNER WILL (WITHOUT USING ANY ASSESSMENT REVENUES OR BOND PROCEEDS) DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, THE CITY, AND THEIR OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (INDIVIDUALLY, AN "**INDEMNIFIED PARTY**," AND COLLECTIVELY, THE "**INDEMNIFIED PARTIES**") AGAINST AND FROM, AND WILL PAY TO THE INDEMNIFIED PARTIES, ALL WITHOUT WAIVING ANY SOVEREIGN OR

GOVERNMENTAL IMMUNITY AVAILABLE TO ANY INDEMNIFIED PARTY UNDER TEXAS OR FEDERAL LAW, AND WITHOUT WAIVING ANY DEFENSES OR REMEDIES UNDER TEXAS OR FEDERAL LAW, THE AMOUNT OF, ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, FEES, FINES, PENALTIES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, “**DAMAGES**”), ARISING DIRECTLY OR INDIRECTLY, FROM:

(1) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER;

(2) THE NEGLIGENT DESIGN, ENGINEERING, OR CONSTRUCTION BY THE OWNER OF ANY PUBLIC IMPROVEMENT;

(3) THE OWNER’S NONPAYMENT UNDER CONTRACTS WITH THE GENERAL CONTRACTOR OR SUBCONTRACTORS FOR ANY PUBLIC IMPROVEMENT UNDER THIS AGREEMENT;

(4) ANY CLAIMS AGAINST ONE OR MORE OF THE INDEMNIFIED PARTIES RELATING TO ANY PUBLIC IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT; AND

(5) ANY THIRD-PARTY CLAIMS RELATING TO ANY PUBLIC IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT.

(b) THE OWNER WILL DEFEND THE INDEMNIFIED PARTIES AGAINST ALL CLAIMS DESCRIBED IN THIS SECTION, AND THE INDEMNIFIED PARTIES WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE.

(c) THE INDEMNIFIED PARTIES WILL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER.

(d) THE INDEMNIFIED PARTIES RESERVE THE RIGHT, BUT ARE NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT THEIR OWN EXPENSE.

(e) THE OWNER SHALL RETAIN INDEMNIFIED PARTY-APPROVED DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE COUNTY OR THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION, AND IF THE OWNER DOES NOT DO SO, THE INDEMNIFIED PARTY MAY RETAIN ITS OWN DEFENSE COUNSEL AND THE OWNER WILL BE LIABLE FOR ALL SUCH COSTS.

(f) THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW.

## ARTICLE VII. DEFAULT AND REMEDIES

### Section 7.01. Default

A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe, or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. **Notwithstanding any provision to the contrary, neither the failure of the County to levy Special Assessments nor the failure of the County to issue PID Bonds shall constitute a default or a breach under this Agreement.**

### Section 7.02. Breach

(a) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph Section 7.03 below.

(b) Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate).

(c) Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity.

(d) Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

(e) Notwithstanding any provision contained herein to the contrary, the Owner shall not be required to construct any portion of the Public Improvements (or take any other action related to or in furtherance of same) while the County is in default under this Agreement).

### Section 7.03. Force Majeure

Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, COVID-19 or any pandemic or other event declared a disaster (including a disaster declared by the County Judge), adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or

tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing “Force Majeure” events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a “force majeure” event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article. Notwithstanding any provision to the contrary, Force Majeure will not excuse any obligation to make payment under this Agreement unless the event of Force Majeure affects the ability of financial institutions generally to transfer funds in the normal course of business.

#### Section 7.04. No Waiver

No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to the County and/or its elected officials, officers, employees, and agents under Federal or Texas law nor waive any defenses or remedies at law available to the County, the City, or their respective elected officials, employees, and agents under Federal or Texas law.

### **ARTICLE VIII. GENERAL PROVISIONS**

#### Section 8.01. Notices.

Any notice, communication, or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent, and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to County:           Hays County Judge  
                              Hays County Commissioners Court  
                              111 E San Antonio Street, Room 301  
                              San Marcos, TX 78666  
                              Facsimile: 512.393.2248

With copy to:         Hays County Office of General Counsel  
                              Attention: Jordan Powell, Assistant General Counsel  
                              111 E San Antonio Street, Room 202  
                              San Marcos, TX 78666  
                              Facsimile: (512) 392-6500

If to Owner:           Lazy Oaks Ranch, LP  
                              Attn: Bryan Lee



303 Colorado, Suite 2300  
Austin, TX 78701  
Facsimile: 512.457.8008

#### Section 8.02. Fee Arrangement /Administration of District

(a) The Owner agrees that it will pay all of the County's costs and expenses (including the County's third-party advisors and consultants) related to the creation, including this Agreement, and administration of the District, as well as costs and expenses relating to the development and review of the Service and Assessment Plan, including any applicable Acquisition and Reimbursement Agreement, (including legal fees and financial advisory fees) ("**County PID Costs**"). To the extent that County PID Costs have not previously been paid by the Owner, prior to closing of any PID Bonds, the County shall (i) submit to the Owner and the Trustee invoices and other supporting documentation evidencing the County PID Costs and (ii) direct the Trustee to pay these fees, as applicable, to the County or on behalf of the County from proceeds of the PID Bonds.

(b) In addition to any County PID Costs pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the PID Bonds, including fees for the review of the District creation and District administration documentation, the preparation of customary bond documents and the obtaining of Attorney General approval for the PID Bonds, will be paid at closing from proceeds of the PID Bonds. Further, the Owner agrees that it will be responsible for paying the Administrative Expenses.

(c) The Owner shall be solely responsible for the costs associated with the issuance of any PID Bonds. The terms of subparagraph (a) above shall apply to the Owner in the event that any PID Bonds are issued.

(d) The County may enter into a separate agreement with an Administrator to administer the District. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Service and Assessment Plan.

#### Section 8.03. Assignment

(a) Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party so long as the assignee has demonstrated to the County's satisfaction that the financial, technical, and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. Owner shall provide the County thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned.

(b) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign and that the Designated Successor or Assign agrees to and

accepts all of the Owner's rights and obligations to the County under this Agreement with respect to those rights and obligations that are sold, transferred, or assigned.

The Owner shall provide the County an executed copy of the assignment to any Designated Successor or Assign no later than five (5) days after the assignment is fully executed by the Owner and the Designated Successor or Assign.

(c) Upon a sale of a portion of the Property or assignment of any right hereunder, neither the County nor the City shall be required to release fiscal security to the Owner until the Designated Successor or Assign provides the County evidence that the Designated Successor or Assign has posted replacement fiscal security in the form and amount required by this Agreement and the County or the City to secure the completion of Authorized Improvements.

(d) Any transfer of the Owner's rights to receive Bond Proceeds or Special Assessment Revenues (not involving an assignment of this Agreement) are addressed in the applicable Acquisition and Reimbursement Agreement.

#### Section 8.04. Term of Agreement

This Agreement shall terminate on the date on which the County and Owner discharge all of their obligations hereunder. In the case of any termination of this Agreement and/or dissolution of the District, the obligation of any Party to pay any Project Costs expended prior to the termination of this Agreement and/or dissolution of the District and remaining unpaid will survive such termination and/or dissolution; provided however, that any payment obligation of the County shall be payable solely from Special Assessment Revenues or, if PID Bonds are issued, the proceeds of such bonds.

#### Section 8.05. Construction of Certain Terms

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

- (a) Words importing a gender include either gender.
- (b) Words importing the singular include the plural and vice versa.
- (c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.
- (d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.
- (e) A reference to any Party includes, with respect to Owner, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.

(f) All references in this Agreement to designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to “Exhibits” are to the designated Exhibits to this Agreement.

(g) The words “herein,” “hereof,” “hereto,” “hereby,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.

(h) The words “including” and “includes,” and words of similar import, are deemed to be followed by the phrase “without limitation.”

(i) Unless the context otherwise requires, a reference to the “Property,” the “Public Improvements,” or the “District” is deemed to be followed by the phrase “or a portion thereof.”

(j) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “approval,” “waiver,” “identification,” or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.

(k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

#### Section 8.06. Table of Contents; Titles and Headings

The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

#### Section 8.07. Amendments.

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties. The Owner acknowledges that no officer, agent, employee, or representative of the County has any authority to change the terms of this agreement unless expressly granted that authority by the Commissioners Court.

#### Section 8.08. Time

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

#### Section 8.09. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. Signatures

transmitted electronically by e-mail in a “PDF” format shall have the same force and effect as original signatures in this Agreement

#### Section 8.10. Entire Agreement

This Agreement contains the entire agreement of the Parties.

#### Section 8.11. Severability; Waiver

(a) If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

(b) Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

#### Section 8.12. Owner as Independent Contractor

In performing under this Agreement, it is mutually understood that the Owner is acting as an independent contractor, and not an agent of the County.

#### Section 8.13. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Service and Assessment Plan, the Assessment Order, PID Bond Order and Indenture. The Owner will provide any continuing disclosures required under an Indenture and will execute a separate agreement outlining the Owner’s continuing disclosure obligations, if required.

#### Section 8.14. Audit

The County Construction Representative or County Auditor shall have the right, during normal business hours and upon the giving of three business days’ prior written notice to an Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner with respect to any of the Public Improvements and any bids taken or received for the construction thereof or materials therefor.

#### Section 8.15. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Travis County, Texas and venue for any action arising hereunder shall be in Travis County, Texas.

#### Section 8.16. Contract Verifications

(a) The Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the County to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(b) The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

or

The foregoing representation is made solely to enable the County to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law and excludes the Owner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(c) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the County to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

(d) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th

Texas Legislature, Regular Session), Texas Government Code, as amended, the Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the County to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification,

(1) “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association,

(2) “firearm entity” means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and

(3) “firearm trade association” means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(e) As used in Section 8.16(a) through (d), the Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

(f) Submitted herewith is a completed Form 1295 in connection with the Owner’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the

“TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The County hereby confirms receipt of the Form 1295 from the Owner. The Owner and the County understand and agree that, with the exception of information identifying the County and the contract identification number, neither the County nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Owner; and, neither the County nor its consultants have verified such information.

#### Section 8.17. Claims Notification

If any Party receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against a Party in relation to this Agreement, the Party receiving such notice must give written notice to the other Parties of the claim or other action within three business days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Parties copies of all pertinent papers received by that Party with respect to these claims or actions.

#### Section 8.18. Texas Public Information Act

The Parties agree that this Agreement, all performance under this Agreement, and all information obtained by County in connection with this Agreement is subject to applicable provisions of the Texas Public Information Act, Texas Government Code Chapter 552, and all legal authorities relating to the Texas Public Information Act, including decisions and letter rulings issued by the Texas Attorney General’s Office; and the Owner agrees to provide County, citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Agreement subject to and in accordance with the Texas Public Information Act. Notwithstanding any provision to the contrary, nothing in this Agreement requires a Party to waive any applicable exceptions to disclosure under the Texas Public Information Act.

#### Section 8.19. Correction of Technical Errors

If, by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the Parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

#### Section 8.20. No Third-Party Beneficiary

This Agreement is solely for the benefit of the Parties, and neither the County nor the Owner intends by any provision of this Agreement to create any rights in any third-party

beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the County and the Owner.

#### Section 8.21. Exhibits

The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit “A” - Definitions
- Exhibit “B” - Property
- Exhibit “C” - Certification for Payment
- Exhibit “D” - Closing Disbursement Request

[Signature Pages to Follow]



**Hays County, Texas**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signatures Continue on Next Page]

**LAZY OAKS RANCH, LP**, a Texas limited partnership

By: Lazy Oaks GP, LLC, a Texas limited liability company,  
Its general partner

By: \_\_\_\_\_  
Name: Bryan W. Lee  
Title: Manager

## Exhibit “A” to Financing Agreement

### DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

**“Acceptance Date”** means, with respect to a Public Improvement or Segment thereof, the date that the County or the City, as applicable, accepts dedication of such Public Improvement or Segment thereof.

**“Accredited Investor”** means an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933.

**“Acquisition and Reimbursement Agreement”** means (whether one or more) an agreement that provides for construction and dedication of a Public Improvement (or Segment) to the County or City, as applicable, prior to the Owner being paid out of the applicable Bond Proceeds, whereby all or a portion of the Actual Costs will be paid to Owner initially from Special Assessment Revenues (and ultimately from PID Bonds) to reimburse the Owner for actual costs paid by the Owner that are eligible to be paid with Bond Proceeds.

**“Actual Cost(s)”** means, with respect to a Public Improvement, the Owner’s demonstrated, reasonable, allocable, and allowable costs of constructing such Public Improvement, as specified in a payment request in a form that has been reviewed and approved by the County and in an amount not to exceed the amount for each Public Improvement as set forth in Service and Assessment Plan. Actual Cost may include (a) the costs incurred by or on behalf of the Owner (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvement, (b) the costs incurred by or on behalf of the Owner in preparing the plans for such Public Improvement, (c) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvement, (d) a construction management fee of 4.0% of the costs incurred by or on behalf of the Owner for the construction of such Public Improvement if the Owner is serving as the construction manager, (e) the costs incurred by or on behalf of the Owner for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, and similar professional services related to the Public Improvements (f) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, and (g) all related permitting, zoning and public approval expenses, architectural, engineering, and consulting fees.

**“Additional Interest”** means the amount collected by application of an interest rate on Special Assessments not to exceed 0.50% pursuant to Section 372.018 of the PID Act and the applicable Indenture.

**“Additional Neighborhood Improvement PID Bonds”** are, with respect to each individual Neighborhood Improvement Area, additional Neighborhood Improvement PID Bonds that may be issued periodically in the future subsequent to the issuance of the initial series of Neighborhood Improvement PID Bonds as such individual Neighborhood Improvement Areas of

the Project is developed and requires financing of internal infrastructure improvements that benefit such individual Neighborhood Improvement Area.

**“Administrative Expenses”** means the actual or budgeted costs and expenses for: (1) the Administrator and County staff; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the County; (3) calculating, collecting, and maintaining records with respect to Special Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and an update to the Service and Assessment Plan; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Special Assessments and Annual Installments; (7) complying with the Service and Assessment Plan and the PID Act with respect to the administration of a reimbursement agreement and the issuance and sale of PID Bonds, if issued, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, if issued, including their respective legal counsel. Administrative Expenses collected but not expended in any year shall be carried forward and applied to reduce Administrative Expenses for subsequent years.

**“Administrator”** means the County or a third-party designated by the County to perform the duties and obligations of the “Administrator” in the Service and Assessment Plan and an Indenture. If no Administrator is appointed by the County, the County shall serve as the Administrator.

**“Agreement”** has the meaning given to such term in the recitals to this Agreement.

**“Annual Installment”** means the annual installment payment of a Special Assessment as calculated by the Administrator and approved by the Commissioners Court, that includes: (1) principal; (2) interest; (3) Administrative Expenses; and (4) Additional Interest, if any.

**“Assessed Parcel”** means for any year, any Parcel within the District against which a Special Assessment is levied.

**“Assessment Order”** means each order adopted by the Commissioners Court, in accordance with the PID Act, levying the Special Assessments on the Property, as further described in Article II of this Agreement.

**“Assessment Roll”** means any assessment roll for Assessed Parcels within the District

**“Attorney General”** means the Attorney General of the State of Texas.

**“Bond Counsel”** means Orrick, Herrington & Sutcliffe LLP or their successor.

**“Bond Issuance Costs”** mean the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, direct County costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

**“Bond Issuance Request”** means written request made by Owner to the County in good faith as evidenced by Owner’s expenditure of necessary amounts for market studies, financial

analysis, legal counsel, and other professional services and due diligence necessary to support the request.

**“Bond Proceeds”** has the meaning given to such term in Section 6.01(b) of this Agreement.

**“Bond Tests”** means certain conditions precedent imposed by the County or the investment and underwriting criteria which must be met prior to the issuance of PID Bonds which are more particularly described in Section 5.01(b) of this Agreement or in an Indenture.

**“Builder”** has the meaning given to such term in Section 6.03(b) of this Agreement.

**“Certification for Payment”** means the certificate (whether one or more) to be provided by the Owner to substantiate the Actual Cost of one or more Public Improvements or Segments in substantially the same form as Exhibit “C” attached hereto.

**“City”** means the City of San Marcos, Texas.

**“Closing Disbursement Request”** means the request (whether one or more) in substantially the same form as Exhibit “D” attached hereto.

**“Closing Reimbursement Payment”** has the meaning given to such term in Section 4.03(e).

**“Commissioners Court”** means the Commissioners Court of Hays County, Texas.

**“Construction Management Fee”** means 4% of the costs incurred by or on behalf of Owner for the construction of each Public Improvement (or Segment thereof).

**“Construction Manager”** means initially the Owner, and thereafter subject to change in accordance with Section 3.02 of this Agreement.

**“Cost of Issuance Account”** means an account within the Project Fund established pursuant to an Indenture and into which the Trustee will deposit Bond Proceeds to be used for the payment of Bond Issuance Costs.

**“County”** means Hays County, Texas.

**“County PID Costs”** has the meaning given to such term in Section 8.02 of this Agreement.

**“County Auditor”** means the County Auditor of the County or his/her designee.

**“County Construction Representative”** means the Director of Development and Community Services or such other person selected by the County to oversee the construction of the Public Improvements on behalf of the County.

**“Designated Successors and Assigns”** means (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to

all or a portion of the Property, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Owner's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital, or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner.

**"Development Agreement"** has the meaning given to such term in the recitals to this Agreement.

**"District"** has the meaning given to such term in the recitals to this Agreement.

**"Effective Date"** has the meaning given to such term in the recitals to this Agreement.

**"Indenture"** means the applicable Indenture of Trust between the County and a trustee relating to the issuance of a series of PID Bonds for financing costs of Public Improvements, as it may be amended from time to time.

**"Independent Appraisal"** means, in establishing the appraised value, an "as-complete" appraisal delivered by an independent appraiser licensed in the State of Texas, which appraisal shall assume completion of the Public Improvements to be funded with the PID Bonds. Notwithstanding the foregoing and in the case of Major Public Improvement PID Bonds and Neighborhood Improvement PID Bonds, the Independent Appraisal may not include the value of any vertical improvements completed or expected to be completed on the applicable Assessed Parcels in the District or the Neighborhood Improvement Area subject to such Independent Appraisal.

**"Major Improvement Special Assessment"** those Special Assessments levied on property within the District that benefits from the Major Public Improvements.

**"Major Public Improvement PID Bonds"** means PID Bonds that may be issued to fund Major Public Improvements. Major Public Improvement PID Bonds will be secured by Major Improvement Special Assessments.

**"Major Public Improvements"** means those Public Improvements that confer special benefit on the entire District and may be initially financed with an Acquisition and Reimbursement Agreement or ultimately financed with Major Improvement PID Bonds and/or allocated to Neighborhood Improvement Areas and financed with Neighborhood Improvement PID Bonds or Additional Neighborhood Improvement PID Bonds.

**"Neighborhood Improvement Areas"** means one or more Parcels that are anticipated to be developed over time within the District as determined by the Owner. The Parcels within a Neighborhood Improvement Area will be assessed in connection with the Public Improvements that specially benefit the Assessed Parcels within said Neighborhood Improvement Area, but any Parcels outside of the Neighborhood Improvement Area will not be assessed.

**"Neighborhood Improvement PID Bonds"** means PID Bonds that may be issued periodically as individual Neighborhood Improvement Areas of the Project are developed and require financing of internal infrastructure improvements and/or the allocable portion of Major

Public Improvements that benefit each given Neighborhood Improvement Area. Neighborhood Improvement PID Bonds will be secured by Neighborhood Improvement Special Assessments.

**“Neighborhood Improvement Special Assessments”** means those Special Assessments levied only on property located in a specific Neighborhood Improvement Area to finance the internal infrastructure improvements that benefit only such Neighborhood Improvement Area and/or the portion of Major Public Improvements allocable to such Neighborhood Improvement Area.

**“Neighborhood Improvement Value to Lien Ratio”** means the ratio of the appraised value of a specific assessed parcel or assessed parcels, as applicable, in a Neighborhood Improvement Area, based on an Independent Appraisal, to the sum of (i) the Neighborhood Improvement Special Assessments levied or to be levied on a specific parcel or parcels, as applicable, within such Neighborhood Improvement Area, (ii) the outstanding Major Improvement Special Assessments levied on such parcel or parcels, as applicable, within such Neighborhood Improvement Area and (iii) the outstanding Original La Cima PID Assessments levied on such parcel or parcels, as applicable, within such Neighborhood Improvement Area.

**“Neighborhood Public Improvements”** means those Public Improvements that confer a special benefit upon property within a designated Neighborhood Improvement Area within the District, may be initially financed with an Acquisition and Reimbursement Agreement or ultimately financed with Neighborhood Improvement PID Bonds and/or Additional Neighborhood Improvement PID Bonds and that confer a special benefit upon property within that Neighborhood Improvement Area.

**“Non-Benefited Property”** means Parcels within the boundaries of the District that accrue no special benefit from the Public Improvements as determined by the Commissioners Court.

**“Original La Cima District”** means the La Cima Public Improvement District created by the County on September 23, 2014, consisting of that certain approximately 2,044 acres of land located within Hays County, Texas, as depicted on Exhibit “B” to the Original La Cima PID Financing Agreement, a portion of which overlaps the Property.

**“Original La Cima Major Improvements”** means the public improvements that provide benefit to all of the assessed parcels within the Original La Cima District, including the Property, that were financed through the Original La Cima District.

**“Original La Cima Major PID Bonds”** means the Hays County, Texas Special Assessment Revenue Bonds, Series 2015 (La Cima Public Improvement District Major Public Improvement Project) issued by the County on August 5, 2015, to finance the Original La Cima Major Improvements that are secured by the Original La Cima PID Assessments and any bonds issued by the County to refund outstanding bonds of the foregoing series.

**“Original La Cima PID Assessments”** means the special assessments levied by order of the Commissioners Court on August July 21, 2015, on benefited parcels within the Original La Cima District, including the Property, to finance the Original La Cima Major Improvements.

**“Original La Cima PID Financing Agreement”** means the La Cima Public Improvement District Financing Agreement effected as of July 12, 2015, between the County and La Cima San Marcos, LLC, a Texas limited liability company, successor in interest to the Owner, as amended by the First Amendment to La Cima Public Improvement District Financing Agreement effective as of May 12, 2020, as amended by the Second Amendment to La Cima Public Improvement District Financing Agreement effective as of August 30, 2022, as may be further amended from time to time.

**“Original La Cima PID Service and Assessment Plan”** means the La Cima Public Improvement District Service and Assessment Plan (as amended, supplemented, or updated from time to time) pursuant to which the Original La Cima PID Assessments were levied against all benefited parcels in the Original La Cima District, including the Property, to finance the costs of Original La Cima Major Improvements.

**“Owner”** means, collectively, Lazy Oaks Ranch, LP, a Texas limited partnership, including its respective Designated Successors and Assigns.

**“Owners’ Association”** means a homeowners’ association or property owners’ association.

**“Owner Continuing Disclosure Agreement”** means an agreement outlining the Owner’s continuing disclosure obligations with respect to a series of PID Bonds, if required.

**“Owner Expended Funds”** has the meaning given to such term in Section 4.03(e) of this Agreement.

**“Parcel”** means a property within the District identified by either a tax map identification number assigned by the Hays County Appraisal District for real property tax purpose, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the Official Public Records of Hays County, or by any other means determined by the County.

**“Party”** means the Owner or the County, as parties to this Agreement, and **“Parties”** means collectively, the Owner and the County.

**“PID Act”** means Chapter 372, Local Government Code, as amended.

**“PID Bond Order”** means and refers to the order or orders of the Commissioners Court that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either under the terms of the bond order or a trust indenture related to the PID Bonds.

**“PID Bond Issuance Request”** means a written request from the Owner to the County requesting the issuance of PID Bonds.

**“PID Bond Security”** means the funds that are to be pledged in or pursuant to the PID Bond Order or the Indenture to the payment of the debt service requirements on the PID Bonds, consisting of the Special Assessments, including earnings and income derived from the investment or deposit of Special Assessments in the special funds or accounts created and established for the



payment and security of the PID Bonds, unless such earnings are required to be deposited into a rebate fund for payment to the federal government.

**“PID Bonds”** means the special assessment revenue bonds to be issued by the County, in one or more series, for the purpose of financing the Public Improvements that confer special benefit on the land within the District or reimbursing the Owner for Actual Costs paid prior to the issuance of the PID Bonds, which may include funds for any required reserves and amounts necessary to pay Bond Issuance Costs, and to be secured by the revenues and funds pledged under an Indenture, consisting primarily of the Special Assessments, pursuant to the authority granted in the PID Act, and as described by this Agreement. This term is used to collectively refer to the Major Improvement PID Bonds, the Neighborhood Improvement PID Bonds, the Additional Neighborhood Improvement PID Bonds and any Refunding PID Bonds throughout this Agreement.

**“Prepayment”** means the payment of all or a portion of a Special Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of a Special Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Special Assessment.

**“Project”** has the meaning given to such term in the recitals to this Agreement.

**“Project Costs”** means the total of all Actual Costs.

**“Project Engineer”** means the civil engineer or firm of civil engineers selected by the Owner to perform the duties set forth herein, which is currently Bowman Consulting.

**“Project Fund”** means the separate and unique fund established by the County under such name pursuant to an Indenture as described in Section 5.02 hereof.

**“Property”** has the meaning given to such term in the recitals to this Agreement.

**“Public Improvements”** means collectively the Major Public Improvements and Neighborhood Public Improvements together with any and all of the improvements which are included in the Service and Assessment Plan as such plan is adopted, amended and updated from time to time.

**“Qualified Institutional Buyer”** means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933.

**“Real Property Interests”** has the meaning given to such term in section 3.04(a) of this Agreement

**“Refunding PID Bonds”** means PID Bonds issued to refund of all or any portion of a series of outstanding PID Bonds

**“Segment”** or **“Segments”** means the discrete portions of the Public Improvements identified as such.

**“Service and Assessment Plan”** means the La Cima South Public Improvement District Service and Assessment Plan (as such plan is amended and updated from time to time), to be initially adopted by the Commissioners Court in the first Assessment Order for the purpose of assessing allocated costs against property located within the boundaries of the District having terms, provisions and findings approved and agreed to by the Owner, as required by Article II of this Agreement.

**“Special Assessment Levy Request”** means a written request from the Owner to the County, containing the items set forth in Section 4.02(a) of this Agreement, requesting that Special Assessments be levied on benefited Parcels within the Property or a given Neighborhood Improvement Area for the financing of the Actual Costs of Public Improvements.

**“Special Assessment(s)”** means the assessments levied against a Parcel in the District, as provided for in the applicable Assessment Order and in the Service and Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

**“Special Assessment Revenues”** means money collected by or on behalf of the County from any one or more of the following: (i) a Special Assessment levied against an Assessed Parcel, or Annual Installment payment thereof, including any interest on such Special Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs (as defined in an Indenture), and (iv) Foreclosure Proceeds (as defined in an Indenture).

**“State”** means the State of Texas.

**“Subdivision Ordinance”** means the Hays County Subdivision and Development Regulations in effect as of the Effective Date.

**“Tax Certificate”** has the meaning given to such term in Section 6.01(b) hereof.

**“Tax Code”** means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

**“Trustee”** means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

**“Underwriter”** means the underwriter engaged by the County from time to time in connection with the marketing and issuance of PID Bonds.

**“Unpaid Balance”** has the meaning given to such term in the applicable Acquisition and Reimbursement Agreement.

**“Value to Lien Ratio”** means the ratio of the appraised value of a specific assessed parcel or assessed parcels, as applicable, in the District based on an Independent Appraisal, to the sum of (i) the outstanding Major Improvement Special Assessments levied on such parcel or parcels, as applicable, within the District and (ii) the outstanding Original La Cima PID Assessments levied on such parcel or parcels, as applicable, within the District.

**Exhibit “B” to Financing Agreement**  
**PROPERTY DESCRIPTION FOR PROJECT**

### FIELD NOTES DESCRIPTION

DESCRIPTION OF 320.964 ACRES OF LAND IN, THE WILLIAM BURKE SURVEY, ABSTRACT NO. 68 AND THE WILLIAM SMITHSON SURVEY, ABSTRACT NO. 419, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT CERTAIN CALLED 321 ACRES DESCRIBED IN THE DEED TO LAZY OAKS RANCH, LP OF RECORD IN VOLUME 3772, PAGE 231, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 320.964 ACRES OF LAND AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD. AND SHOWN ON PLAN NO. 3602.01, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a 1/2-inch iron rod with a plastic cap stamped "BCG" previously set in a southerly line of the said 321 acre tract and a northerly line of a called 537.30 acre tract described in Deed to LCSM West LP, of record in Document 20031138, subject to a boundary line agreement recorded in Vol. 124, Page 496, Official Public Records of Hays County, Texas, from which a 20" cedar tree found bears N 16°11'45" E, a distance of 16.19 feet from the **POINT OF BEGINNING** of the tract described herein;

**THENCE** with the north line of said 537.30 acre tract, the south line of the said 321 acre tract, with said boundary line agreement and being the south line of the herein described property, the following twenty-six (26) courses and distances:

1. S 42°44'24" W, a distance of 371.35 feet to a 3-inch cedar fence corner post found for an angle point,
2. S 43°42'44" W, a distance of 494.18 feet to a 4-inch cedar post found for an angle point;
3. S 48°26'43" W, a distance of 69.01 feet to a multi-stem (20-inch, 6.5-inch) live oak tree found for an angle point,
4. S 85°42'20" W, a distance of 50.43 feet to a 17.5-inch live oak tree found for an angle point,
5. S 58°23'07" W, a distance of 191.56 feet to an 18-inch live oak tree found for an angle point,
6. S 69°45'06" W, a distance of 135.88 feet to 28.5-inch live oak tree found for an angle point,
7. S 29°44'24" W, a distance of 43.94 feet to a fallen, dead oak tree found for an angle point,
8. S 15°37'38" W, a distance of 179.41 feet to a 5-inch cedar post found for an angle point,
9. S 16°48'45" W, a distance of 155.23 feet to a 6-inch cedar post tree found for an angle point,
10. S 42°58'51" W, a distance of 514.14 feet to a 5-inch cedar post tree found for an angle point,
11. S 42°14'49" W, a distance of 179.51 feet to a 23.5" live oak tree found for an angle point,
12. S 44°45'36" W, a distance of 181.12 feet to a 5-inch cedar post tree found for an angle point,
13. S 78°15'12" W, a distance of 248.69 feet to a 6-inch cedar post found for an angle point,
14. S 67°10'44" W, a distance of 36.69 feet to a 22-inch live oak tree found for an angle point,
15. S 41°23'55" W, a distance of 167.03 feet to a fence corner found for an angle point,
16. S 15°20'53" W, a distance of 190.01 feet to a 13-inch cedar elm tree found for an angle point,
17. S 29°55'03" W, a distance of 170.32 feet to a 15-inch tree found for an angle point,

18. S 41°34'53" W, a distance of 90.25 feet to a 16.5-inch cedar tree found for an angle point,
19. S 51°33'27" W, a distance of 40.44 feet to a 14-inch cedar tree found for an angle point,
20. S 54°58'35" W, a distance of 201.92 feet to a 6-inch cedar post found for an angle point,
21. S 52°58'32" W, a distance of 226.94 feet to a 15.5-inch cedar tree found for an angle point,
22. S 51°21'36" W, a distance of 478.17 feet to a 6-inch cedar post found for an angle point,
23. S 49°18'19" W, a distance of 259.36 feet to a 8-inch cedar post found for an angle point,
24. S 48°23'08" W, a distance of 242.13 feet to a 38-inch live oak tree found for an angle point,
25. S 45°28'14" W, a distance of 229.75 feet to a 4-inch cedar post tree found for an angle point, and
26. S 44°23'23" W, a distance of 216.48 feet to a 1/2-inch iron rod found at the southwest corner of said 537.30 acre tract, being an angle point in the southeast line of said 321 acre tract and the north corner of a called 100 acre tract described in the deed to LCSM West LP of record in Document 20031182, Official Public Records of Hays County, Texas, for an angle point in the southeast line of the tract described herein;

**THENCE** S 44°10'20" W, leaving said boundary line agreement and with the northwest line of the said 100 acre tract and the southeast line of the said 321 acre tract, a distance of 703.47 feet to a 1/2-inch iron rod with a plastic cap marked "BYRN" found at the southeast corner of that called 390.52 acre tract described in the deed to LCSM West LP of record in Document 18007483, Official Public Records of Hays County, Texas, at the southwest corner of the said 321 acre tract, for the southwest corner of the tract described herein;

**THENCE** N 55°21'01" W, leaving the northwest line of said 100.0 acre tract, with the northeast line of said 390.42 acre tract and with the southwest line of the said 321 acre tract, with the southwest line of the herein described tract, a distance of 2333.06 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for the most westerly northwest corner of the tract described herein;

**THENCE** leaving the northeast line of said 390.52 acre tract, crossing the said 321 acre tract, with a northwest and a southwest line of the tract described herein, the following two (2) courses and distances:

1. N 44°32'35" E, a distance of 2927.87 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for a re-entrant corner, and
2. N 44°15'28" W, a distance of 904.23 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for the northerly northwest corner of the tract described herein;

**THENCE** continuing across the said 1388.17 acre tract, with a northwest line of the tract described herein, the following twenty-three (23) courses and distances:

1. N 35°14'56" E, a distance of 527.92 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
2. N 47°34'44" E, a distance of 112.73 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
3. N 50°57'50" E, a distance of 102.60 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,

4. N 78°04'49" E, a distance of 85.12 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
5. S 85°01'43" E, a distance of 96.90 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
6. N 51°19'12" E, a distance of 28.38 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
7. S 63°32'56" E, a distance of 73.72 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
8. S 71°02'40" E, a distance of 284.37 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
9. S 77°17'56" E, a distance of 490.99 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
10. N 67°45'17" E, a distance of 103.40 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
11. N 49°35'40" E, a distance of 76.92 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
12. N 32°12'49" E, a distance of 193.35 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
13. N 66°23'46" E, a distance of 300.51 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
14. S 89°54'40" E, a distance of 414.61 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
15. S 54°16'57" E, a distance of 240.25 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
16. S 41°50'12" E, a distance of 293.15 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
17. S 41°43'20" E, a distance of 279.34 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for an angle point,
18. N 50°54'28" E, a distance of 175.88 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for a point of curvature,
19. along a curve to the right, having a radius of 537.00 feet, an arc distance of 71.80 feet, and a chord which bears N 54°44'19" E, a distance of 71.75 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" previously set for a point of tangency,
20. N 58°34'09" E, a distance of 465.88 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set for an angle point,
21. S 72°30'31" E, a distance of 933.45 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set for an angle point,

22. S 47°13'47" E, a distance of 304.95 feet to the **POINT OF BEGINNING** and containing 320.964 acres of land, more or less.

**BEARING BASIS:** Texas Coordinate System, South Central Zone, NAD83, Grid.


BOWMAN WORD FILE: FN2710(JBR)

THE STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF TRAVIS         §

I, JAMES BRADLEY RICHARDS, REGISTERED PROFESSIONAL LAND SURVEYOR RPLS NO. 6875 IN THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON-THE-GROUND SURVEY MADE UNDER THE DIRECTION AND SUPERVISION OF JOHN D. BARNARD, A REGISTERED PROFESSIONAL LAND SURVEYOR, RPLS NO. 5749, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

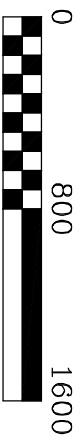
WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on this 27th day of January 2022 A.D.

Bowman Consulting Group, Ltd.  
Austin, Texas 78746

  
\_\_\_\_\_  
James Bradley Richards  
Registered Professional Land Surveyor  
No. 6875 – State of Texas



CURVE TABLE				
CURVE #	RADIUS	ARC DISTANCE	CHORD BEARING	CHORD DISTANCE
C27	537.00' (537.00')	71.80' (71.80')	N 54°44'19" E (N 54°44'19" E)	71.75' (71.75')



SCALE: 1"=1600'

JANUARY, 2022  
CITY OF SAN MARCOS  
HAYS COUNTY, TEXAS

CALLED 698.2 ACRES  
LCSM WEST LP  
DOCUMENT NO. 17043115  
DECEMBER, 08, 2017  
O.P.R.H.C.TX.

CALLED 698.2 ACRES  
LCSM WEST LP  
DOCUMENT NO. 17043115  
DECEMBER, 08, 2017  
O.P.R.H.C.TX.

WILLIAM BURKE SURVEY,  
ABSTRACT NO. 68

WILLIAM SMITHSON SURVEY,  
ABSTRACT NO. 419

CALLLED 390.52 ACRES  
LCSM WEST LP  
DOCUMENT NO. 18007483  
FEBRUARY, 28, 2018  
O.P.R.H.C.TX.

RESIDENTIAL TRACT 7W  
CALLED 321 ACRES  
LAZY OAKS RANCH, LP  
VOL. 3772, PG. 231  
MARCH 19, 2014  
O.P.R.H.C.TX.



CALLLED 78.95 ACRES  
LAZY OAKS RANCH, LP.

CALLLED 100.00 ACRES  
LCSM WEST LP  
DOCUMENT NO. 20031182  
JULY 24, 2020  
O.P.R.H.C.TX.

CALLLED 537.30 ACRES  
LCSM WEST LP  
DOCUMENT NO. 20031138  
JULY 24, 2020  
O.P.R.H.C.TX.

THIS LINE IS SUBJECT TO A BOUNDARY LINE AGREEMENT  
RECORDED IN VOL. 124, PG. 496,  
D.R.H.C.TX.

[("WITH FENCE")]



SHEET 5 OF 6

**Bowman**  
CONSULTING

Bowman Consulting Group, Ltd.  
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www.bowmanconsulting.com © Bowman Consulting Group, Ltd.  
TBPE Firm No. F-14309 | TBPLS Firm No. 101206-00

EXHIBIT TO ACCOMPANY  
FNE2710



LINE TABLE			LINE TABLE			LEGEND	
LINE #	BEARING	DISTANCE				○	1/2" IRON ROD FOUND PREVIOUSLY SET
L59	S 47°13'47" E (S 47°13'47" E)	304.95' (304.95')	L83	S 48°23'08" W [S 48°19'29" W]	242.13' [242.10']	O.P.R.H.C.TX.	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS
L60	S 42°44'24" W [S 42°46'57" W]	371.35'	L84	S 45°28'14" W [S 45°28'50" W]	229.75' [229.89']		
L61	S 43°42'44" W [S 43°32'08" W]	494.18' [346.50']	L85	S 44°23'23" W [S 44°21'44" W]	216.48' [215.87']		
L62	S 48°26'43" W [S 48°11'14" W]	69.01' (69.08')	L86	S 44°10'20" W [S 44°11'34" W]	703.47' [703.53']	P.O.B.	POINT OF BEGINNING
L63	S 85°42'20" W [S 85°52'49" W]	50.43' [50.52']	L87	N 35°14'56" E (N 35°14'56" E)	527.92' (527.92')	P.O.R.	POINT OF REFERENCE
L64	S 58°23'07" W [S 58°25'20" W]	191.56' [191.29']	L88	N 47°34'44" E (N 47°34'44" E)	112.73' (112.73')	NOTES: 1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, GRID.  2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS, TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.  3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 0.999875.	
L65	S 69°45'06" W [S 69°43'05" W]	135.88' [135.71']	L89	N 50°57'50" E (N 50°57'50" E)	102.60' (102.60')		
L66	S 29°44'24" W [S 29°48'20" W]	43.94' [43.75']	L90	N 78°04'49" E (N 78°04'49" E)	85.12' (85.12')		
L67	S 15°37'38" W [S 14°38'20" W]	179.41' [179.95']	L91	S 85°01'43" E (S 85°01'43" E)	96.90' (96.90')		
L68	S 16°48'45" W [S 16°48'13" W]	155.23' [155.11']	L92	N 51°19'12" E (N 51°19'12" E)	28.38' (28.38')		
L69	S 42°58'51" W [S 42°59'31" W]	514.14' [514.06']	L93	S 63°32'56" E (S 63°32'56" E)	73.72' (73.72')		
L70	S 42°14'49" W [S 42°15'06" W]	179.51' [179.62']	L94	S 71°02'40" E (S 71°02'40" E)	284.37' (284.37')		
L71	S 44°45'36" W [S 44°47'10" E]	181.12' [181.13']	L95	S 77°17'56" E (S 77°17'56" E)	490.99' (490.99')		
L72	S 78°15'12" W [S 78°15'32" W]	248.69' [248.66']	L96	N 67°45'17" E (N 67°45'17" E)	103.40' (103.40')		
L73	S 67°10'44" W [S 67°12'30" W]	36.69' [36.61']	L97	N 49°35'40" E (N 49°35'40" E)	76.92' (76.92')	SHEET 6 OF 6	
L74	S 41°23'55" W [S 27°31'51" W]	167.03'	L98	N 32°12'49" E (N 32°12'49" E)	193.35' (193.35')		
L75	S 15°20'53" W (S 27°31'51" W)	190.01' [348.02']	L99	N 66°23'46" E (N 66°23'46" E)	300.51' (300.51')		
L76	S 29°55'03" W [S 29°52'19" W]	170.32' [170.25']	L100	S 89°54'40" E (S 89°54'40" E)	414.61' (414.61')	<b>EXHIBIT TO ACCOMPANY</b> <b>FN2710</b>	
L77	S 41°34'53" W [S 41°30'05" W]	90.25' [90.07']	L101	S 54°16'57" E (S 54°16'57" E)	240.25' (240.25')		
L78	S 51°33'27" W [S 52°01'55" W]	40.44' [40.54']	L102	S 41°50'12" E (S 41°50'12" E)	293.15' (293.15')		
L79	S 54°58'35" W [S 54°55'53" W]	201.92' [202.09']	L103	S 41°43'20" E (S 41°43'20" E)	279.34' (279.34')	<b>Bowman</b> <b>CONSULTING</b>	
L80	S 52°58'32" W [S 52°59'51" W]	226.94' [227.02']	L104	N 50°54'28" E (N 50°54'28" E)	175.88' (175.88')		
L81	S 51°21'36" W [S 51°20'33" W]	478.17' [478.03']	L105	N 58°34'09" E (N 58°34'09" E)	465.88' (465.88')		
L82	S 49°18'19" W [S 49°20'40" W]	259.36' [259.32']	L151	N 51°10'40" W [N 51°01'56" W]	176.70' [176.86']	<b>EXHIBIT TO ACCOMPANY</b> <b>FN2710</b>	
			L177	N 42°44'24" E	126.20'		

**Exhibit “C” to Financing Agreement**

**FORM OF CERTIFICATION FOR PAYMENT**

**CERTIFICATION FOR PAYMENT  
(La Cima South Public Improvement District)**

**CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

The undersigned \_\_\_\_\_ (the “**Construction Manager**”) requests payment from the [\_\_\_\_\_ Account of the Project Fund][Reimbursement Account][Reimbursement Fund] established by Hays County, Texas (the “**County**”) in the amount of \$\_\_\_\_\_ for labor, design, materials, fees, and/or other general costs related to the acquisition or construction of certain Public Improvements providing a special benefit to property within the La Cima South Public Improvement District (the “**District**”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the La Cima South Public Improvement District Financing Agreement (the “**Financing Agreement**”).

In connection with the above referenced payment, the Construction Manager represents and warrants to the County as follows:

1. The undersigned is a duly authorized officer of the Construction Manager, is qualified to execute this Certification for Payment Form No. \_\_\_\_\_ on behalf of the Construction Manager and is knowledgeable as to the matters set forth herein.
2. The work described in Attachment A has been completed in the percentages stated therein.
3. The Certification for Payment for the below referenced Public Improvements has not been the subject of any prior Certification for Payment submitted for the same work to the County or, if previously requested, no disbursement was made with respect thereto.
4. The amounts listed for Actual Costs of the Public Improvements, as set forth in Attachment A, is a true and accurate representation of the Actual Costs associated with the acquisition, design or construction of said Public Improvements, and such costs (i) are in compliance with the Financing Agreement [and the Acquisition and Reimbursement Agreement], and (ii) are consistent with the Service and Assessment Plan.
5. Following is an itemized list of all deposits to and disbursements from (i) the [\_\_\_\_\_] Account of the Project Fund, (ii) the Reimbursement Account and (iii) the Reimbursement Fund.

<u>Account</u>	<u>Deposits</u>	<u>Disbursements</u>
[_____] Account of the	\$	\$
Project Fund		Certification for Payment Form No. ____
	\$	\$
		Certification for Payment Form No. ____

<b>Total</b>	\$	\$
Reimbursement Account	\$	\$
	\$	Certification for Payment Form No. ____
<b>Total</b>	\$	\$
Reimbursement Fund	\$	\$
	\$	Certification for Payment Form No. ____
<b>Total</b>	\$	\$
		Certification for Payment Form No. ____

6. The Construction Manager is in compliance with the terms and provisions of the Financing Agreement[, Acquisition and Reimbursement Agreement], the Service and Assessment Plan [and the Continuing Disclosure Agreement of the Developer between the Construction Manager, P3Works, LLC and \_\_\_\_\_].
7. The Construction Manager has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity under common control with the Construction Manager owes, located in the District and has no outstanding delinquencies for such taxes and assessments.
8. [All conditions set forth in the Indenture for the payment hereby requested have been satisfied.]
9. The work with respect to the Public Improvements referenced below (or its Segment) has been completed, and the County or the City, as applicable, has inspected [and accepted] such Public Improvements (or its completed Segment). ***[Include bracketed language if final progress payment for such Public Improvement]***
10. The Construction Manager agrees to cooperate with the County in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the County to complete said review.
11. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for the Public Improvements identified may be paid until the work with respect to such Public Improvements (or Segment thereof) has been completed and the County has accepted such Public Improvements (or Segment thereof). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Public Improvements (or Segment thereof).
12. [Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.][***Include bracketed language if final progress payment for such Public Improvement***]

13. Attached hereto as Attachment C are invoices, receipts, purchase orders, change orders, and similar instruments, which are in sufficient detail to allow the County to verify the Actual Costs for which payment is requested.
14. Also attached hereto as Attachment D are any lender consents or approvals that the Construction Manager may be required to obtain under any loan documents relating to the District.
15. [Attached hereto as Attachment E is a two-year maintenance bond for the Public Improvements (or its completed Segment) accepted by the City or the County, as applicable.] ***[Include bracketed language if final progress payment for such Public Improvement (or Segment thereof)]***
16. Pursuant to the Financing Agreement, after receiving this Certification for Payment, the County has inspected [and accepted] the completed Public Improvements and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations. ***[Include bracketed language if final progress payment for such Public Improvement]***
17. [TO BE USED IF PID BONDS HAVE BEEN ISSUED: The Owner confirms that payment of the amounts requested in this Certification for Payment, taking into account all prior payments for the Public Improvements and the amount of work related to the Public Improvements remaining to be completed as of the date of this Certification for Payment will not cause the amounts on deposit in the [Project Fund] available to pay Actual Costs of the Public Improvements[, plus ***[Insert fiscal security provided in accordance with Section 3.05(b) of the Financing Agreement]***] to fall below the amount necessary to complete the remaining Public Improvements.]
18. [TO BE USED IF REQUESTING FUNDS FROM THE REIMBURSEMENT FUND UNDER THE INDENTURE: The Construction Manager represents that, in requesting funds from the Reimbursement Fund, the [\_\_\_\_\_] Account of the Project Fund has been fully depleted.]

*(Signature pages follow)*

I hereby declare that the above representations and warranties are true and correct.

**[INSERT APPLICABLE NAME, as  
CONSTRUCTION MANAGER**

By:

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

Title: Manager

## JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

[\_\_\_\_\_]

By:

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

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

**APPROVAL OF CERTIFICATION FOR PAYMENT BY COUNTY**

The County is in receipt of the attached Certification for Payment Form No. \_\_\_\_, acknowledges the Certification for Payment, acknowledges that the Public Improvements (or its Segment) covered by the certificate have been inspected by the County, and otherwise finds the Certification for Payment Form No. \_\_\_\_ to be in order. After reviewing the Certification for Payment Form, the County approves the Certification for Payment Form No. \_\_\_\_ [and shall direct the Trustee to make payment from the [\_\_\_\_ Account of the Project Fund][Reimbursement Account][Reimbursement Fund] to the Construction Manager or to any person designated by the Construction Manager].

**HAYS COUNTY, TEXAS**

By: \_\_\_\_\_

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

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

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

**ATTACHMENT A TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

<u>Segment</u>	Description of Work Completed under this <u>Certification for Payment</u>	Total Actual Costs of <u>Public Improvements</u> \$
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**ATTACHMENT B TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

***[Include Attachment B if final progress payment for such Public Improvement]***

**[bills paid affidavit and release of liens - attached]**

**ATTACHMENT C TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

## INVOICE LEDGER

[illegible]

**[INVOICES AND/OR RECEIPTS - ATTACHED]**

**ATTACHMENT D TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

**[lender consents or approvals - attached]**

**ATTACHMENT E TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

***[Include Attachment E if final progress payment for such  
Public Improvement or Segment thereof]***

**[two-year maintenance bond - attached]**

**Exhibit “D” to Financing Agreement**

**FORM OF CLOSING DISBURSEMENT REQUEST**

**CLOSING DISBURSEMENT REQUEST  
(La Cima South Public Improvement District)**

The undersigned is a lawfully authorized representative for [INSERT APPLICABLE NAME] (the “Owner”) and requests payment from the [Costs of Issuance Account of the Project Fund] (as defined in Financing Agreement) from [\_\_\_\_\_] (the “Trustee”) in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) to be transferred from the [Cost of Issuance Account of the Project Fund] upon the delivery of the [**INSERT NAME OF APPLICABLE PID BONDS**] (the “Bonds”) for costs incurred relating to the issuance and sale of the Bonds for the La Cima South Public Improvement District (the “District”), as follows.

In connection to the above referenced payment, the Owner represents and warrants to the County as follows:

1. The undersigned is a duly authorized officer of the Owner and is qualified to execute this Closing Disbursement Request on behalf of the Owner, and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced costs of issuance at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the County.

3. The amount listed for the below itemized costs is a true and accurate representation of the Bond Issuance Costs incurred by Owner at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan. The itemized costs are as follows:

**[insert itemized list of costs here]**

TOTAL REQUESTED: \$\_\_\_\_\_

4. The Owner is in compliance with the terms and provisions of the Financing Agreement, [the Acquisition and Reimbursement Agreement,] the applicable Indenture, and the Service and Assessment Plan.

5. All conditions set forth in the Indenture and [the Acquisition and Reimbursement Agreement for \_\_\_\_\_] for the payment hereby requested have been satisfied.

6. The Owner agrees to cooperate with the County in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the County to complete its review.

Payments requested hereunder shall be made as directed below:

***[Information regarding Payee, amount, and deposit instructions]***

I hereby declare that the above representations and warranties are true and correct.

[INSERT APPLICABLE NAME]

By: \_\_\_\_\_

### **APPROVAL OF REQUEST BY COUNTY**

The County is in receipt of the attached Closing Disbursement Request. After reviewing the Closing Disbursement Request, the County approves the Closing Disbursement Request and shall include said payments in the Certificate submitted to the Trustee directing payments to be made from Costs Issuance Account of the Project Fund upon delivery of the Bonds.

HAYS COUNTY, TEXAS

By: \_\_\_\_\_

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

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

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



AGENDA ITEM REQUEST FORM: K. 3.

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor: Commissioner Shell

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### Agenda Item

Discussion and possible action to adopt a Resolution Approving a La Cima North Public Improvement District Financing Agreement; Authorizing the Execution and Delivery of such Agreement; and Approving any Additional Actions Necessary in Connection Therewith. **SHELL**

### Summary

See attached.

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### Attachments

La Cima North Financing Agreement



## CERTIFICATE OF COUNTY CLERK

THE STATE OF TEXAS                   §  
  §  
COUNTY OF HAYS                   §

THE UNDERSIGNED HEREBY CERTIFIES that:

The Commissioners Court (the “Court”) of Hays County, Texas (the “County”), convened on the 11th day of July, 2023 in regular session at the regular meeting place of the Court in the County Courthouse, Room 301, 111 E. San Antonio Street, San Marcos, Texas (the “Meeting”), which Meeting was at all times open to the public, the duly constituted officers and members of the Court being as follows:

Ruben Becerra	County Judge
Debbie Gonzales Ingalsbe	Commissioner, Precinct No. 1
Michelle Cohen	Commissioner, Precinct No. 2
Lon Shell	Commissioner, Precinct No. 3
Walt Smith	Commissioner, Precinct No. 4

and all of such persons were present at the Meeting, [except \_\_\_\_\_], thus constituting a quorum. Among other business considered at the Meeting, the attached resolution (the “Resolution”) entitled:

**A RESOLUTION APPROVING A LA CIMA NORTH PUBLIC  
IMPROVEMENT DISTRICT FINANCING AGREEMENT;  
AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH  
AGREEMENT; AND APPROVING ANY ADDITIONAL ACTIONS  
NECESSARY IN CONNECTION THEREWITH**

was introduced for the due consideration of the Court. After presentation and discussion of the Resolution, a motion was made by Commissioner \_\_\_\_\_ that the Resolution be passed and adopted. The motion was seconded by Commissioner \_\_\_\_\_ and carried by the following vote:

\_\_\_ voted “For”     \_\_\_ voted “Against”     \_\_\_ “Abstained”

all as shown in the official Minutes of the Court for the Meeting.

The attached Resolution is a true and correct copy of the original on file in the official records of the County; the duly qualified and acting members of the Court on the date of the Meeting are those persons shown above, and, according to the records of my office, each member of the Court was given actual notice of the time, place, and purpose of the Meeting and had actual notice that the Resolution would be considered; and the Meeting and deliberation of the aforesaid public business, including the subject of the Resolution, was posted and given in

advance thereof in compliance with the provisions of Chapter 551, as amended, Texas Government Code.

IN WITNESS WHEREOF, I have signed my name officially and affixed the seal of the Commissioners Court, this \_\_\_\_ day of \_\_\_\_\_, 2023.

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County Clerk and Ex-Officio Clerk of the  
Commissioners Court of Hays County, Texas

(SEAL OF THE COMMISSIONERS COURT)

## **HAYS COUNTY, TEXAS**

### **A RESOLUTION APPROVING A LA CIMA NORTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH AGREEMENT; AND APPROVING ANY ADDITIONAL ACTIONS NECESSARY IN CONNECTION THEREWITH**

**WHEREAS**, the Commissioners Court of Hays County, Texas (the “County”), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the “PID Act”), authorized the creation of the “La Cima North Public Improvement District” (the “District”) pursuant to a resolution adopted by the Commissioners Court of the County (the “Commissioners Court”) on September 13, 2022; and

**WHEREAS**, the County authorized the creation of the District to finance certain public improvements authorized by the PID Act for the benefit of the property within the District (the “Authorized Improvements”); and

**WHEREAS**, in connection with the development of property within the District and the construction of the Authorized Improvements therein, the County desires to approve the form, terms and provisions of the Financing Agreement, which is defined and described more fully below; and

**WHEREAS**, the meeting at which this Resolution is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF THE HAYS COUNTY, TEXAS, TEXAS:**

SECTION 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein. Capitalized terms used in this Resolution and not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.

SECTION 2. Approval of Financing Agreement. That certain “La Cima North Public Improvement District Financing Agreement” by and between the County, LCSM North, LP, a Texas limited partnership, and LCSM WW, LLC, a Texas limited liability company (the “Financing Agreement”) is hereby authorized and approved in substantially the form attached hereto as Exhibit A which is incorporated herein as a part hereof for all purposes and the County Judge of the County is hereby authorized and directed to execute and deliver such Financing Agreement with such changes as may be required to carry out the purposes of this Resolution and approved by the County Judge of the County, such approval to be evidenced by the execution thereof.

SECTION 3. Additional Actions. The County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, and the County Clerk of the County are hereby authorized and directed to take any and all actions on behalf of the County necessary or desirable to carry out the intent and purposes of this Resolution. County Judge, the County Auditor, the Civil Division of the Hays County Criminal District Attorney's Office, and the County Clerk of the County are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in the carrying out of the purposes and intent of this Resolution

SECTION 4. Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 5. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 6. Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. Construction of Terms. If appropriate in the context of this Resolution, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

*[Execution page follows.]*

DULY PASSED AND APPROVED BY THE COMMISSIONERS COURT ON JULY 11, 2023.

HAYS COUNTY, TEXAS

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RUBEN BECERRA, County Judge of Hays County,  
Texas

(COUNTY SEAL)

ATTEST:

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ELAINE H. CÁRDENAS, County Clerk and  
Ex-Officio Clerk of the Commissioners Court  
of Hays County, Texas

Signature Page to Resolution Approving and Authorizing  
Financing Agreement

**EXHIBIT A**

**LA CIMA NORTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT**

[See attached]

LA CIMA NORTH PUBLIC IMPROVEMENT DISTRICT  
FINANCING AGREEMENT

BETWEEN

LCSM NORTH, LP, a Texas limited partnership,

LCSM WW, LLC, a Texas limited liability company

AND

HAYS COUNTY, TEXAS

## LA CIMA NORTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT

This La Cima North Public Improvement District Financing Agreement (this “**Agreement**”), dated as of [\_\_\_\_\_], 2023, (the “**Effective Date**”), is entered into between LCSM North, LP, a Texas limited partnership (“**LCSM North**”) and LCSM WW, LLC, a Texas limited liability company and an affiliate of LCSM North (“**LCSM WW**” and, together with LCSM North, and as more fully described and defined in Exhibit “A” hereto, the “**Owner**”), and Hays County, Texas (the “**County**”), acting by and through its duly authorized representative.

### RECITALS

WHEREAS, LCSM North owns that approximately 658.3 acres of land located within Hays County, Texas which is more particularly described as Tract 1 in Exhibit “B” attached hereto and made a part hereof (the “**LCSM North Property**”) and LCSM WW owns approximately 26.176 acres of land located within Hays County, Texas which is more particularly described as Tract 2-5 in Exhibit “B” attached hereto and made a part hereof (the “**LCSM WW Property**” and, together with the LCSM North Property, the “**Property**”);

WHEREAS, it is intended that the Property will be developed as a mixed-use development (the “**Project**”);

WHEREAS, on April 27, 2022, Frost Bank, as trustee for the Freeman Educational Foundation and as trustee for the Joseph Freeman Testamentary Trust, the owners of the LCSM North Property at such time, and LCSM WW submitted and filed with the County Clerk of the County a petition requesting the establishment of the La Cima North Public Improvement District (the “**District**”) consisting of the Property;

WHEREAS, the County, the City of San Marcos, Texas (the “**City**”), LCSM WW and certain other affiliates of the Owner entered into the Seventh Amended and Restated Development Agreement, effective as of May 17, 2022 (the “**Development Agreement**”), which, among other things, sets forth certain development standards for the Project;

WHEREAS, pursuant to the Development Agreement, the City agreed that, if the Owner submitted a petition to the County requesting that one or more new public improvement districts be created for any portion of the land subject to the Development Agreement, including the Property, it would not oppose any such petition;

WHEREAS, on August 9, 2022, the Commissioners Court, by resolution, called a public hearing to be held on the creation of the proposed District and the advisability of the public improvements (as more fully described and defined in Exhibit “A” hereto, the “**Public Improvements**”) and services for the District;

WHEREAS, on August 30, 2022, the Commissioners Court convened a public hearing on the creation of the District and, after giving the Owner and other interested persons the opportunity to speak for or against the creation of the District, closed the public hearing;



WHEREAS, on September 13, 2022, the Commissioners Court, by resolution, authorized the formation of the District in accordance with the PID Act;

WHEREAS, pursuant to the terms of this Agreement, the County has agreed to allow financing of the costs of the Public Improvements conferring special benefits to the Property via the District;

WHEREAS, the Owner proposes to construct, or have its Designated Successors and Assigns (as defined in Exhibit “A” hereto) construct, Public Improvements over time to serve Property located in the District (or portions thereof) and transfer some or all of those improvements to the County or City in accordance with the terms and provisions of this Agreement and the Development Agreement;

WHEREAS, the County intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) levy special assessments on all or a portion of the property located within the District and issue bonds in one or more series for payment of costs associated with construction and/or acquisition of the Public Improvements included in a service and assessment plan to be approved by the Commissioners Court, as such plan may be amended from time to time (the “**Service and Assessment Plan**” as further defined in Exhibit “A” attached hereto); and

WHEREAS, the County has determined that it is in its best interests to contract with the Owner, and its Designated Successors and Assigns, for the construction of the Public Improvements, which will result in the efficient and effective implementation of the Service and Assessment Plan.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

## **ARTICLE I. SCOPE OF AGREEMENT**

### Section 1.01. Definitions.

Definitions used herein are set forth in Exhibit “A” attached hereto and made a part hereof.

### Section 1.02. Overview of Agreement

This Agreement establishes provisions for the apportionment, levying, and collection of Special Assessments on the Property (Article II), the construction of Public Improvements to be acquired by the County or City (Article III), the payment of Public Improvements within the District (Article IV), the issuance of bonds for the financing of the Public Improvements (Article V), representations, warranties and indemnification (Article VI), default and remedies (Article VII) and general provisions (Article VIII).

## ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS

### Section 2.01. Preliminary Matters

(a) The Recital set forth in the preamble of this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

(b) On September 13, 2022, the County authorized the formation of the District by resolution. The District includes all of the Property.

(c) The Owner may develop the Property in phases. It is anticipated that some Public Improvements will be constructed that benefit only a Neighborhood Improvement Area, while other Public Improvements will benefit the entire District. As a result, Special Assessments may be levied on benefited property within the District or only on certain Neighborhood Improvement Areas from time to time as the development in the District progresses. As such, it is currently contemplated that there will be (i) bonds issued for the entire District, the “**Major Public Improvement PID Bonds**” (as further defined in Exhibit “A”) and (ii) bonds issued for different Neighborhood Improvement Areas, the “**Neighborhood Improvement PID Bonds**” (as further defined in Exhibit “A”) and potentially “**Additional Neighborhood Improvement PID Bonds**” (as further defined in Exhibit “A”).

(d) The Owner acknowledges and agrees that to finance the costs of the Public Improvements through the levy of Special Assessments, County staff or the Administrator will prepare and the Commissioners Court will consider the approval of a Service and Assessment Plan that meets the requirements of Texas Local Government Code Sections 372.013 and 372.014. Thereafter, the Service and Assessment Plan will be updated and amended by the County or its Administrator at least once per year and submitted for the Commissioners Court’s review and approval.

(e) Special Assessments on any portion of the Property will bear a direct proportional relationship to and be less than or equal to the special benefit of the Public Improvements within the District (or Neighborhood Improvement Area, as applicable).

(f) Special Assessments on any portion of the Property may be adjusted in connection with subsequent PID Bond issues or otherwise so long as the Special Assessments are determined in accordance with the Service and Assessment Plan and the PID Act.

(g) The Property may also be subject to an Owners’ Association assessment.

(h) Following preparation of the initial Service and Assessment Plan acceptable in form and substance to the County and to the Owner with respect to the matters therein that require approval by the Owner as provided in this Agreement, the Commissioners Court shall, by resolution, approve the preliminary Service and Assessment Plan and call a public hearing on the levy of Special Assessments. After conducting the public hearing, the Commissioners Court may consider approval of an Assessment Order relating to Service and Assessment Plan. If an Assessment Order is adopted, the County shall use reasonable efforts to expeditiously initiate and approve all necessary documents and orders required to effectuate the Service and Assessment

Plan and Assessment Order. The Commissioners Court, by order, will update, amend and/or restate the Service and Assessment Plan each time Special Assessments are levied.

#### Section 2.02. Apportionment and Levy of Special Assessments

Prior to or in connection with the issuance of PID Bonds, the Owner may submit to the County one or more Special Assessment Levy Requests to finance the costs of Public Improvements in accordance with Section 4.02 hereof. Upon the receipt of a Special Assessment Levy Request, the Commissioners Court will consider the adoption of an Assessment Order, which levies Special Assessments on the Property or a Neighborhood Improvement Area in accordance herewith and with the Service and Assessment Plan. The County's apportionment of the costs of Public Improvements and levy of Special Assessments will be made in accordance with the PID Act.

#### Section 2.03. Collection of Assessments

(a) The County covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied pursuant to the Service and Assessment Plan during the term of this Agreement or, if PID Bonds are issued, during the term of the applicable PID Bonds, in the manner and to the maximum extent permitted by applicable law. If PID Bonds are issued, the County covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until the PID Bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full, defeasance, or otherwise. The County shall use best efforts to collect the Special Assessments consistent with the County's policies and standard practices applicable to the collection of County ad valorem taxes and assessments.

(b) Notwithstanding anything to the contrary contained herein or in the Service and Assessment Plan, the Special Assessment Revenues collected annually from the Property, or any portion thereof, will be deposited in accordance with the applicable Acquisition and Reimbursement Agreement or, if PID Bonds are issued, the applicable Indenture.

(c) Owner will be reimbursed for Actual Costs associated with Public Improvements from Special Assessments collected by the County and held by the County pursuant to an applicable Acquisition and Reimbursement Agreement or, if PID Bonds are issued, from the proceeds of PID Bonds, until Owner is fully reimbursed by Special Assessments and/or the proceeds of PID Bonds. The balance of any reimbursement obligation due to Owner under an Acquisition and Reimbursement Agreement will be subordinate to payment of the applicable PID Bonds.

#### Section 2.04. Approval and Recordation of Special Assessments through Landowner Agreement and recording of the Service and Assessment Plan

(a) Concurrently with the levy of the Special Assessments for any portion of the Property, the Owner and any other landowner at the time of such assessment levy shall execute (and shall cause any other owner of any of the Property at the time of such assessment levy that will be subject to the Special Assessments to execute) a Landowner Agreement (herein so called),

in recordable form, in which the Owner (and any other landowner, if applicable) shall approve and accept the apportionment of the cost of the Public Improvements in the Service and Assessment Plan and the levy of the Special Assessments by the County.

(b) The Landowner Agreement further shall (a) evidence the Owner's intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property or portions thereof to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Special Assessments; and (b) provide that the liens created by the levy of the Special Assessments are a first and prior lien on the Property or portions thereof, subject only to liens for ad valorem taxes of the State or municipality, County, or school district.

(c) After the Landowner Agreement is fully executed, the Owner shall file the Landowner Agreement in the Official Public Records of the County.

(d) Further, in accordance with the PID Act, the County shall file a copy of the Service and Assessment Plan and any updates thereto with the County Clerk.

#### Section 2.05. Reimbursement of Actual Costs

(a) Notwithstanding anything to the contrary contained herein, the Parties hereby acknowledge and agree that the Actual Costs expended by the Owner to construct the Public Improvements may not be fully reimbursed from the Special Assessment Revenues or the proceeds of PID Bonds. The Actual Costs expended by the Owner, but not funded by a series of PID Bonds, are payable solely from available Special Assessment Revenue pursuant to the applicable Acquisition and Reimbursement Agreement; provided, however that sufficient Special Assessment Revenues are available to make the payments.

**(b) The Owner reimbursement provisions contained in this Section 2.05 shall not, under any circumstances, give rise to or create (i) a charge against the general credit or taxing power of the County or (ii) a debt or other obligation of the County payable from any source other than proceeds from the PID Bonds and Special Assessment Revenues.**

### ARTICLE III. CONSTRUCTION AND ACQUISITION

#### Section 3.01. Acquisition of Public Improvements

(a) With respect to those Public Improvements to be dedicated and owned by the County under the Development Agreement, the Owner will dedicate such Public Improvements to the County upon completion of said Public Improvements, and the County will accept dedication of such Public Improvements after confirming that such Public Improvements have been completed in accordance with this Agreement and the Development Agreement. The County's Subdivision Ordinance and the Development Agreement shall govern the procedure for inspection, dedication, and acceptance of such Public Improvements being conveyed to the County.

(b) With respect to those Public Improvements to be dedicated and owned by the City under the Development Agreement, the Owner will dedicate such Public Improvements to the City

upon completion of said Public Improvements, and the City will accept dedication of such Public Improvements after confirming that such Public Improvements have been completed in accordance with this Agreement and the Development Agreement. The City's Land Development Code and the Development Agreement shall govern the procedure for inspection, dedication, and acceptance of such Public Improvements being conveyed to the City.

#### Section 3.02. Designation of Construction Manager, Construction Engineers

(a) The County hereby designates the Owner, or its assignees, as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, the supervision of construction, and the bidding and letting of construction contracts for the construction of the Public Improvements in accordance with the provisions of this Agreement.

(b) Except as otherwise provided herein, inspection of the construction of any Public Improvement being conveyed to the County will be by County Construction Representative or its designee. Any City inspection of a Public Improvement being conveyed to the City will be in accordance with any requirements of the City. The Owner agrees to notify the County within 24 hours of the scheduling of any City Inspection, and at that same to provide any design or construction-related documents to be used as part of the inspection. The Owner agrees that the County Construction Representative may be present at any City inspection and is responsible for ensuring the County Construction Representative is informed of the date, time, and location of each City inspection.

(c) The Owner shall be entitled to a separate Construction Management Fee for the construction of each Public Improvement (or Segment thereof) unless Owner contracts with a third party to act as the Construction Manager with respect to construction of the Public Improvements.

(d) The County shall cooperate with the Owner in connection with its services as Construction Manager.

(e) The Owner shall designate the consulting engineers for the Public Improvements for the compensation specified by the Owner. Any fees paid to a consulting engineer must be reasonable and customary.

#### Section 3.03. Designation of Construction Manager Subcontractor

The County acknowledges and agrees that Owner may subcontract out all or some of the duties of Construction Manager to a third party. Owner may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Public Improvements or distinct Segments thereof provided that such designee has the technical capacity, experience and expertise to perform such construction management duties or obligations. Owner may make such designation under the same terms as set out in Section 8.03(a) of this Agreement.

#### Section 3.04. Real Property Interests

(a) For each Neighborhood Improvement Area, the Public Improvements shall be constructed in public rights-of-way and/or easements (“**Real Property Interests**”) conveyed to the County or the City. The Owner hereby grants the County the right to enter the Property for purposes of implementing this Agreement.

(b) The Owner shall cause all Real Property Interests necessary to construct each phase of the Public Improvements to be conveyed free of all liens, encumbrances, and title defects unacceptable to County or City, as applicable, in its reasonable discretion and at no cost to the County or the City. All Real Property Interests shall be conveyed by deeds or other instruments acceptable to the County or the City, as applicable, in its reasonable discretion, or by plat (if plat dedication is required by the County or City).

(c) All title insurance premium fees, costs to cure title defects, closing costs, and other acquisition costs shall be borne solely by the Owner.

(d) If a Real Property Interest is subordinate to existing easements for utilities or other facilities, the Owner shall, in addition to conveying the Real Property Interests, coordinate the execution of a joint use agreement between the County or City, as applicable, and the owner of the existing easement in a form that is acceptable to the County or City.

#### Section 3.05. Fiscal Surety

(a) Prior to the issuance of PID Bonds, the Owner shall post fiscal security for the construction of a given Public Improvement in accordance with applicable County or City regulations. The County acknowledges that it will accept fiscal security, if required, for the Public Improvements in the form of an irrevocable letter of credit, surety bond, cash deposit, or other security acceptable to the County.

(b) Upon the issuance of PID Bonds, the Owner shall not be required to post fiscal security for the Public Improvements to be financed with the proceeds of such PID Bonds, unless, at the closing of the PID Bonds or any time thereafter, there are not sufficient funds in the Project Fund established pursuant to the applicable Indenture to complete all Public Improvements for the District or in the given Neighborhood Improvement Area. In such event, the Owner shall post fiscal security in an amount sufficient to complete all Public Improvements in the District or given Neighborhood Improvement Area. The County will accept fiscal security for the Public Improvements in the form of an irrevocable letter of credit, closed loan, cash deposit, or other security acceptable to the County.

(c) If subcontractors providing labor or materials for the Public Improvements file claims or otherwise give notice asserting failure to receive payment for such labor or materials, the County may require the Owner to post fiscal security bond for the estimated cost of constructing the Public Improvements. The Owner shall give the County a copy of any such claims within three (3) business days of receipt of the claim.

(1) If the Owner has commenced construction but fails or refuses to complete the construction of a particular Public Improvement (or Segment thereof) in accordance

with the terms and conditions set forth in this Agreement, such failure or refusal shall be considered an event of default and, after giving notice of default and reasonable opportunity to cure as herein provided, the County will have the right, but not the obligation, to draw on the funds within the Project Fund (or any fiscal security posted by the Owner for the applicable Public Improvement, if applicable) and complete (or cause the completion of) the applicable Public Improvement (or Segment thereof).

(2) In the event the County elects to complete a Public Improvement (or Segment thereof), all plans and specifications, designs, easements, real and personal property, and improvements acquired, produced, or installed in aid of completing such component of the Public Improvement (or Segment thereof) by the Owner or its engineers or contractors before such default, will become the property of the County. In such event, the Owner will provide, within five (5) business days of the County's request, documentation to the County that the above listed items have been conveyed and have become the property of the County. Notwithstanding anything to the contrary contained herein if the Owner fails or refuses to timely complete the construction of a Public Improvement (or Segment thereof) and such default cannot reasonably be cured in thirty (30) days, Owner shall have such additional time as is reasonably necessary to cure as long as the Owner commences the cure within 30 days and diligently pursues the same to completion. If Owner has still not completed the applicable component of the Public Improvement (or Segment thereof) after the notice and cure periods provided for above, the County shall either:

- (i) Assume the construction management role and direct the completion of the applicable Public Improvement (or Segment thereof); or
- (ii) Assume the construction management role and direct the closeout of the applicable Public Improvement (or Segment thereof).

(3) In the event the County assumes the construction management role for a given Public Improvement (or Segment thereof) (as provided above) then the Owner agrees as follows:

- (i) The County may draw down funds from the Project Fund to complete the Public Improvement (or Segment thereof) in question;
- (ii) All construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such Public Improvement (or Segment thereof) by the Owner or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Public Improvement (or Segment thereof), will automatically without further action by the Owner become the property of the County;
- (iii) The Owner will automatically forgo and release any claims or rights to those items listed in (ii) above; and

(iv) The County may draw down on any fiscal security posted to complete such component of the Public Improvement (or Segment thereof).

(d) The County may also request that the Owner provide fiscal security for the completion of improvements, other than the Public Improvements financed via the District, the construction of which are necessary to complete lots.

#### Section 3.06. Maintenance of Project, Warranties

Unless otherwise provided for, the Owner shall maintain each Public Improvement (or Segment thereof) in good and safe condition until such Public Improvement (or Segment thereof) is accepted by the County or the City. The County's and City's acceptance of Public Improvements shall be in accordance with the County's (or City's, as applicable) standard rules and procedures for the type of improvements being constructed, including as set forth in Section 3.01(a) and (b). Prior to such acceptance, the Owner shall be responsible for performing any required maintenance on such Public Improvement. On or before the acceptance by the County or the City of a Public Improvement (or Segment thereof), the Owner shall assign to the County or the City, as applicable, all of the Owner's rights in any warranties, guarantees, maintenance obligations, or other evidences of contingent obligations of third persons with respect to such Public Improvement (or Segment thereof). Prior to or concurrently with the County's or City's acceptance of a Public Improvement (or Segment thereof), Owner shall provide a two-year maintenance bond for said Public Improvement.

#### Section 3.07. Sales and Use Tax Exemptions

(a) The parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Public Improvements to be acquired by the County are exempt under the Texas Tax Code from sales and use taxes levied by the State of Texas, or by any city, county, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309.

(b) The County will provide such certifications to the Owner and/or to suppliers and contractors as may be required to assure the exemptions claimed herein.

(c) The County and the Owner shall cooperate in structuring the construction contracts for the Public Improvements to comply with requirements (including those set forth in Texas Tax Code Section 151.309) for exemption from sales and use taxes.

#### Section 3.08. Public Bidding Requirements/County Cooperation in Plan Review

(a) There is currently no County analog to Texas Local Government Code Section 252.022(a)(9), which allows the District to be exempt from any public bidding or other City purchasing and procurement policies for "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements." It is agreed that if statutory authorization is enacted by the Texas Legislature which would make such an exemption applicable to construction of Public Improvements under this Agreement, the County will review



the enacted statute and, if the County determines the statute is applicable to this Agreement, the new County exemption statute will apply.

(b) The County Construction Representative agrees to cooperate with the Owner to the extent reasonably possible without detriment to proper engineering review, comment, and revision on the review and approval of the engineering, design, plans, and specifications of all Public Improvements submitted by the Owner.

#### Section 3.09. Additional Requirements for Public Improvements

(a) The Construction Manager will maintain an ongoing monthly updated accounting of funds disbursed, work progress and remaining funding needed to complete each applicable Public Improvements. The Construction Manager will provide such monthly reports to the Owner, the County Construction Representative, the Administrator, the Underwriter, and the Trustee, as applicable.

(b) After bids and construction contracts have been executed for the applicable Public Improvements, all change orders or costs increases for such applicable Public Improvements must be approved by the Owner, Construction Manager and the County Construction Representative, to the extent any such change order is in excess of \$100,000.00 for any Segment of such applicable Public Improvement. The Construction Manager shall provide copies of all approved change orders to the Underwriter and Trustee within ten (10) days after approval.

#### Section 3.10. Additional Requirements for the Project.

(a) Owner hereby agrees that the Project shall establish a minimum 100 foot wide tree preservation/open space landscape buffer setback along the inside boundary of the Property adjacent to the existing Country Estates single family residential subdivision as depicted on Exhibit "C" attached (the "**Buffer**"). The Buffer is intended to serve as a buffer from the adjacent lots in the Country Estates Subdivisions. The Buffer will be privately owned and maintained by the Owner. Unless otherwise approved by the County, there shall be no clearing, grading, road or transportation infrastructure improvements, other improvements, or public access within the Buffer, except as may be necessary to allow for the construction of a fence along a property line, the maintenance of the existing ranch road located in the Buffer, or the establishment of a pedestrian-only trail. The Buffer shall be maintained by Owner or its successors or assigns free of all, trash, rubbish, debris or other similar nuisances and fire hazards.

(b) Additionally, unless otherwise approved by the County, the Owner may not construct any public or private streets, roadways, alleyways, extensions to existing streets, roadways or alleyways, any other transportation infrastructure improvements, or any other improvement in aid thereof, within 125 feet of the Buffer, whether such 125 feet is located inside or outside of the boundaries of the District (the "**Additional Road Buffer**").

(c) For the avoidance of doubt, no Assessments may be levied nor PID Bonds issued to finance the construction of or an extension to W Centerpoint Road or any other public or private street, roadway, alleyway or transportation infrastructure improvements (with the exception of pedestrian-only improvements) that may be constructed in the Buffer or the Additional Road Buffer.

## **ARTICLE IV. PAYMENT FOR PUBLIC IMPROVEMENTS**

### **Section 4.01. Overall Requirements**

(a) The County shall not be obligated to provide funds for any Public Improvement except from Special Assessments or, if PID Bonds are issued, the proceeds of the PID Bonds. The County makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment of the Actual Cost of the Public Improvements to be constructed for or acquired by the County or the City will be sufficient for the construction or acquisition of all of those particular Public Improvements. The Parties anticipate that the Actual Cost to construct the Public Improvements may be greater than the proceeds of the PID Bonds available for Public Improvements.

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period, the County or City, as applicable, shall be responsible for all operation and maintenance of such Public Improvement, including all costs thereof and relating thereto.

(c) The Parties hereby acknowledge and agree that:

(1) Owner will construct or cause the construction of the applicable Public Improvements.

(2) Public Improvements are initially intended to be constructed pursuant to one or more Acquisition and Reimbursement Agreements and paid for by the Owner prior to the levy of Special Assessment and the issuance of the PID Bonds intended to fund the Actual Costs of such Public Improvements. Such funding of the Public Improvements will be governed by the applicable Acquisition and Reimbursement Agreement and Section 4.02 of this Agreement.

(3) Upon satisfying the conditions precedent described in Section 5.01 of this Agreement, the Commissioners Court intends to consider the issuance of the PID Bonds to refinance any Unpaid Balance under an Acquisition and Reimbursement Agreement and, if applicable, to finance the Actual Costs of any Public Improvement not completed at the time of PID Bond issuance. Such funding of the Public Improvements will be governed by the Indenture and Section 4.03 of this Agreement.

(4) The County's current policy requires the Owner to pay for and construct seventy-five percent (75%) the Public Improvements associated with the applicable Acquisition and Reimbursement Agreement and Neighborhood Improvement Area and compliance with the applicable Bond Test before a PID Bond Issuance Request be submitted to the County. The County, in its discretion, may allow for construction and funding of Public Improvements to be handled in a manner other than specified in this Agreement. If the County so elects, this Agreement shall be modified accordingly to reflect such terms.

#### Section 4.02. Payments for Public Improvements upon entering an Acquisition and Reimbursement Agreement

(a) Pursuant to the terms of an Acquisition and Reimbursement Agreement, the Owner shall convey, and the County or the City (as applicable) shall acquire, the given Public Improvement for the Actual Cost, after such Public Improvement is completed and has been accepted by the County or the City (as applicable). The general process for funding of Public Improvements under an Acquisition and Reimbursement Agreement is as follows:

(1) Any time after the commencement of construction of Public Improvements benefiting the District or a particular Neighborhood Improvement Area, Owner may submit a Special Assessment Levy Request to finance the costs of Public Improvements to the County via the Hays County Office of General Counsel Hays. In its request, the Owner shall submit legal descriptions of the Neighborhood Improvement Areas to be assessed, an engineer's opinion of probable costs, or Actual Costs, if available, of the Public Improvements, and maps showing the location of the Public Improvements to be funded by such Special Assessments.

(2) The Commissioners Court shall consider an order levying the Special Assessments and adopting or amending the Service and Assessment Plan to reflect the Special Assessments and the applicable Public Improvements, and as contemplated by the applicable Acquisition and Reimbursement Agreement. The County will levy the Special Assessment for the associated benefitted Property in the case of Master Public Improvements or the Neighborhood Improvement Area in the case of Neighborhood Public Improvements. The Assessment Order approving the Special Assessment for the associated benefitted Property or Neighborhood Improvement Area, as the case may be, shall set forth the collection date for such Special Assessment.

(3) If a PID Bond Issuance Request will not be requested concurrently with a Special Assessment Levy Request, the Owner and the County shall enter into an Acquisition and Reimbursement Agreement to finance the applicable Public Improvements, which will provide for Special Assessments that will reimburse the Owner for Actual Costs incurred in connection with the applicable Public Improvements until the applicable PID Bonds are issued in amount necessary to reimburse Owner for the Actual Costs of the applicable Public Improvements less any amounts already reimbursed to Owner pursuant to the applicable Acquisition and Reimbursement Agreement. An Acquisition and Reimbursement Agreement shall be a form mutually acceptable to the County and the Owner and comply with the PID Act and other applicable laws. In addition, an Acquisition and Reimbursement Agreement shall provide that: (i) the Acquisition and Reimbursement Agreement may be assigned in whole but not in part; (ii) the Owner may assign the Acquisition and Reimbursement Agreement to Owner's lender or, if assigned for cash, only to an Accredited Investor or Qualified Institutional Buyer; (iii) no assignment of the Acquisition and Reimbursement Agreement may be made to another governmental entity without the consent of the County.

(4) The County will begin collecting the Special Assessments for the associated Public Improvement that benefit the District or Neighborhood Improvement

Area, as the case may be, in accordance with the order approving such Special Assessments. Upon collection of such Special Assessments, the County will place such Special Assessments in a designated account separate from the County's other accounts (the "**Reimbursement Account**"). The funds within the Reimbursement Account will be used to reimburse the Owner for the Actual Costs of the applicable Public Improvements pursuant to the terms of the Acquisition and Reimbursement Agreement.

(5) Payments for the Actual Cost of Public Improvements that benefit the District or a Neighborhood Improvement Area will be made in accordance with this Agreement and the applicable Acquisition and Reimbursement Agreement, including submittal to the County Construction Representative and Project Engineer (with a copy to the Administrator) of a correct and complete Certification for Payment, substantially in the form attached hereto in Exhibit "D". The deliverables identified in the form of Certification for Payment cannot be modified with the written consent of the County.

#### Section 4.03. Payments for Public Improvements upon the Issuance of PID Bonds

(a) Upon completion of at least seventy-five percent (75%) of the applicable Public Improvements associated with the applicable Acquisition and Reimbursement Agreement and compliance with Section 5.01 of this Agreement, including the applicable Bond Test, the Owner may submit a PID Bond Issuance Request to the County via the Hays County Office of General Counsel Hays. If the foregoing conditions have been satisfied, the Commissioners Court shall consider the issuance of PID Bonds to fund the Actual Costs of such Public Improvements less any amounts already reimbursed to Owner pursuant to the applicable Acquisition and Reimbursement Agreement, as applicable.

(b) Prior to the issuance of a series of PID Bonds, the Project Engineer shall review all plans and specifications, construction contract and related materials for the applicable Public Improvements, and shall certify to the Owner, County, Underwriter, and Trustee, that the amount of fiscal security referenced in Section 3.05(b) above, is sufficient to fund the full cost of design and construction of the applicable Public Improvements as set forth in the Service and Assessment Plan, if applicable.

(c) If the applicable Neighborhood Improvement PID Bonds are not sufficient to fully reimburse the Owner for the Actual Costs of the applicable Neighborhood Improvement Public Improvements less any amounts already reimbursed to Owner pursuant to the Acquisition and Reimbursement Agreement (if applicable), then, so long as the applicable Bond Test and any additional bonds test set forth in an Indenture, if applicable, are satisfied, Additional Neighborhood Improvement PID Bonds may be issued to reimburse the Owner for any Actual Costs not reimbursed by the applicable Neighborhood Improvement PID Bonds and the applicable Acquisition and Reimbursement Agreement.

(d) To receive funds from the proceeds of the applicable PID Bonds to pay the Actual Cost of a given Public Improvement, the Owner shall deliver a correct and complete Certification for Payment to the County Construction Representative and the Project Engineer (with a copy to the Administrator), substantially in the form attached hereto in Exhibit "D", as the same may be

modified by an applicable Indenture. The deliverables identified in the form of Certification for Payment cannot be modified without the written consent of the County.

(e) Prior to the issuance of PID Bonds, the Owner may have expended funds for the formation of the District (which were not previously reimbursed under the applicable Acquisition and Reimbursement Agreement) and Bond Issuance Costs reimbursable under the PID Act (“**Owner Expended Funds**”). The total amount of Owner Expended Funds approved by the County pursuant to this Section shall be referred to herein as the “**Closing Reimbursement Payment**.”

(f) At least thirty (30) days prior to the issuance of the PID Bonds, the Owner shall submit a Closing Disbursement Request (substantially in the form attached hereto as Exhibit “E”), including any supporting documentation requested by the County (with a copy to the Administrator) for the Closing Reimbursement Payment. Upon approval, the County will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. Upon the closing of the PID Bonds, the Owner or the Owner’s designee shall be reimbursed an amount equal to the portion of the Closing Reimbursement Payment attributable to such PID Bonds from the appropriate account of the Project Fund.

#### Section 4.04. Certifications for Payments

(a) The following procedures set forth in this Section 4.04 shall apply to all Certifications for Payment. These requirements are in addition to any conditions precedent specified in an Acquisition and Reimbursement Agreement for the release of funds from the Reimbursement Account or an applicable Indenture for the release of funds from the Project Fund or similar provisions under any Owner loan agreement.

(b) Owner shall be entitled to submit and receive draws (not to exceed one (1) per month) based on the Actual Cost for completed Public Improvements or portions thereof. Each draw request shall be comprised of a Certification for Payment, in substantially the form attached hereto as Exhibit “D”, executed by the Project Engineer and Construction Manager, specifying that the identified work has been performed and the Actual Cost thereof and include the deliverables set forth therein.

(c) The Owner request for final payment of the Actual Costs of a Public Improvement shall include written evidence of the Owner’s assignment to the County or the City, as applicable, of the warranties and guaranties, as and if applicable, for the subject Public Improvement.

(d) Upon receipt of a completed Certification for Payment accompanied by the requisite deliverables identified in this Section 4.04 and therein, the County Construction Representative or its designee shall, within fifteen (15) calendar days of its determination of receipt of a Certification for Payment that is compliant with the applicable provisions of this Agreement, execute the Certification for Payment evidencing its approval and deliver to the County Auditor his/her concurrence to pay pursuant to a correct and complete Certification for Payment. The County Auditor shall then have up to fifteen (15) calendar days to pay the Owner from amounts on deposit in the Reimbursement Account in accordance with the applicable Acquisition and

Reimbursement Agreement or, if PID Bonds are issued, to forward the executed Certification for Payment to the Trustee for payment in accordance with the applicable Indenture.

(e) If the County disapproves any Certification for Payment, the County shall provide a written explanation of the reasons for such disapproval so that the Owner may revise the Certification for Payment in accordance with County's comments and resubmit for County approval. The County shall only disapprove a Certification for Payment in good faith for a material reason. Notwithstanding anything to the contrary contained herein, if the monthly reconciliation provided by the Construction Manager pursuant to Section 3.09(a) above for a particular Public Improvement shows there are not enough funds in the Project Fund, together with any fiscal security provided in accordance with Section 3.05(b), to fund the remaining design and construction costs of that Public Improvement, the County Construction Representative shall not be obligated to authorize payments of funds exceeding the balance in the Project Fund until such time as Owner provides evidence satisfactory to the County Construction Representative that Owner has or will provide funds in an amount sufficient to fully fund the remaining design and construction costs of that Public Improvement.

## ARTICLE V. PID BONDS

### Section 5.01. Issuance of PID Bonds

(a) Subject to the terms and conditions set forth in this Section V, the County intends to pay for the Public Improvements, by issuing PID Bonds in one or more series. The County will use reasonable and good faith efforts to issue PID Bonds after receiving a PID Bond Issuance Request from Owner, provided that Owner can reasonably demonstrate to the County and its financial advisor that the terms and conditions to the issuance of PID Bonds set forth in this Article V have been satisfied. In addition to the criteria outlined in this Article V, the County may consider additional requirements prior to authorizing the issuance of any PID Bonds, including but not limited to a market condition assessment (including market study update), development of the District, and current status of Owner and any other related entity involved in developing the Project ("**Related Development Entity**"), and related builder positions. The Commissioners Court may require a recommendation from County staff, advisors, and consultants.

(b) The "Bond Tests" consists of condition precedent and investment and underwriting criteria which must be met prior to the issuance of PID Bonds:

(1) County shall receive a certificate from the Owner certifying that the Public Improvements to be funded with the proceeds of the PID Bonds to be issued are at least seventy-five percent (75%) completed as evidenced by either (i) submitted Certifications for Payment that equal at least seventy-five percent (75%) of the budget for the Public Improvements to be funded with such PID Bonds, as shown in the Service and Assessment Plan or (ii) a letter from the Project Engineer certifying that at least seventy-five percent (75%) of the Public Improvements to be funded with such PID Bonds are complete, which letter must be signed by a County Construction Representative;

(2) County shall receive a certificate from the Owner certifying that it is not in default beyond any applicable notice and cure period in the performance and observance

of any of the terms, provisions and conditions applicable to the Owner contained in this Agreement, the Development Agreement, the Acquisition and Reimbursement Agreement applicable to such Public Improvements or any continuing disclosure agreement entered into by Owner (or its Related Development Entity) relating to the PID Bonds, unless any defaults under the foregoing agreements (except for defaults under any continuing disclosure agreements entered into by Owner (or its affiliate developer entities) which defaults shall be cured) are disclosed in a certificate from Owner to the County, and the Commissioners Court elects to proceed with the issuance of the PID Bonds regardless of the existence of such default or defaults;

(3) County shall receive a certificate from the Administrator certifying that there is no default by the Owner or any landowner of more than five percent (5%) of the assessed parcels in the applicable Neighborhood Improvement Area for failure to pay special assessments or ad valorem taxes on assessed parcels in such Neighborhood Improvement Area owed by the Owner or such other landowner prior to the delinquency date thereof;

(4) With respect to Major Improvement Public PID Bonds, the County shall receive an Independent Appraisal from Owner evidencing that the average Value to Lien Ratio of all Assessed Parcels within the District is not less than 3:1;

(5) With respect to Neighborhood Improvement PID Bonds, the County shall receive an Independent Appraisal from Owner evidencing that (i) the average Neighborhood Improvement Value to Lien Ratio of all Assessed Parcels in the Neighborhood Improvement Area for which Neighborhood Improvement PID Bonds will be issued is not less than 2:1 and (ii) at least fifty percent (50%) of the residential lots in such Neighborhood Improvement Area are either under contract or closed with third-party merchant homebuilders and/or homeowners;

(6) With respect to Additional Neighborhood Improvement PID Bonds, the County shall receive evidence of meeting any conditions precedent or tests under the Indenture applicable to such Neighborhood Improvements and related Neighborhood Improvement Area; and

(7) With respect to Refunding PID Bonds, the County shall receive evidence of meeting any conditions precedent or tests under the Indenture applicable to PID Bonds to be refunded.

(c) The aggregate principal amount of PID Bonds issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Public Improvements; (ii) required reserves and capitalized interest during the period of construction and not more than twelve (12) months after the completion of construction of the applicable Public Improvements funded by the PID Bond issue in question and in no event for a period greater than eighteen (18) months from the date of the initial delivery of the applicable PID Bonds; (iii) first year's Administrative Expenses; and (iv) Bond Issuance Costs. Provided, however that to the extent the law(s) which limit the period of capitalized interest to twelve (12) months after completion of construction change, the

foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances.

(d) The final maturity for each series of PID Bonds shall occur no later than thirty (30) years from the issuance date of said PID Bonds.

(e) Evidence of fiscal security required under Section 3.05 of this Agreement, if any.

(f) PID Bonds are not required to be issued under this Article V unless (i) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied, (ii) the County receives at the time of issuance of such PID Bonds an opinion of counsel selected by the County stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their issuance under State law have been satisfied, and (iii) the Attorney General has issued an opinion approving issuance of the bonds as required by the PID Act.

(g) Notwithstanding any provision in this Agreement to the contrary, in connection with the issuance of PID Bonds, the Owner shall execute and deliver any documents, agreements, or certificates requested by the County, counsel to the County, the Underwriter, or Underwriter's counsel in order to demonstrate that the PID Bonds will be issued in compliance with State and federal law.

(h) The foregoing requirements apply to each series of PID Bonds issued.

(i) If proceeds from PID Bonds are still available after all the Public Improvements are accepted by the County or City, as applicable, and Owner has been reimbursed for all unreimbursed Actual Costs incurred in connection therewith, the proceeds may be utilized to finance other Public Improvements within the Property as allowed by the PID Act, if approved by the County.

#### Section 5.02. Project Fund

The County hereby covenants and agrees that if PID Bonds are issued, the Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The portion of the proceeds of the PID Bonds issued to pay Actual Costs of Public Improvements and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund, which will be held by the Trustee under the Indenture.

#### Section 5.03. Denomination, Maturity, Interest, and Security for Bonds

(a) Each series of PID Bonds shall be finally authorized by the Commissioners Court and shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the PID Bond Security, all to be as described and provided in the PID Bond Order or Indenture, as applicable.

(b) The final and adopted versions of the PID Bond Order and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the PID Bonds when and as issued and delivered and



otherwise contain such terms and provisions as are mutually approved by the County and the Owner.

#### Section 5.04. Sale of PID Bonds.

The PID Bonds, if issued by the County, shall be marketed and sold through negotiated sale to an underwriter selected by the County with the cooperation and assistance of the Owner in all respects with respect to the preparation of marketing documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the County and the Owner. The Owner agrees to fully cooperate with County with respect to the preparation of the offering document.

#### Section 5.05. Phased Assessments

(a) In connection with the execution of an Acquisition and Reimbursement Agreement or the issuance of PID Bonds, the Service and Assessment Plan will be adopted or updated to reflect the special benefit each Assessed Parcel within the District or a Neighborhood Improvement Area, as applicable, receives from the specific Public Improvements funded with those Special Assessments and/or the proceeds of PID Bonds.

(b) It is hereby acknowledged and agreed that one or more of the following types of PID Bonds contemplated to be issued for this Project (Major Public Improvement PID Bonds, Neighborhood Improvement PID Bonds, and Additional Neighborhood Improvement PID Bonds) may be issued under separate Indentures; however, unless issued on a subordinate basis, all of the Special Assessments levied and pledged for the payment of PID Bonds will have the same lien priority against the Assessed Parcels.

(c) Subject to the processes and procedures of the Hays County Tax Assessor-Collector, if the total Special Assessments levied on a particular Parcel within the Project consist of Special Assessments stemming from an Acquisition and Reimbursement Agreement and/or one or more series of PID Bonds and an owner of an Assessed Parcel pays only a portion of the Annual Installment due for such Special Assessments, then such payment will be allocated pro-rata to the payment of the Annual Installment based on the portions of each Annual Installment due as it relates to the total Annual Installment due. For example, assume that a Parcel has an Annual Installment due relating to Major Improvement Area Bonds in the amount of \$600 and an Annual Installment due relating to a Neighborhood Improvement Area in the amount of \$400. Further assume that the landowner pays only \$900 of the combined Annual Installment due of \$1,000. The \$900 payment will be allocated as follows:

\$540 (60% of \$900) will go towards the Annual Installment due for the Major Improvement PID Bonds; and

\$360 (40% of \$900) will go towards the Annual Installment due for the Neighborhood Improvement Area Bonds

Total: \$900

(d) Further detail regarding partial payments of the Annual Installments will be contained in the Service and Assessment Plan and the applicable Indenture relating to Major Improvement PID Bonds, Neighborhood Improvement PID Bonds, or Additional Neighborhood Improvement PID Bonds.

## **ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION**

### **Section 6.01. Representations and Warranties of County**

The County makes the following covenants, representations and warranties for the benefit of the Owner:

(a) The County is a political subdivision of the State of Texas and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute and deliver this Agreement, (ii) to consider one or more Assessment Orders, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

(b) The County will deliver a certificate relating to the PID Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the “Tax Certificate”) containing covenants and agreements designed to satisfy the requirements of Sections 103 and 141 through 150, inclusive, of the Tax Code and the income tax regulations issued thereunder relating to the use of the proceeds of the PID Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of Section 148 of the Tax Code (collectively, “**Bond Proceeds**”).

### **Section 6.02. Covenants, Representation, and Warranties of Owner**

The Owner makes the following representations, warranties, and covenants for the benefit of the County:

(a) LCSM WW represents and warrants that it is a limited liability company duly organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated. LCSM North represents and warrants that it is a limited partnership duly organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Owner represents and warrants that the Owner has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Owner.

(c) The Owner represents and warrants that this Agreement is valid and enforceable obligation of the Owner and is enforceable against the Owner in accordance with its terms, subject

to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Owner covenants that once it commences construction of a Public Improvement (or a Segment thereof) it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Public Improvements (or Segment thereof) to be completed in accordance with this Agreement.

(e) The Owner covenants that it will not commit or knowingly permit any act in, upon or to the Property or the Project in violation of any law, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition, or restriction now or hereafter affecting the Property or the Project.

(f) The Owner represents and warrants that (i) it will not request payment from the County for the acquisition or financing of any Public Improvements that are not part of the Project, and (ii) it will diligently follow all procedures set forth in this Agreement, including each Certification for Payment.

(g) For a period of four (4) years after (i) the final Acceptance Date of each applicable Public Improvement, or (ii) claims filed upon completion, whichever is later, the Owner covenants to maintain proper books of record and account for the Public Improvements and all costs related thereto. The Owner covenants that such accounting books will be maintained in accordance with sound accounting practices. The Owner shall provide copies (including electronic copies in a form acceptable to the County if electronic copies are requested) of such records to the County upon written request to the Owner, and those copies shall be provided no later than ten (10) business days after receipt of a written request from the County at a cost that is no more than the rates applicable to copies provided pursuant to the Texas Public Information Act.

(h) The Owner agrees to provide the information required pursuant to an Owner Continuing Disclosure Agreement executed by the Owner in connection with the PID Bonds.

(i) The Owner covenants to provide, or cause to be provided, such facts and estimates as the County reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Owner further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Owner providing such facts and estimates, true, correct, and complete as of that date, and (ii) the Owner will make reasonable inquiries to ensure such truth, correctness, and completeness. The Owner covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds that would cause any of the covenants or agreements of the County contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

(j) The Owner agrees not to take any action or actions to reduce the total amount of such Special Assessments to be levied as of the Effective Date.

### Section 6.03. Buyer Disclosures.

(a) The Owner shall comply with Chapter 5 of the Property Code, as amended, and shall contractually obligate (and promptly provide written evidence of such contractual provisions to the County) any party who purchases any Parcel owned by the Owner, or any portion thereof, to comply with the notice requirements set forth in Chapter 5 of the Property Code regarding any subsequent sale or conveyance of the Parcel. The Owner's compliance obligation shall terminate as to each Lot (as defined in the Service and Assessment Plan) if and when there is a sale of a Lot to a purchaser.

(b) The Owner shall contractually obligate each commercial builder who is in the business of constructing and/or selling residences to individual homebuyers (a "**Builder**") to:

(1) Comply with the requirements set forth in Chapter 5 of the Property Code, including providing individual homebuyers written notice, at and before closing, of the homebuyer's obligation to pay public improvement district assessments to the County and to inform each homebuyer that the homebuyer may ask the homebuyer's mortgage company to include the Annual Installments in the homebuyer's monthly escrow payment. Notwithstanding any provision herein to the contrary, the notice that must be provided to buyers of Parcels located within the boundaries of the District must comply with Chapter 5 of the Property Code; and

(2) Prominently display signage utilizing language and information provided by the Administrator in the Builder's model homes, if any, located within the Property.

### Section 6.04. Indemnification and Hold Harmless by Owner

(a) THE OWNER WILL (WITHOUT USING ANY ASSESSMENT REVENUES OR BOND PROCEEDS) DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, THE CITY, AND THEIR OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (INDIVIDUALLY, AN "**INDEMNIFIED PARTY**," AND COLLECTIVELY, THE "**INDEMNIFIED PARTIES**") AGAINST AND FROM, AND WILL PAY TO THE INDEMNIFIED PARTIES, ALL WITHOUT WAIVING ANY SOVEREIGN OR GOVERNMENTAL IMMUNITY AVAILABLE TO ANY INDEMNIFIED PARTY UNDER TEXAS OR FEDERAL LAW, AND WITHOUT WAIVING ANY DEFENSES OR REMEDIES UNDER TEXAS OR FEDERAL LAW, THE AMOUNT OF, ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, FEES, FINES, PENALTIES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, "**DAMAGES**"), ARISING DIRECTLY OR INDIRECTLY, FROM:

(1) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER;

(2) THE NEGLIGENT DESIGN, ENGINEERING, OR CONSTRUCTION BY THE OWNER OF ANY PUBLIC IMPROVEMENT;

(3) THE OWNER'S NONPAYMENT UNDER CONTRACTS WITH THE GENERAL CONTRACTOR OR SUBCONTRACTORS FOR ANY PUBLIC IMPROVEMENT UNDER THIS AGREEMENT;

(4) ANY CLAIMS AGAINST ONE OR MORE OF THE INDEMNIFIED PARTIES RELATING TO ANY PUBLIC IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT; AND

(5) ANY THIRD-PARTY CLAIMS RELATING TO ANY PUBLIC IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT.

(b) THE OWNER WILL DEFEND THE INDEMNIFIED PARTIES AGAINST ALL CLAIMS DESCRIBED IN THIS SECTION, AND THE INDEMNIFIED PARTIES WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE.

(c) THE INDEMNIFIED PARTIES WILL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER.

(d) THE INDEMNIFIED PARTIES RESERVE THE RIGHT, BUT ARE NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT THEIR OWN EXPENSE.

(e) THE OWNER SHALL RETAIN INDEMNIFIED PARTY-APPROVED DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE COUNTY OR THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION, AND IF THE OWNER DOES NOT DO SO, THE INDEMNIFIED PARTY MAY RETAIN ITS OWN DEFENSE COUNSEL AND THE OWNER WILL BE LIABLE FOR ALL SUCH COSTS.

(f) THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW.

## ARTICLE VII. DEFAULT AND REMEDIES

### Section 7.01. Default

A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe, or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement. **Notwithstanding any provision to the contrary, neither the failure of the County to levy Special Assessments nor the failure of the County to issue PID Bonds shall constitute a default or a breach under this Agreement.**

### Section 7.02. Breach

(a) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in

writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph Section 7.03 below.

(b) Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate).

(c) Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity.

(d) Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

(e) Notwithstanding any provision contained herein to the contrary, the Owner shall not be required to construct any portion of the Public Improvements (or take any other action related to or in furtherance of same) while the County is in default under this Agreement).

#### Section 7.03. Force Majeure

Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, COVID-19 or any pandemic or other event declared a disaster (including a disaster declared by the County Judge), adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing "Force Majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article. Notwithstanding any provision to the contrary, Force Majeure will not excuse any obligation to make payment under this Agreement unless the event of Force Majeure affects the ability of financial institutions generally to transfer funds in the normal course of business.

#### Section 7.04. No Waiver

No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to the County and/or its elected officials, officers, employees, and agents under Federal or Texas law nor waive any defenses or remedies at law available to the County, the City, or their respective elected officials, employees, and agents under Federal or Texas law.

### ARTICLE VIII. GENERAL PROVISIONS

#### Section 8.01. Notices.

Any notice, communication, or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent, and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to County:           Hays County Judge  
                              Hays County Commissioners Court  
                              111 E San Antonio Street, Room 301  
                              San Marcos, TX 78666  
                              Facsimile: (512) 393-2248

With copy to:           Hays County Office of General Counsel  
                              Attention: Jordan Powell, Assistant General Counsel  
                              111 E San Antonio Street, Room 202  
                              San Marcos, TX 78666  
                              Facsimile: (512) 392-6500

If to Owner:            LCSM North, LP and LCSM WW, LLC  
                              Attn: Bryan Lee  
                              303 Colorado, Suite 2300  
                              Austin, TX 78701  
                              Facsimile: (512) 457-8008

#### Section 8.02. Fee Arrangement /Administration of District

(a) The Owner agrees that it will pay all of the County's costs and expenses (including the County's third-party advisors and consultants) related to the creation, including this Agreement, and administration of the District, as well as costs and expenses relating to the development and review of the Service and Assessment Plan, including any applicable Acquisition and Reimbursement Agreement, (including legal fees and financial advisory fees) ("**County PID Costs**"). To the extent that County PID Costs have not previously been paid by the Owner, prior to closing of any PID Bonds, the County shall (i) submit to the Owner and the Trustee invoices and other supporting documentation evidencing the County PID Costs and (ii) direct the Trustee

to pay these fees, as applicable, to the County or on behalf of the County from proceeds of the PID Bonds.

(b) In addition to any County PID Costs pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the PID Bonds, including fees for the review of the District creation and District administration documentation, the preparation of customary bond documents and the obtaining of Attorney General approval for the PID Bonds, will be paid at closing from proceeds of the PID Bonds. Further, the Owner agrees that it will be responsible for paying the Administrative Expenses.

(c) The Owner shall be solely responsible for the costs associated with the issuance of any PID Bonds. The terms of subparagraph (a) above shall apply to the Owner in the event that any PID Bonds are issued.

(d) The County may enter into a separate agreement with an Administrator to administer the District. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Service and Assessment Plan.

#### Section 8.03. Assignment

(a) Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party so long as the assignee has demonstrated to the County's satisfaction that the financial, technical, and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. Owner shall provide the County thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned.

(b) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign and that the Designated Successor or Assign agrees to and accepts all of the Owner's rights and obligations to the County under this Agreement with respect to those rights and obligations that are sold, transferred, or assigned.

The Owner shall provide the County an executed copy of the assignment to any Designated Successor or Assign no later than five (5) days after the assignment is fully executed by the Owner and the Designated Successor or Assign.

(c) Upon a sale of a portion of the Property or assignment of any right hereunder, neither the County nor the City shall be required to release fiscal security to the Owner until the Designated Successor or Assign provides the County evidence that the Designated Successor or Assign has posted replacement fiscal security in the form and amount required by this Agreement and the County or the City to secure the completion of Authorized Improvements.



(d) Any transfer of the Owner's rights to receive Bond Proceeds or Special Assessment Revenues (not involving an assignment of this Agreement) are addressed in the applicable Acquisition and Reimbursement Agreement.

#### Section 8.04. Term of Agreement

This Agreement shall terminate on the date on which the County and Owner discharge all of their obligations hereunder. In the case of any termination of this Agreement and/or dissolution of the District, the obligation of any Party to pay any Project Costs expended prior to the termination of this Agreement and/or dissolution of the District and remaining unpaid will survive such termination and/or dissolution; provided however, that any payment obligation of the County shall be payable solely from Special Assessment Revenues or, if PID Bonds are issued, the proceeds of such bonds.

#### Section 8.05. Construction of Certain Terms

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

- (a) Words importing a gender include either gender.
- (b) Words importing the singular include the plural and vice versa.
- (c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.
- (d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.
- (e) A reference to any Party includes, with respect to Owner, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.
- (f) All references in this Agreement to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to "Exhibits" are to the designated Exhibits to this Agreement.
- (g) The words "herein," "hereof," "hereto," "hereby," "hereunder," and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.
- (h) The words "including" and "includes," and words of similar import, are deemed to be followed by the phrase "without limitation."

(i) Unless the context otherwise requires, a reference to the “Property,” the “Public Improvements,” or the “District” is deemed to be followed by the phrase “or a portion thereof.”

(j) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “approval,” “waiver,” “identification,” or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.

(k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

#### Section 8.06. Table of Contents; Titles and Headings

The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

#### Section 8.07. Amendments.

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties. The Owner acknowledges that no officer, agent, employee, or representative of the County has any authority to change the terms of this agreement unless expressly granted that authority by the Commissioners Court.

#### Section 8.08. Time

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

#### Section 8.09. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. Signatures transmitted electronically by e-mail in a “PDF” format shall have the same force and effect as original signatures in this Agreement

#### Section 8.10. Entire Agreement

This Agreement contains the entire agreement of the Parties.

#### Section 8.11. Severability; Waiver

(a) If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be

affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

(b) Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

#### Section 8.12. Owner as Independent Contractor

In performing under this Agreement, it is mutually understood that the Owner is acting as an independent contractor, and not an agent of the County.

#### Section 8.13. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Service and Assessment Plan, the Assessment Order, PID Bond Order and Indenture. The Owner will provide any continuing disclosures required under an Indenture and will execute a separate agreement outlining the Owner's continuing disclosure obligations, if required.

#### Section 8.14. Audit

The County Construction Representative or County Auditor shall have the right, during normal business hours and upon the giving of three business days' prior written notice to an Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner with respect to any of the Public Improvements and any bids taken or received for the construction thereof or materials therefor.

#### Section 8.15. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Travis County, Texas and venue for any action arising hereunder shall be in Travis County, Texas.

#### Section 8.16. Contract Verifications

(a) The Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the County to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(b) The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to enable the County to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law and excludes the Owner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(c) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the County to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

(d) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the County to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification,

(1) "discriminate against a firearm entity or firearm trade association" (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing

business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association,

(2) "firearm entity" means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and

(3) "firearm trade association" means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(e) As used in Section 8.16(a) through (d), the Owner understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Owner within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

(f) Submitted herewith is a completed Form 1295 in connection with the Owner's participation in the execution of this Agreement generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The County hereby confirms receipt of the Form 1295 from the Owner. The Owner and the County understand and agree that, with the exception of information identifying the County and the contract identification number, neither the County nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Owner; and, neither the County nor its consultants have verified such information.

#### Section 8.17. Notification

If any Party receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against a Party in relation to this Agreement, the Party receiving such

notice must give written notice to the other Parties of the claim or other action within three business days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Parties copies of all pertinent papers received by that Party with respect to these claims or actions.

#### Section 8.18. Texas Public Information Act

The Parties agree that this Agreement, all performance under this Agreement, and all information obtained by County in connection with this Agreement is subject to applicable provisions of the Texas Public Information Act, Texas Government Code Chapter 552, and all legal authorities relating to the Texas Public Information Act, including decisions and letter rulings issued by the Texas Attorney General's Office; and the Owner agrees to provide County, citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Agreement subject to and in accordance with the Texas Public Information Act. Notwithstanding any provision to the contrary, nothing in this Agreement requires a Party to waive any applicable exceptions to disclosure under the Texas Public Information Act.

#### Section 8.19. Correction of Technical Errors

If, by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the Parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

#### Section 8.20. No Third-Party Beneficiary

This Agreement is solely for the benefit of the Parties, and neither the County nor the Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the County and the Owner.

#### Section 8.21. Exhibits

The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit "A" - Definitions

Exhibit "B" - Property

- Exhibit “C” - 100 Ft Tree Preservation/Open Space Landscape Buffer  
Setback Along Country Estates Boundary
- Exhibit “D” - Certification for Payment
- Exhibit “E” - Closing Disbursement Request

[Signature Pages to Follow]

**Hays County, Texas**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signatures Continue on Next Page]



**LCSM NORTH, LP**, a Texas limited partnership

By: LCSM North GP, LLC, a Texas limited  
liability company,  
Its general partner

By: \_\_\_\_\_  
Name: Bryan W. Lee  
Title: Manager

**LCSM WW, LLC**, a Texas limited liability company

By: \_\_\_\_\_  
Name: Bryan W. Lee  
Title: Manager

## Exhibit “A” to Financing Agreement

### DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

**“Acceptance Date”** means, with respect to a Public Improvement or Segment thereof, the date that the County or the City, as applicable, accepts dedication of such Public Improvement or Segment thereof.

**“Accredited Investor”** means an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933.

**“Acquisition and Reimbursement Agreement”** means (whether one or more) an agreement that provides for construction and dedication of a Public Improvement (or Segment) to the County or City, as applicable, prior to the Owner being paid out of the applicable Bond Proceeds, whereby all or a portion of the Actual Costs will be paid to Owner initially from Special Assessment Revenues (and ultimately from PID Bonds) to reimburse the Owner for actual costs paid by the Owner that are eligible to be paid with Bond Proceeds.

**“Actual Cost(s)”** means, with respect to a Public Improvement, the Owner’s demonstrated, reasonable, allocable, and allowable costs of constructing such Public Improvement, as specified in a payment request in a form that has been reviewed and approved by the County and in an amount not to exceed the amount for each Public Improvement as set forth in Service and Assessment Plan. Actual Cost may include (a) the costs incurred by or on behalf of the Owner (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvement, (b) the costs incurred by or on behalf of the Owner in preparing the plans for such Public Improvement, (c) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvement, (d) a construction management fee of 4.0% of the costs incurred by or on behalf of the Owner for the construction of such Public Improvement if the Owner is serving as the construction manager, (e) the costs incurred by or on behalf of the Owner for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, and similar professional services related to the Public Improvements (f) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, and (g) all related permitting, zoning and public approval expenses, architectural, engineering, and consulting fees.

**“Additional Interest”** means the amount collected by application of an interest rate on Special Assessments not to exceed 0.50% pursuant to Section 372.018 of the PID Act and the applicable Indenture.

**“Additional Neighborhood Improvement PID Bonds”** are, with respect to each individual Neighborhood Improvement Area, additional Neighborhood Improvement PID Bonds that may be issued periodically in the future subsequent to the issuance of the initial series of Neighborhood Improvement PID Bonds as such individual Neighborhood Improvement Areas of

the Project is developed and requires financing of internal infrastructure improvements that benefit such individual Neighborhood Improvement Area.

**“Administrative Expenses”** means the actual or budgeted costs and expenses for: (1) the Administrator and County staff; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the County; (3) calculating, collecting, and maintaining records with respect to Special Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and an update to the Service and Assessment Plan; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Special Assessments and Annual Installments; (7) complying with the Service and Assessment Plan and the PID Act with respect to the administration of a reimbursement agreement and the issuance and sale of PID Bonds, if issued, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, if issued, including their respective legal counsel. Administrative Expenses collected but not expended in any year shall be carried forward and applied to reduce Administrative Expenses for subsequent years.

**“Administrator”** means the County or a third-party designated by the County to perform the duties and obligations of the “Administrator” in the Service and Assessment Plan and an Indenture. If no Administrator is appointed by the County, the County shall serve as the Administrator.

**“Agreement”** has the meaning given to such term in the recitals to this Agreement.

**“Annual Installment”** means the annual installment payment of a Special Assessment as calculated by the Administrator and approved by the Commissioners Court, that includes: (1) principal; (2) interest; (3) Administrative Expenses; and (4) Additional Interest, if any.

**“Assessed Parcel”** means for any year, any Parcel within the District against which a Special Assessment is levied.

**“Assessment Order”** means each order adopted by the Commissioners Court, in accordance with the PID Act, levying the Special Assessments on the Property, as further described in Article II of this Agreement.

**“Assessment Roll”** means any assessment roll for Assessed Parcels within the District

**“Attorney General”** means the Attorney General of the State of Texas.

**“Bond Counsel”** means Orrick, Herrington & Sutcliffe LLP or their successor.

**“Bond Issuance Costs”** mean the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, direct County costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

**“Bond Issuance Request”** means written request made by Owner to the County in good faith as evidenced by Owner’s expenditure of necessary amounts for market studies, financial

analysis, legal counsel, and other professional services and due diligence necessary to support the request.

**“Bond Proceeds”** has the meaning given to such term in Section 6.01(b) of this Agreement.

**“Bond Tests”** means certain conditions precedent imposed by the County or the investment and underwriting criteria which must be met prior to the issuance of PID Bonds which are more particularly described in Section 5.01(b) of this Agreement or in an Indenture.

**“Builder”** has the meaning given to such term in Section 6.03(b) of this Agreement.

**“Certification for Payment”** means the certificate (whether one or more) to be provided by the Owner to substantiate the Actual Cost of one or more Public Improvements or Segments in substantially the same form as Exhibit “D” attached hereto.

**“City”** means the City of San Marcos, Texas.

**“Closing Disbursement Request”** means the request (whether one or more) in substantially the same form as Exhibit “E” attached hereto.

**“Closing Reimbursement Payment”** has the meaning given to such term in Section 4.03(e).

**“Commissioners Court”** means the Commissioners Court of Hays County, Texas.

**“Construction Management Fee”** means 4% of the costs incurred by or on behalf of Owner for the construction of each Public Improvement (or Segment thereof).

**“Construction Manager”** means initially the Owner, and thereafter subject to change in accordance with Section 3.02 of this Agreement.

**“Cost of Issuance Account”** means an account within the Project Fund established pursuant to an Indenture and into which the Trustee will deposit Bond Proceeds to be used for the payment of Bond Issuance Costs.

**“County”** means Hays County, Texas.

**“County PID Costs”** has the meaning given to such term in Section 8.02 of this Agreement.

**“County Auditor”** means the County Auditor of the County or his/her designee.

**“County Construction Representative”** means the Director of Development and Community Services or such other person selected by the County to oversee the construction of the Public Improvements on behalf of the County.

**“Designated Successors and Assigns”** means (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to

all or a portion of the Property, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Owner's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital, or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner.

**"Development Agreement"** has the meaning given to such term in the recitals to this Agreement.

**"District"** has the meaning given to such term in the recitals to this Agreement.

**"Effective Date"** has the meaning given to such term in the recitals to this Agreement.

**"Indenture"** means the applicable Indenture of Trust between the County and a trustee relating to the issuance of a series of PID Bonds for financing costs of Public Improvements, as it may be amended from time to time.

**"Independent Appraisal"** means, in establishing the appraised value, an "as-complete" appraisal delivered by an independent appraiser licensed in the State of Texas, which appraisal shall assume completion of the Public Improvements to be funded with the PID Bonds. Notwithstanding the foregoing and in the case of Major Public Improvement PID Bonds and Neighborhood Improvement PID Bonds, the Independent Appraisal may not include the value of any vertical improvements completed or expected to be completed on the applicable Assessed Parcels in the District or the Neighborhood Improvement Area subject to such Independent Appraisal.

**"Major Improvement Special Assessment"** those Special Assessments levied on property within the District that benefits from the Major Public Improvements.

**"Major Public Improvement PID Bonds"** means PID Bonds that may be issued to fund Major Public Improvements. Major Public Improvement PID Bonds will be secured by Major Improvement Special Assessments.

**"Major Public Improvements"** means those Public Improvements that confer special benefit on the entire District and may be initially financed with an Acquisition and Reimbursement Agreement or ultimately financed with Major Improvement PID Bonds and/or allocated to Neighborhood Improvement Areas and financed with Neighborhood Improvement PID Bonds or Additional Neighborhood Improvement PID Bonds.

**"Neighborhood Improvement Areas"** means one or more Parcels that are anticipated to be developed over time within the District as determined by the Owner. The Parcels within a Neighborhood Improvement Area will be assessed in connection with the Public Improvements that specially benefit the Assessed Parcels within said Neighborhood Improvement Area, but any Parcels outside of the Neighborhood Improvement Area will not be assessed.

**"Neighborhood Improvement PID Bonds"** means PID Bonds that may be issued periodically as individual Neighborhood Improvement Areas of the Project are developed and require financing of internal infrastructure improvements and/or the allocable portion of Major

Public Improvements that benefit each given Neighborhood Improvement Area. Neighborhood Improvement PID Bonds will be secured by Neighborhood Improvement Special Assessments.

**“Neighborhood Improvement Special Assessments”** means those Special Assessments levied only on property located in a specific Neighborhood Improvement Area to finance the internal infrastructure improvements that benefit only such Neighborhood Improvement Area and/or the portion of Major Public Improvements allocable to such Neighborhood Improvement Area.

**“Neighborhood Improvement Value to Lien Ratio”** means the ratio of the appraised value of a specific assessed parcel or assessed parcels, as applicable, in a Neighborhood Improvement Area, based on an Independent Appraisal, to the sum of (i) the Neighborhood Improvement Special Assessments levied or to be levied on a specific parcel or parcels, as applicable, within such Neighborhood Improvement Area and (ii) the outstanding Major Improvement Special Assessments levied on such parcel or parcels, as applicable, within such Neighborhood Improvement Area.

**“Neighborhood Public Improvements”** means those Public Improvements that confer a special benefit upon property within a designated Neighborhood Improvement Area within the District, may be initially financed with an Acquisition and Reimbursement Agreement or ultimately financed with Neighborhood Improvement PID Bonds and/or Additional Neighborhood Improvement PID Bonds and that confer a special benefit upon property within that Neighborhood Improvement Area.

**“Non-Benefited Property”** means Parcels within the boundaries of the District that accrue no special benefit from the Public Improvements as determined by the Commissioners Court.

**“Owner”** means, collectively, LCSM WW and LCSM North, including their respective Designated Successors and Assigns.

**“Owners’ Association”** means a homeowners’ association or property owners’ association.

**“Owner Continuing Disclosure Agreement”** means an agreement outlining the Owner’s continuing disclosure obligations with respect to a series of PID Bonds, if required.

**“Owner Expended Funds”** has the meaning given to such term in Section 4.03(e) of this Agreement.

**“Parcel”** means a property within the District identified by either a tax map identification number assigned by the Hays County Appraisal District for real property tax purpose, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the Official Public Records of Hays County, or by any other means determined by the County.

**“Party”** means the Owner or the County, as parties to this Agreement, and **“Parties”** means collectively, the Owner and the County.

**“PID Act”** means Chapter 372, Local Government Code, as amended.

**“PID Bond Order”** means and refers to the order or orders of the Commissioners Court that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either under the terms of the bond order or a trust indenture related to the PID Bonds.

**“PID Bond Issuance Request”** means a written request from the Owner to the County requesting the issuance of PID Bonds.

**“PID Bond Security”** means the funds that are to be pledged in or pursuant to the PID Bond Order or the Indenture to the payment of the debt service requirements on the PID Bonds, consisting of the Special Assessments, including earnings and income derived from the investment or deposit of Special Assessments in the special funds or accounts created and established for the payment and security of the PID Bonds, unless such earnings are required to be deposited into a rebate fund for payment to the federal government.

**“PID Bonds”** means the special assessment revenue bonds to be issued by the County, in one or more series, for the purpose of financing the Public Improvements that confer special benefit on the land within the District or reimbursing the Owner for Actual Costs paid prior to the issuance of the PID Bonds, which may include funds for any required reserves and amounts necessary to pay Bond Issuance Costs, and to be secured by the revenues and funds pledged under an Indenture, consisting primarily of the Special Assessments, pursuant to the authority granted in the PID Act, and as described by this Agreement. This term is used to collectively refer to the Major Improvement PID Bonds, the Neighborhood Improvement PID Bonds, the Additional Neighborhood Improvement PID Bonds and any Refunding PID Bonds throughout this Agreement.

**“Prepayment”** means the payment of all or a portion of a Special Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of a Special Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Special Assessment.

**“Project”** has the meaning given to such term in the recitals to this Agreement.

**“Project Costs”** means the total of all Actual Costs.

**“Project Engineer”** means the civil engineer or firm of civil engineers selected by the Owner to perform the duties set forth herein, which is currently Bowman Consulting.

**“Project Fund”** means the separate and unique fund established by the County under such name pursuant to an Indenture as described in Section 5.02 hereof.

**“Property”** has the meaning given to such term in the recitals to this Agreement.

**“Public Improvements”** means collectively the Major Public Improvements and Neighborhood Public Improvements together with any and all of the improvements which are included in the Service and Assessment Plan as such plan is adopted, amended and updated from time to time. Public Improvements do not include the construction of or an extension to W

Centerpoint Road or any other public or private street, roadway, alleyway or transportation infrastructure improvements (with the exception of pedestrian-only improvements) that may be constructed in the Buffer or the Additional Road Buffer.

**“Qualified Institutional Buyer”** means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933.

**“Real Property Interests”** has the meaning given to such term in section 3.04(a) of this Agreement

**“Refunding PID Bonds”** means PID Bonds issued to refund of all or any portion of a series of outstanding PID Bonds

**“Segment”** or **“Segments”** means the discrete portions of the Public Improvements identified as such.

**“Service and Assessment Plan”** means the La Cima North Public Improvement District Service and Assessment Plan (as such plan is amended and updated from time to time), to be initially adopted by the Commissioners Court in the first Assessment Order for the purpose of assessing allocated costs against property located within the boundaries of the District having terms, provisions and findings approved and agreed to by the Owner, as required by Article II of this Agreement.

**“Special Assessment Levy Request”** means a written request from the Owner to the County, containing the items set forth in Section 4.02(a) of this Agreement, requesting that Special Assessments be levied on benefited Parcels within the Property or a given Neighborhood Improvement Area for the financing of the Actual Costs of Public Improvements.

**“Special Assessment(s)”** means the assessments levied against a Parcel in the District, as provided for in the applicable Assessment Order and in the Service and Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

**“Special Assessment Revenues”** means money collected by or on behalf of the County from any one or more of the following: (i) a Special Assessment levied against an Assessed Parcel, or Annual Installment payment thereof, including any interest on such Special Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs (as defined in an Indenture), and (iv) Foreclosure Proceeds (as defined in an Indenture).

**“State”** means the State of Texas.

**“Subdivision Ordinance”** means the Hays County Subdivision and Development Regulations in effect as of the Effective Date.

**“Tax Certificate”** has the meaning given to such term in Section 6.01(b) hereof.



**“Tax Code”** means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

**“Trustee”** means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

**“Underwriter”** means the underwriter engaged by the County from time to time in connection with the marketing and issuance of PID Bonds.

**“Unpaid Balance”** has the meaning given to such term in the applicable Acquisition and Reimbursement Agreement.

**“Value to Lien Ratio”** means the ratio of the appraised value of a specific assessed parcel or assessed parcels, as applicable, in the District based on an Independent Appraisal, to the outstanding Major Improvement Special Assessments levied on such parcel or parcels, as applicable, within the District.

**Exhibit “B” to Financing Agreement**  
**PROPERTY DESCRIPTION FOR PROJECT**



**658.3-Acre Tract  
Hays County, Texas**

**D&A Job No. 1722-014  
April 12, 2022**

**DESCRIPTION  
658.3 Acre Tract**

**BEING A 658.3 ACRE TRACT OUT OF THE JOHN CARSON SURVEY NUMBER 3, ABSTRACT NUMBER 80, THE PATRICK MCGREAL SURVEY NUMBER 1, ABSTRACT NUMBER 308, THE JOHN WILLIAMS SURVEY, ABSTRACT NUMBER 490, THE THOMAS H.W. FORSITH SURVEY NUMBER 2, ABSTRACT NUMBER 173, AND THE JOHN MAXAMILLIN JR SURVEY NUMBER 15, ABSTRACT NUMBER 299, HAYS COUNTY, TEXAS, BEING COMPRISED OF TWO (2) TRACTS: 1) THE REMAINDER OF A CALLED 716.234 ACRE TRACT, DESCRIBED TO CHRISTINE ALEXANDER, SUBSTITUTE TRUSTEE OF THE WILL AND ESTATE OF JOSEPH FREEMAN, RECORDED IN VOLUME 769, PAGE 688, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS [O.P.R.H.C.T.], AND 2) THE REMAINDER OF A CALLED 105.55 ACRE TRACT, CONVEYED TO THE FROST NATIONAL BANK, TRUSTEE OF THE JOSEPH FREEMAN TESTAMENTARY TRUST, RECORDED IN VOLUME 1189, PAGE 94 OF THE OFFICIAL RECORDS OF HAYS COUNTY, TEXAS [O.R.H.C.T.]; SAID 658.3 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a 1/2-inch iron rod with cap stamped “DOUCET” set in the existing northeast right-of-way line of Ranch Road 12, for the northeast corner of a called 3.433-acre tract of land conveyed to Hays County, recorded in Volume 4264, Page 511 of the Official Public records of Hays County, Texas [O.P.R.H.C.T.], same point being in the west line of a called 19.46-acre tract, conveyed to Nolen Boesch Stanford and Joy Stanford, Co-Trustees of the Nolen Stanford and Joy Stanford Revocable Trust, recorded in Volume 5323, Page 579 [O.P.R.H.C.T.] and for the southeast corner of the tract described herein, from which a 3/8-inch iron rod found (bent) for the southwest corner of said 716.234-acre tract, bears S43°28'28"W, a distance of 26.32 feet;

**THENCE** with common line of said R.R. 12 and said 3.433-acre tract, over and across said 716.234-acre tract, the following seven (7) courses:

- 1) N65°31'26"W, for a distance of 156.35 feet, to a 1/2-inch iron rod with cap stamped “TxDot” found for an angle corner of the tract described herein,
- 2) N64°39'24"W, for a distance of 531.82 feet, to a 1/2-inch iron rod with cap stamped “DOUCET” set for an angle corner of the tract described herein,
- 3) With a curve to the left, defined by an arc length of 200.91 feet, a radius of 5,561.70 feet, a delta angle of 02°04'11", and a chord which bears N65°46'46"W, for a distance of 200.90 feet, to a 1/2-inch iron rod with cap stamped “TxDot” found for an angle corner of the tract described herein,
- 4) N23°10'30"E, for a distance of 55.06 feet, to a 1/2-inch iron rod with cap stamped “TxDot” found for an angle corner of the tract described herein,
- 5) N66°45'19"W, for a distance of 1,264.68 feet, to a 1/2-inch iron rod with cap stamped “TxDot” found for an angle corner of the tract described herein,

**(CONTINUED ON NEXT PAGE)**



- 6) S23°12'31"W, for a distance of 29.99 feet, to a 1/2-inch iron rod with cap stamped "TxDot" found for an angle corner of the tract described herein, and
- 7) N66°45'17"W, for a distance of 414.89 feet, to a 1/2-inch iron rod with cap stamped "TxDot" found in the common line of said remainder of a called 716.234-acre tract and said 105.55-acre tract, and for an angle corner of the tract described herein;

**THENCE** with common line of said R.R. 12 and said 3.025-acre tract, over and across said 105.55-acre tract, the following two (2) courses:

- 1) N66°45'43"W, for a distance of 443.49 feet, to a 5/8-inch iron rod with cap stamped "TxDot" found for an angle corner of the tract described herein and
- 2) With a curve to the right, defined by an arc length of 286.96 feet, a radius of 2,765.96 feet, a delta angle of 05°56'39", and a chord which bears N63°48'21"W, for a distance of 286.83 feet, to a magnail with shiner "BCG" found for an angle corner of the tract described herein;

**THENCE**, N35°07'28"E, with the common line of said 105.55-acre tract and Lot 1, La Cima, Offsite Water Booster Station, Lot 1 Final Plat, recorded in Document No. 17028737 in the Plat Records of Hays County, Texas [P.R.H.C.T.], being that same tract conveyed to The City of San Marcos, recorded in Document No. 19006243, [O.P.R.H.C.], for a distance of 41.73 feet, to a 1/2-inch iron rod with cap stamped "DOUCET" set for the southwest corner of a called 0.23-acre tract conveyed to City of San Marcos, recorded in Volume 1238, Page 725, [O.R.H.C.T.] and for an angle corner of the tract described herein;

**THENCE** with line of said 0.23-acre tract, continuing over and across said 105.55-acre tract, the following three (3) courses:

- 1) S54°44'21"E, for a distance of 99.86 feet, to a 1/2-inch iron rod with cap stamped "BYRN" found for an angle corner of the tract described herein,
- 2) N35°14'37"E, for a distance of 99.99 feet, to a 1/2-inch iron rod with cap stamped "BYRN" found for an angle corner of the tract described herein, and
- 3) N54°45'29"W, partially with the north line of said Lot 1, for a distance of 230.66 feet, to a 1/2-inch iron rod with cap stamped "BCG" found for the northeast corner of said Lot 1 and for an angle corner of the tract described herein;

**THENCE** with line of said Lot 1, continuing over and across said 105.55-acre tract, the following three (3) courses:

- 1) S35°10'05"W, for a distance of 99.66 feet, to a 1/2-inch iron rod with cap stamped "BCG" found for an angle corner of the tract described herein,
- 2) S54°55'03"E, for a distance of 69.92 feet, to a 1/2-inch iron rod with cap stamped "DOUCET" set for an angle corner of the tract described herein, and
- 3) S35°17'42"W, for a distance of 48.99 feet, to a 1/2-inch iron rod with cap stamped "DOUCET" set in the existing northeast right-of-way line of R.R. 12 for an angle corner of the tract described herein;

**(CONTINUED ON NEXT PAGE)**



**THENCE** with common line of said R.R. 12 and said 3.025-acre tract, continuing over and across said 105.55-acre tract, the following four (4) courses:

- 1) With a curve to the right, defined by an arc length of 197.22 feet, a radius of 2,764.79 feet, a delta angle of  $04^{\circ}05'13''$ , and a chord which bears  $N57^{\circ}10'50''W$ , for a distance of 197.18 feet, to 5/8-inch iron rod with cap stamped "TxDot" found for an angle corner of the tract described herein,
- 2)  $N55^{\circ}25'57''W$ , for a distance of 102.05 feet, to a 5/8-inch iron rod with cap stamped "TxDot" found for an angle corner of the tract described herein,
- 3)  $N69^{\circ}32'34''W$ , for a distance of 102.58 feet, to a 5/8-inch iron rod with cap stamped "TxDot" (bent) found for an angle corner of the tract described herein, and
- 4)  $N55^{\circ}26'48''W$ , for a distance of 224.88 feet, to a 1/2-inch iron rod with cap stamped "DOUCET" set for the southeast corner of a called 0.3766-acre tract, conveyed to the State of Texas, recorded in Document No. 17007275, [O.P.R.H.C.T.] and for an angle corner of the tract described herein;

**THENCE**,  $N52^{\circ}47'06''W$ , with common line of said R.R. 12 and said 0.3766-acre tract, continuing over and across said 105.55-acre tract, for a distance of 582.27 feet to a 5/8-inch iron rod with cap stamped "TxDot" found in the west line of said 105.55-acre tract, same point being in the east line of the remainder of a called 3,486.6-acre tract conveyed to Frost National Bank, Independent Executor and Trustee under the Will of Joseph Freeman, recorded in Volume 359, Page 887 of The Deed Records of Hays County, Texas [D.R.H.C.T.] and for the southwest corner of the tract described herein, from which a 5/8-inch iron rod with cap stamped "TxDot" found bears  $S50^{\circ}04'16''W$ , a distance of 49.53 feet;

**THENCE**,  $N49^{\circ}55'52''E$ , with the common line of said 105.55-acre tract and said remainder of a called 3,486.6-acre tract, for a distance of 4,251.74 feet to a 4-1/2" iron pipe fence post found the north corner of said 105.55-acre tract, for the southeast corner of a called 94.23-acre tract, conveyed to Southwest Texas State University, Operating Co-Trustee and The Frost National Bank, Inactive Co-Trustee of the Harold M. Freeman Testamentary Trust, recorded in Volume 1189, Page 99 [O.P.R.H.C.T.], for an angle corner of said 3,486.6-acre tract and for an angle corner of the tract described herein;

**THENCE** with the southeast line of said 94.23-acre tract, over and across said 716.234-acre tract, the following two (2) courses:

- 1)  $N32^{\circ}58'31''E$ , for a distance of 2,076.98 feet to a 4-1/2" iron pipe fence post found for an angle corner of the tract described herein, and
- 2)  $N37^{\circ}21'34''E$ , for a distance of 2,082.81 feet to a 4-1/2" iron pipe fence post found for the northeast corner of said 94.23-acre tract, same being in the south line of said 3,486.6-acre tract, and for the northwest corner of the tract described herein, from which a 60D nail found bears  $N60^{\circ}57'21''W$ , a distance of 1.17 feet;

**THENCE** with common line of said 716.234-acre tract and said 3,486.6-acre tract, the following three (3) courses and distances:

- 1)  $S85^{\circ}03'39''E$ , for a distance of 82.90 feet, to a 1/2-inch iron rod with cap stamped "DOUCET" set for an angle corner of the tract described herein,

(CONTINUED ON NEXT PAGE)



- 2) S84°27'48"E, for a distance of 452.04 feet, to a 1/2-inch iron rod with cap stamped "DOUCET" set for an angle corner of the tract described herein, and
- 3) S84°26'51"E, for a distance of 432.88 feet, to a 1/2-inch iron rod with cap found for the northwest corner of a called 60.77-acre tract, conveyed to Southwest Texas State University, Operating Co-Trustee and The Frost National Bank, Inactive Co-Trustee of the Harold M. Freeman Testamentary Trust, recorded in Volume 1189, Page 99 [O.R.H.C.T.], and for the northeast corner of the tract described herein;

**THENCE**, S26°31'02"E, with the west line of said 60.77-acre tract, over and across said 716.234-acre tract, for a distance of 2,270.37 feet to 1-inch iron pipe found for the southwest corner of said 60.77-acre tract, same being in the easterly line of said 716.234-acre tract, same being in the west line of Country Estates 2 Subdivision, an unrecorded subdivision, and for the northeast corner of the tract described herein;

**THENCE** with common line of said 716.234-acre tract and said Country Estates 2 Subdivision, the following two (2) courses and distances:

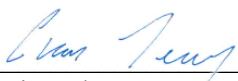
- 1) S45°33'06"W, for a distance of 44.43 feet, to a 1/2-inch iron rod found for an angle corner of the tract described herein, and
- 2) S25°36'43"W, for a distance of 5,199.11 feet, to a 2-7/8-inch metal fence corner post found for the common corner of said Country Estates 2 Subdivision and said 19.46-acre tract and for an angle corner of the tract described herein,

**THENCE**, S43°28'55"W, with the west line of said 19.46-acre tract and the east line of said 716.234-acre tract, for a distance of 1,879.19 feet to the **POINT OF BEGINNING** of the tract described herein and containing 658.3-acres more or less.

Notes:

Basis of bearings is the Texas Coordinate System, South Central Zone [4204], NAD83 (2011), Epoch 2010. All distances are surface values and may be converted to grid by using the surface adjustment factor of 1.000077936  
Units: U.S. Survey Feet.

I, Christopher W. Terry, Registered Professional Land Surveyor, hereby certify that this description and accompanying plat of even date represent an actual survey performed on the ground.

  
\_\_\_\_\_  
Christopher W. Terry  
Registered Professional Land Surveyor  
Texas Registration No. 6649  
Doucet & Associates  
Cterry@DoucetEngineers.com  
TBPELS Firm Registration No. 10105800

04/12/2022

Date



**FIELD NOTES DESCRIPTION - TRACT 2****1.150 ACRES**

DESCRIPTION OF 1.150 ACRES OF LAND SITUATED IN THE LYDIA GLASGOW SURVEY NO. 14, ABSTRACT NO. 188, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 1.150 ACRES AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** at a 1/2 inch iron rod found in the interior of R.M. Highway No. 12 (R.O.W. varies), being, the common north corner of that called 4.337 acre tract described as "Tract One" in the Warranty Deed to the City of San Marcos, of record in Volume 1080, Page 874, Official Public Records of Hays County, Texas, and that called 0.464 acre tract described as "Parcel 65" in Exhibit "C" in the Special Warranty Deed to the County of Hays, of record in Volume 4264, Page 511, Official Public Records of Hays County, Texas, being the northwest corner of that called 0.14 acre tract described as "Easement Tract IV" in the Easement Agreement between The Frost National Bank, Trustee of the Joseph Freeman Testamentary Trust, and the City of San Marcos, of record in Volume 1239, Page 104, Official Public Records of Hays County, Texas;

**THENCE** S 66°45'57" E, through the interior of said R.M. Highway No. 12, with the north line of said 0.464 acre tract and said 0.14 acre easement tract, also with a portion of the north lines of said 6.4500 acre tract and that called 0.611 acre tract described as "Easement Tract III" in said Easement Agreement of record in Volume 1239, Page 104, passing at a distance of 451.60 feet a TXDOT type II monument found for the common north corner of said 0.464 acre tract and that called 6.4500 acre tract of land described in the Special Warranty Deed to the City of San Marcos, of record in Volume 3100, Page 712, Official Public Records of Hays County, Texas, continuing for a total distance of 1336.77 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found at the intersection of the south right-of-way line of said R.M. Highway No. 12 with the east right-of-way line of said Wonder World Drive, for the **POINT OF BEGINNING**, being an angle point in the northerly line of said 659.9 acre remainder tract and also an angle point in the northerly line of said 6.4500 acre tract, for the northwest corner of the tract described herein;

**THENCE** S 66°45'57" E, continuing with the north line of said 0.611 acre easement tract and also with the south right-of-way line of said R.M. Highway No. 12 and a portion of the north line of said 659.9 acre remainder tract, with the north line of the tract described herein, a distance of 544.90 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found at the intersection of the south right-of-way line of said R.M. Highway No. 12 with the north right-of-way line of Old Ranch Road 12 (R.O.W. varies), being an angle point in the

northerly lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the northeast corner of the tract described herein;

**THENCE** leaving the south right-of-way line of said R.M. Highway No. 12 and the north line of said 0.611 acre easement tract, with the curving north right-of-way line of said Old Ranch Road 12, also with the curving northerly interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the east line of the tract described herein, the following three (3) courses and distances:

1. with the arc of a curve to the left, having a radius of 560.00 feet, an arc length of 174.70 feet, and a chord which bears S 68°05'29" W, a distance of 173.99 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found,
2. S 58°43'50" W, a distance of 47.47 feet to a TXDOT type II monument found, and
3. S 75°23'37" W, a distance of 54.82 feet to a TXDOT type II monument found at the intersection of the north right-of-way line of said Old Ranch Road 12 with the east right-of-way of said Wonder World Drive, being an angle point in the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, for the most southerly corner of the tract described herein;

**THENCE** leaving the north right-of-way line of said Old Ranch Road 12 and with the east right-of-way line of said Wonder World Drive, also with the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, with the west line of the tract described herein, with the arc of a curve to the left, having a radius of 1997.36 feet, an arc length of 402.79 feet, and a chord which bears N 37°39'28" W, a distance of 402.11 feet to the **POINT OF BEGINNING** and containing 1.150 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, South Central Zone, NAD83, Grid.



**FIELD NOTES DESCRIPTION - TRACT 3****2.303 ACRES**

DESCRIPTION OF 2.303 ACRES OF LAND SITUATED IN THE LYDIA GLASGOW SURVEY NO. 14, ABSTRACT NO. 188, HAYS COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF THAT CALLED 659.9 ACRE TRACT (ONE HALF UNDIVIDED INTEREST), DESCRIBED IN THE SPECIAL WARRANTY DEED FROM HAROLD M. FREEMAN, A SINGLE MAN, TO FROST NATIONAL BANK, INDEPENDENT EXECUTOR & TRUSTEE UNDER THE WILL OF JOSEPH FREEMAN (DECEASED), OF RECORD IN VOLUME 359, PAGE 863, DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 653.045 ACRES BEING COMPRISED OF TRACT 1 (649.592 ACRES), TRACT 2 (1.150 ACRES) AND TRACT 3 (2.303 ACRES), AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found in the east right-of-way line of said Wonder World Drive, being an angle point in the northerly line of said 659.9 acre remainder tract and an angle point in the easterly line of that called 6.4500 acre tract of land described in the Special Warranty Deed to the City of San Marcos, of record in Volume 3100, Page 712, Official Public Records of Hays County, Texas, same being the most northerly corner of that called 6.8059 acre tract of land described in the Special Warranty Deed to the City of San Marcos, of record in Volume 3197, Page 401, Official Public Records of Hays County, Texas, same being an angle point in the westerly line of that called 114 acre tract described as "Tract 1" in the Executor's Deed to Marla D. Sams & Marvin C. Wills, Jr., Co-Trustees of the Marvin C. Wills Family Trust, of record in Volume 3394, Page 424, Official Public Records of Hays County, Texas, for the most southerly corner and **POINT OF BEGINNING** of the tract described herein, from which a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found in the west right-of-way line of said Wonder World Drive, being an angle point in the northerly line of said 659.9 acre remainder tract, same being the most southerly corner of said 6.4500 acre tract, same being the northwest corner of said 6.8059 acre tract, bears, S 35°27'05" W, a distance of 243.79 feet;

**THENCE** with the east right-of-way line of said Wonder World Drive, also with the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, with the west line of the tract described herein, the following two (2) courses and distances:

1. N 19°34'42" W, a distance of 83.03 feet to a TXDOT type II monument found at the beginning of a curve to the left,
2. with the arc of said curve to the left, having a radius of 2009.86 feet, an arc length of 276.89 feet, and a chord which bears N 23°34'40" W, a distance of 276.67 feet to a 1/2 inch iron rod with plastic cap stamped "BCG" set at the intersection of the east right-of-way line of said Wonder World Drive with the south right-of-way line of said Old Ranch Road 12, being an angle point in the interior lines of said 659.9 acre remainder

tract and said 6.4500 acre tract, for the most westerly corner of the tract described herein;

**THENCE** leaving the east right-of-way line of said Wonder World Drive and with the south right-of-way line of said Old Ranch Road 12, also with the interior lines of said 659.9 acre remainder tract and said 6.4500 acre tract, with the north line of the tract described herein, the following three (3) courses and distances:

1. N 37°48'08" E, a distance of 46.59 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found,
2. N 58°50'07" E, a distance of 47.11 feet to a 1/2 inch iron rod with a 1-1/2 inch aluminum cap stamped "Texas Dept of Tran" found at the beginning of a curve to the right, and
3. with the arc of said curve to the right, having a radius of 440.00 feet, an arc length of 390.22 feet, and a chord which bears N 84°25'07" E, a distance of 377.56 feet to a painted hole found in concrete being the most easterly corner of said 6.4500 acre tract and an angle point in the easterly line of said 659.9 acre remainder tract, also being in the west line of said 114 acre remainder tract, for the most easterly corner of the tract described herein,

**THENCE** S 35°28'03" W, with a portion of the east line of said 659.9 acre remainder tract and also with a portion of the west line of said 114 acre remainder tract, with the east line of the tract described herein, a distance of 527.61 feet to the **POINT OF BEGINNING** and containing 2.303 acres of land, more or less.

BEARING BASIS: Texas Coordinate System, South Central Zone, NAD83, Grid.

### FIELD NOTES DESCRIPTION

DESCRIPTION OF 14.062 ACRES (312,548 SQUARE FEET) OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT No. 490 AND THE LYDIA GLASGOW SURVEY No. 14, ABSTRACT No. 188, HAYS COUNTY, TEXAS; BEING A PORTION OF TRACT 1: {a} 114 ACRES CONVEYED TO MARCIE B. WILLS, ET. AL., RECORDED IN TRUST DISTRIBUTION DEED INSTRUMENT No. 16043487, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY TEXAS (O.P.R.H.C.TX.); SAID 14.062 ACRES OF LAND AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD. AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½-inch iron rod with a 1-½-inch aluminum cap stamped TX.D.O.T. found on the northeasterly right-of-way line of Wonder World Drive (right-of-way width varies), at the southwesterly corner of the herein described tract and being a common corner to a 2.303 acre tract conveyed to Lazy Oaks Ranch, LP, recorded in Volume 4931 at page 450, designated as Tract 2, O.P.R.H.C.TX. and to a called 6.8059 acres conveyed to the City of San Marcos, recorded in Volume 3197 at Page 401, O.P.R.H.C.TX., from which a TXDOT Type I concrete monument, found, on said northeasterly right-of-way line, bears North 19 degrees 34 minutes 44 seconds West, a distance of 82.92 feet; in addition, from said beginning point a ½-inch iron rod with a 1-½-inch aluminum cap stamped TX.D.O.T. found on the southwesterly right-of-way line of said drive and at a southwesterly corner of said 6.8059 acres, bears South 35 degrees 26 minutes 58 seconds West, a distance of 243.80 feet;

**THENCE**, leaving said northeasterly right-of-way and said 6.8059 acres and continuing along the easterly line of said 2.303 acre tract North 35 degrees 29 minutes 39 seconds East, a distance of 527.62 feet, to a calculated point at the northeasterly corner of said 2.303 acre tract and a corner of the herein described tract;

**THENCE**, continuing along said easterly line North 35 degrees 29 minutes 39 seconds East, a distance of 11.66 feet to a calculated point on the southern right-of-way line of Old Ranch Road 12 (right-of-way width varies) at the northwesterly corner of the herein described tract;

**THENCE**, leaving said easterly line and continuing along said southern right-of-way line for the following two (2) courses and distances;

- 1.) South 66 degrees 39 minutes 22 seconds East, a distance of 261.53 feet to a TXDOT Type I concrete monument found at a corner of the herein described tract;
- 2.) 481.55 feet along the arc of a curve turning to the left, having a radius of 3869.72 feet and a chord that bears South 70 degrees 28 minutes 09 seconds East, a distance of 481.24 feet, to a ½-inch iron rod found at the northeasterly corner of the herein described tract and at the northwesterly corner to an 8.661 acre partition (Tract 2: North Portion) of Tract 1: {b} 17.45 acres conveyed to Marice B. Wills, Et. Al., recorded in Trust Distribution Deed Instrument No. 16043487, O.P.R.H.C.TX., from which a ½-inch iron rod with a 1-½-inch aluminum cap stamped "CMR/PROTECH SURVEYING RPLS 4288", found on said southern right-of-way line, bears South 79 degrees 41 minutes 36 seconds East, a distance of 239.59 feet;

**THENCE**, leaving said southern right-of-way and continuing along the westerly line of said 8.661 acre partition South 36 degrees 40 minutes 50 seconds West, a distance of 1210.09 feet, to a ½-inch iron rod with a plastic cap stamped "BCG" set on the northeasterly right-of-way line of Wonder World Drive (right-of-way width varies), at the southeasterly corner of the herein described tract and being common corner to said 8.661 acre partition and to aforesaid 6.8059 acres, from which a ½-inch iron rod with a plastic cap stamped "JC EVANS" found bears South 18 degrees 57 minutes 09 seconds West, a distance of 2.17 feet; in addition, from said corner a ½-inch iron rod with a 1-½-inch aluminum cap stamped TX.D.O.T., found on said northeasterly right-of-way line at the common corner of said 8.661 acre partition and said 6.8059 acres, bears South 19 degrees 38 minutes 00 seconds West, a distance of 403.95 feet;

**THENCE**, leaving said westerly line and continuing with said 6.8059 acres along said northeasterly right-of-way line North 19 degrees 38 minutes 00 seconds West, a distance of 845.05 feet to the **POINT OF BEGINNING** and containing 14.062 acres (312,548 square feet) of land, more or less.

**BEARING BASIS:** Texas Coordinate System, NAD 83, South Central Zone, Grid.


BOWMAN WORD FILE: FN2359

THE STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF TRAVIS         §

That I, Terry L. Rowe, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined a survey made on the ground in December 2019, under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on this 04 day of February 2020 A.D.

Bowman Consulting Group, Ltd.  
Austin, Texas 78746



Terry L. Rowe  
Registered Professional Land Surveyor  
No. 5493 – State of Texas



8.661 acre ~ 377,274 sq. ft. (Tract 2: North Portion)  
John Williams Survey, A-471; John Williams survey, A-490;  
Lydia Glasgow Survey No. 14, A-188  
Hays County, Texas

Job No. 005956-01-108

FN2358(sf)  
Page 1 of 2

### FIELD NOTES DESCRIPTION

DESCRIPTION OF 8.661 ACRES (377,274 SQUARE FEET) OF LAND SITUATED IN THE JOHN WILLIAMS SURVEY, ABSTRACT No. 471, THE JOHN WILLIAMS SURVEY, ABSTRACT No. 490 AND THE LYDIA GLASGOW SURVEY No. 14, ABSTRACT No. 188, HAYS COUNTY, TEXAS; BEING A PORTION OF TRACT 1: {b} 17.45 ACRES CONVEYED TO MARCIE B. WILLS, ET. AL., RECORDED IN TRUST DISTRIBUTION DEED INSTRUMENT No. 16043487, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY TEXAS (O.P.R.H.C.TX.); SAID 8.661 ACRES OF LAND AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD. AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½-inch iron rod with a 1-½-inch aluminum cap stamped TX.D.O.T. found on the northeasterly right-of-way line of Wonder World Drive (right-of-way varies), the southeasterly corner of the herein described tract, and being a common corner to Partition Deed Tract 1: 17.45 acres conveyed to Marion H. Wills, recorded in Volume 2530 at page 720, O.P.R.H.C.TX. and to called 6.8059 acres conveyed to the City of San Marcos, recorded in Volume 3197 at Page 401, O.P.R.H.C.TX., from said beginning point a ½-inch iron rod with a 1-½-inch aluminum cap stamped TX.D.O.T., found on the southwesterly right-of-way line of said drive and at the southwesterly corner of said 6.8059 acres, bears South 32 degrees 28 minutes 22 seconds West, a distance of 253.66 feet;

**THENCE**, leaving said Partition Deed Tract 1: 17.45 acres and continuing with said 6.8059 acres along said northeasterly right-of-way line North 19 degrees 38 minutes 00 seconds West, a distance of 403.95 feet, to a ½-inch iron rod with a plastic cap stamped "BCG" set at the southwesterly corner of the herein described tract and being a common corner to said 6.8059 acres and a 14.062 acre partition (Tract 1: North Portion) of Tract 1: {a} 114 acres conveyed to Marice B. Wills, Et. Al., recorded in Trust Distribution Deed Instrument No. 16043487, O.P.R.H.C.TX., from which a ½-inch iron rod with a plastic cap stamped "JC EVANS" found bears South 18 degrees 57 minutes 09 seconds West, a distance of 2.17 feet;

**THENCE**, leaving said 6.8059 acres and said northeasterly right-of-way line and continuing along the easterly line of said 14.062 acre partition North 36 degrees 40 minutes 50 seconds East, a distance of 1210.09 feet, to a ½-inch iron rod found on the southern right-of-way line of Old Ranch Road 12 (right-of-way width varies), the northwesterly corner of the herein described tract, and being a common corner to said 14.062 acre partition, from which a TXDOT Type I concrete monument found on said southern right-of-way line bears North 70 degrees 28 minutes 09 seconds West, a distance of 481.24 feet;

**THENCE**, leaving said 14.062 acre partition and continuing along said southern right-of-way line 239.63 feet along the arc of a curve turning to the left, having a radius of 3869.72 feet and a chord that bears South 75 degrees 41 minutes 36 seconds East, a distance of 239.59 feet, to a ½-inch iron rod with a 1-½-inch aluminum cap stamped "CMR/PROTECH SURVEYING RPLS 4288" found at the northeasterly corner of the herein described tract and being a common corner to aforesaid Partition Deed Tract 1: 17.45 acres, from which a ½-inch iron rod, found, on said southern right-of-way line, bears South 79 degrees 13 minutes 57 seconds East, a distance of 239.76 feet;

**THENCE**, leaving said southern right-of-way line and continuing along the westerly line of aforesaid Partition Deed Tract 1: 17.45 acres South 32 degrees 23 minutes 07 seconds West, a distance of 1529.64 feet, to the **POINT OF BEGINNING** and containing 8.661 acres (377,274 square feet) of land, more or less.

8.661 acre ~ 377,274 sq. ft. (Tract 2: North Portion)  
John Williams Survey, A-471; John Williams survey, A-490;  
Lydia Glasgow Survey No. 14, A-188  
Hays County, Texas

Job No. 005956-01-108

FN2358(sf)  
Page 2 of 2

**BEARING BASIS:** Texas Coordinate System, NAD 83, South Central Zone, Grid.

BOWMAN WORD FILE: FN2358(sf)

THE STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF TRAVIS         §

That I, Terry L. Rowe, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined a survey made on the ground in December 2019, under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on this 04 day of February 2020 A.D.

Bowman Consulting Group, Ltd.  
Austin, Texas 78746

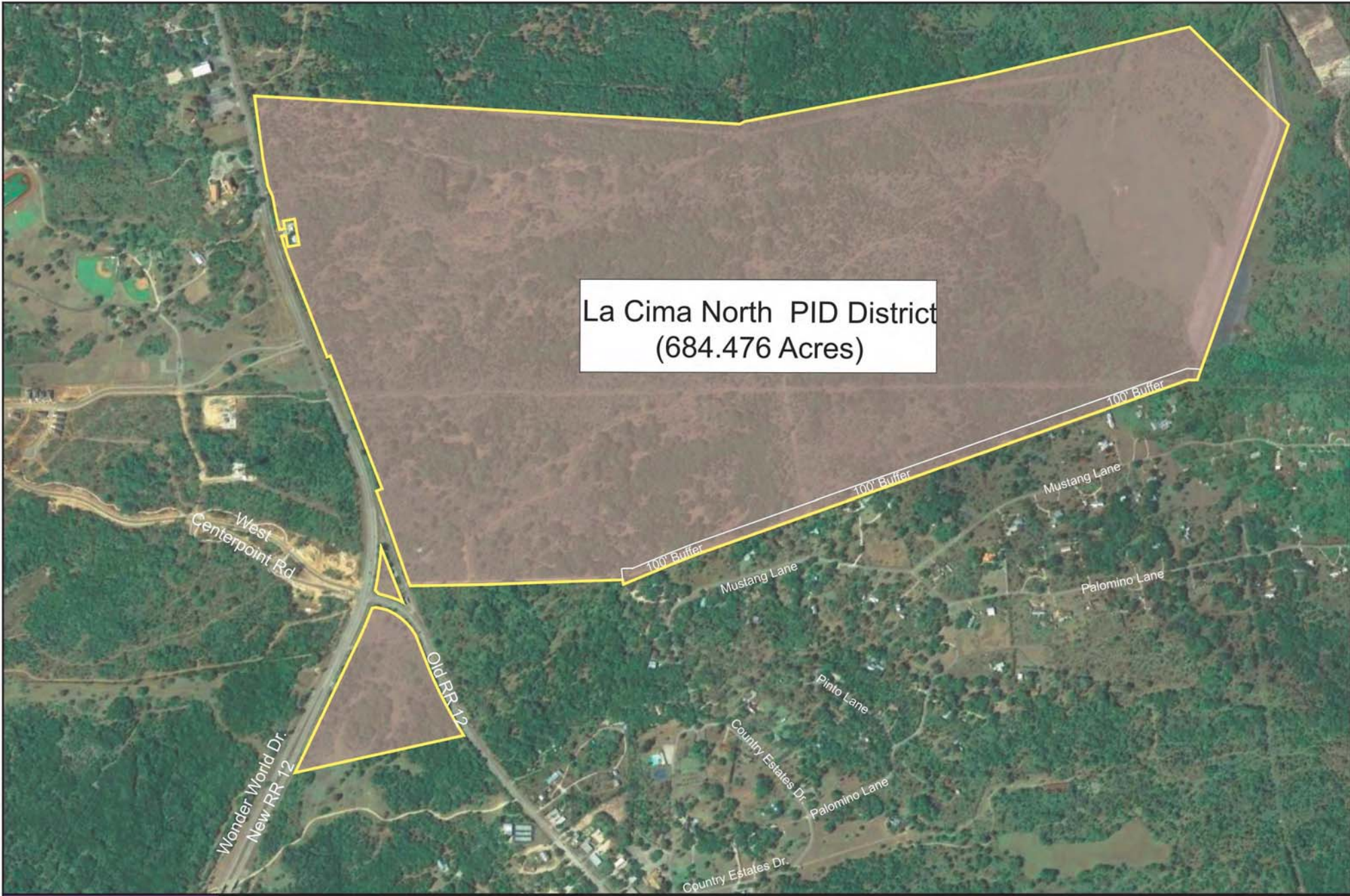
  
\_\_\_\_\_  
Terry L. Rowe  
Registered Professional Land Surveyor  
No. 5493 – State of Texas



**Exhibit “C” to Financing Agreement**

100 Ft Tree Preservation/Open Space Landscape Buffer Setback Along Country Estates  
Boundary





La Cima  
San Marcos

PID MAP - La Cima North District

SCALE : 1" = 300'  
DATE : 09-02-2022



712 Congress Avenue, Suite 300  
Austin, TX 78701  
Tel: (512) 480-0032 Fax: (512) 480-0617  
www.rvplanning.com



All information furnished regarding this property is based on the best available information. The information is provided for informational purposes only and is not intended to constitute an offer of any financial product or service. The information is provided as is and is not intended to constitute an offer of any financial product or service. The information is provided as is and is not intended to constitute an offer of any financial product or service. The information is provided as is and is not intended to constitute an offer of any financial product or service.



**Exhibit “D” to Financing Agreement**

**FORM OF CERTIFICATION FOR PAYMENT**

**CERTIFICATION FOR PAYMENT  
(La Cima North Public Improvement District)**

**CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

The undersigned \_\_\_\_\_ (the “**Construction Manager**”) requests payment from the [\_\_\_\_\_] Account of the Project Fund][Reimbursement Account][Reimbursement Fund] established by Hays County, Texas (the “**County**”) in the amount of \$\_\_\_\_\_ for labor, design, materials, fees, and/or other general costs related to the acquisition or construction of certain Public Improvements providing a special benefit to property within the La Cima North Public Improvement District (the “**District**”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the La Cima North Public Improvement District Financing Agreement (the “**Financing Agreement**”).

In connection with the above referenced payment, the Construction Manager represents and warrants to the County as follows:

1. The undersigned is a duly authorized officer of the Construction Manager, is qualified to execute this Certification for Payment Form No. \_\_\_\_\_ on behalf of the Construction Manager and is knowledgeable as to the matters set forth herein.
2. The work described in Attachment A has been completed in the percentages stated therein.
3. The Certification for Payment for the below referenced Public Improvements has not been the subject of any prior Certification for Payment submitted for the same work to the County or, if previously requested, no disbursement was made with respect thereto.
4. The amounts listed for Actual Costs of the Public Improvements, as set forth in Attachment A, is a true and accurate representation of the Actual Costs associated with the acquisition, design or construction of said Public Improvements, and such costs (i) are in compliance with the Financing Agreement [and the Acquisition and Reimbursement Agreement], and (ii) are consistent with the Service and Assessment Plan.
5. Following is an itemized list of all deposits to and disbursements from (i) the [\_\_\_\_\_] Account of the Project Fund, (ii) the Reimbursement Account and (iii) the Reimbursement Fund.

<u>Account</u>	<u>Deposits</u>	<u>Disbursements</u>
[_____] Account of the	\$	\$
Project Fund		Certification for Payment Form No. ____
	\$	\$

<b>Total</b>	\$	Certification for Payment Form No. ____ \$
Reimbursement Account	\$	\$
	\$	Certification for Payment Form No. ____ \$
<b>Total</b>	\$	Certification for Payment Form No. ____ \$
Reimbursement Fund	\$	\$
	\$	Certification for Payment Form No. ____ \$
<b>Total</b>	\$	Certification for Payment Form No. ____ \$

6. The Construction Manager is in compliance with the terms and provisions of the Financing Agreement[, Acquisition and Reimbursement Agreement], the Service and Assessment Plan [and the Continuing Disclosure Agreement of the Developer between the Construction Manager, P3Works, LLC and \_\_\_\_\_].
7. The Construction Manager has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity under common control with the Construction Manager owes, located in the District and has no outstanding delinquencies for such taxes and assessments.
8. [All conditions set forth in the Indenture for the payment hereby requested have been satisfied.]
9. The work with respect to the Public Improvements referenced below (or its Segment) has been completed, and the County or the City, as applicable, has inspected [and accepted] such Public Improvements (or its completed Segment). *[Include bracketed language if final progress payment for such Public Improvement]*
10. The Construction Manager agrees to cooperate with the County in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the County to complete said review.
11. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for the Public Improvements identified may be paid until the work with respect to such Public Improvements (or Segment thereof) has been completed and the County has accepted such Public Improvements (or Segment thereof). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Public Improvements (or Segment thereof).
12. [Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work described in Attachment A has been

paid in full for all work completed through the previous Certification for Payment.][***Include bracketed language if final progress payment for such Public Improvement***]

13. Attached hereto as Attachment C are invoices, receipts, purchase orders, change orders, and similar instruments, which are in sufficient detail to allow the County to verify the Actual Costs for which payment is requested.
14. Also attached hereto as Attachment D are any lender consents or approvals that the Construction Manager may be required to obtain under any loan documents relating to the District.
15. [Attached hereto as Attachment E is a two-year maintenance bond for the Public Improvements (or its completed Segment) accepted by the City or the County, as applicable.] [***Include bracketed language if final progress payment for such Public Improvement (or Segment thereof)***]
16. Pursuant to the Financing Agreement, after receiving this Certification for Payment, the County has inspected [and accepted] the completed Public Improvements and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations. [***Include bracketed language if final progress payment for such Public Improvement***]
17. [TO BE USED IF PID BONDS HAVE BEEN ISSUED: The Owner confirms that payment of the amounts requested in this Certification for Payment, taking into account all prior payments for the Public Improvements and the amount of work related to the Public Improvements remaining to be completed as of the date of this Certification for Payment will not cause the amounts on deposit in the [Project Fund] available to pay Actual Costs of the Public Improvements[, plus ***Insert fiscal security provided in accordance with Section 3.05(b) of the Financing Agreement***] to fall below the amount necessary to complete the remaining Public Improvements.]
18. [TO BE USED IF REQUESTING FUNDS FROM THE REIMBURSEMENT FUND UNDER THE INDENTURE: The Construction Manager represents that, in requesting funds from the Reimbursement Fund, the [ ] Account of the Project Fund has been fully depleted.]

(Signature pages follow)

I hereby declare that the above representations and warranties are true and correct.

**[INSERT APPLICABLE NAME], as  
CONSTRUCTION MANAGER**

By: \_\_\_\_\_

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

Title: Manager

## JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

[\_\_\_\_\_]

By:\_\_\_\_\_

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

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

**APPROVAL OF CERTIFICATION FOR PAYMENT BY COUNTY**

The County is in receipt of the attached Certification for Payment Form No. \_\_\_\_, acknowledges the Certification for Payment, acknowledges that the Public Improvements (or its Segment) covered by the certificate have been inspected by the County, and otherwise finds the Certification for Payment Form No. \_\_\_\_ to be in order. After reviewing the Certification for Payment Form, the County approves the Certification for Payment Form No. \_\_\_\_ [and shall direct the Trustee to make payment from the [\_\_\_\_ Account of the Project Fund][Reimbursement Account][Reimbursement Fund] to the Construction Manager or to any person designated by the Construction Manager].

**HAYS COUNTY, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT A TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

<u>Segment</u>	Description of Work Completed under this <u>Certification for Payment</u>	Total Actual Costs of <u>Public Improvements</u> \$
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**ATTACHMENT B TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

***[Include Attachment B if final progress payment for such Public Improvement]***

**[bills paid affidavit and release of liens - attached]**



**ATTACHMENT C TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

## INVOICE LEDGER

[illegible]

**[INVOICES AND/OR RECEIPTS - ATTACHED]**

**ATTACHMENT D TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

**[lender consents or approvals - attached]**

**ATTACHMENT E TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

***[Include Attachment E if final progress payment for such  
Public Improvement or Segment thereof]***

**[two-year maintenance bond - attached]**

## Exhibit “E” to Financing Agreement

### FORM OF CLOSING DISBURSEMENT REQUEST

#### CLOSING DISBURSEMENT REQUEST (La Cima North Public Improvement District)

The undersigned is a lawfully authorized representative for **[INSERT APPLICABLE NAME]** (the “Owner”) and requests payment from the [Costs of Issuance Account of the Project Fund] (as defined in Financing Agreement) from [\_\_\_\_\_] (the “Trustee”) in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) to be transferred from the [Cost of Issuance Account of the Project Fund] upon the delivery of the **[INSERT NAME OF APPLICABLE PID BONDS]** (the “Bonds”) for costs incurred relating to the issuance and sale of the Bonds for the La Cima North Public Improvement District (the “District”), as follows.

In connection to the above referenced payment, the Owner represents and warrants to the County as follows:

1. The undersigned is a duly authorized officer of the Owner and is qualified to execute this Closing Disbursement Request on behalf of the Owner, and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced costs of issuance at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the County.

3. The amount listed for the below itemized costs is a true and accurate representation of the Bond Issuance Costs incurred by Owner at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan. The itemized costs are as follows:

**[insert itemized list of costs here]**

TOTAL REQUESTED: \$ \_\_\_\_\_

4. The Owner is in compliance with the terms and provisions of the Financing Agreement, [the Acquisition and Reimbursement Agreement,] the applicable Indenture, and the Service and Assessment Plan.

5. All conditions set forth in the Indenture and [the Acquisition and Reimbursement Agreement for \_\_\_\_\_] for the payment hereby requested have been satisfied.

6. The Owner agrees to cooperate with the County in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the County to complete its review.

Payments requested hereunder shall be made as directed below:

***[Information regarding Payee, amount, and deposit instructions]***

I hereby declare that the above representations and warranties are true and correct.

**[INSERT APPLICABLE NAME]**

By:\_\_\_\_\_

### **APPROVAL OF REQUEST BY COUNTY**

The County is in receipt of the attached Closing Disbursement Request. After reviewing the Closing Disbursement Request, the County approves the Closing Disbursement Request and shall include said payments in the Certificate submitted to the Trustee directing payments to be made from Costs Issuance Account of the Project Fund upon delivery of the Bonds.

HAYS COUNTY, TEXAS

By: \_\_\_\_\_

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

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

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



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Mike Jones

Sponsor:

Commissioner Shell

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### Agenda Item:

Discussion and possible action to accept a Proposal from Water & Earth Technologies (WET) related to the replacement of the pressure transducer on Wayside Drive, authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D), and amend the budget accordingly. **SHELL/MIKE JONES**

### Summary:

The pressure transducer at Wayside Drive is slowly deteriorating. WET visited the station and determined that the pressure transducer is failing and needs to be replaced. WET will remove the broken pressure transducer, install the new one and field test it to confirm that it is working correctly. This quote assumes that the old conduit is in good shape and allows the new PT to be pulled through without problems

### Fiscal Impact:

Amount Requested: 4,021.80

Line Item Number: 001-656-00.5719\_400

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$4,022 - Increase Misc. Equipment\_Ops 001-656-00.5719\_400

(\$4,022) - Decrease Software Maintenance 001-656-00.5429

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D) for captive replacement parts or components for equipment.

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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### Attachments

Wayside PT

Signed Exemption Letter



06/16/2023

Quotation XPHC052

**Prepared for:**

Hays County - Office of Emergency Services  
Attn: Mike Jones  
810 South Stagecoach Trail  
San Marcos, TX 78666

**Federal Tax Identification No.**

84-1440328

**Quote Valid Thru**

08/15/2023

**Prepared by:**

**Water & Earth Technologies, Inc.**

40504 Weld County Road 17  
Severance, CO 80524  
Phone (970) 225-6080  
email: RNiedenis@wetec.us

**Quote Title: Wayside Drive Pressure Transducer Replacement**

**Quote Information**

The pressure transducer at Wayside Drive is slowly deteriorating. WET visited the station and determined that the pressure transducer is failing and needs to be replaced. WET will remove the broken pressure transducer, install the new one and field test it to confirm that it is working correctly. This quote assumes that the old conduit is in good shape and allows the new PT to be pulled through without problems.

Item Description	Model No.	Unit Price	Qty	Amount
Stainless-Steel Pressure Transducer	CS451	\$ 1,891.80	1	\$ 1,891.80
Shipping		\$ 75.00	1	\$ 75.00
				\$ -
				\$ -
				\$ -
Items Total				\$ 1,966.80

Labor Description	ENG I Hours	Field Tech II Hours	Amount
Remove the old PT	2	2	\$ 550.00
Install the new PT	6	6	\$ 1,290.00
Field testing the new PT	1	1	\$ 215.00
			\$ -
			\$ -
Labor Total			\$ 2,055.00

**Total Cost \$ 4,021.80**

**Thank you for your consideration!**



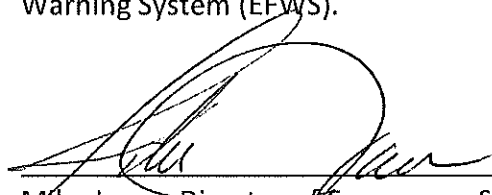
Hays County Commissioners Court

July 11, 2023

Water & Earth Technologies: Wayside Drive & York Creek

Attn: County Clerk

As per requirements to authorize a discretionary exemption per Texas Local Government Code 262.024(a)(7)(D), the Emergency Services Department Water Earth and Technologies as a sole source provider to provide replacement parts and accessories for the Hays County Early Flood Warning System (EFWS).

A handwritten signature in black ink, appearing to read "Mike Jones", is written over a horizontal line.

Mike Jones, Director of Emergency Services



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Mike Jones

Sponsor:

Commissioner Ingalsbe

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### Agenda Item:

Discussion and possible action to accept a Proposal from Water & Earth Technologies (WET) related to upgrading the York Creek Flasher 3 to an Advance Notice Flasher and authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D). **INGALSBE/MIKE JONES**

### Summary:

Remote flasher 3 is no longer able to communicate with the master station. This is due to an increase in foliage between the two locations. It has deteriorated the long radio path between the 2 900Mhz radios. The solution would be to turn flasher 3 into a stand-alone advance notice flasher much like the one at Trautwein or Wayside. WET has enough spare parts to accomplish this.

### Fiscal Impact:

Amount Requested: \$1,525

Line Item Number: 001-656-00.5411

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024 (a)(7)(D) for captive replacement parts or components for equipment.

G/L Account Validated Y/N?: Yes, Equipment Maintenance and Repair

New Revenue Y/N?: N/A

Comments:

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### Attachments

Flasher 3 @ York Creek

Signed Exemption Letter



06/16/2023

Quotation XPHC052

**Prepared for:**

Hays County - Office of Emergency Services  
Attn: Mike Jones  
810 South Stagecoach Trail  
San Marcos, TX 78666

**Federal Tax Identification No.**

84-1440328

**Quote Valid Thru**

08/15/2023

**Prepared by:**

**Water & Earth Technologies, Inc.**

40504 Weld County Road 17  
Severance, CO 80524  
Phone (970) 225-6080  
email: RNiedenzu@wetec.us

**Quote Title: York Creek Flasher 3 upgrade to Advance Notice Flasher**

**Quote Information**

Remote flasher 3 is no longer able to communicate with the master station. This is due to an increase in foliage between the two locations. It has deteriorated the long radio path between the 2 900Mhz radios. The solution would be to turn flasher 3 into a stand-alone advance notice flasher much like the one at Trautwein or Wayside. We have enough spare parts to accomplish this.

Item Description	Model No.	Unit Price	Qty	Amount
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
<b>Items Total</b>				<b>\$ -</b>

Labor Description	ENG I Hours	Field Tech II Hours	Amount
Configure spare parts for Advance Notice Flasher functionality	3	0	\$ 450.00
Install new components at the flasher	4	4	\$ 860.00
Field testing the new configuration	1	1	\$ 215.00
			\$ -
			\$ -
<b>Labor Total</b>			<b>\$ 1,525.00</b>

<b>Total Cost</b>	<b>\$ 1,525.00</b>
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**Thank you for your consideration!**

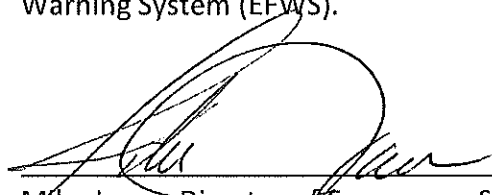
Hays County Commissioners Court

July 11, 2023

Water & Earth Technologies: Wayside Drive & York Creek

Attn: County Clerk

As per requirements to authorize a discretionary exemption per Texas Local Government Code 262.024(a)(7)(D), the Emergency Services Department Water Earth and Technologies as a sole source provider to provide replacement parts and accessories for the Hays County Early Flood Warning System (EFWS).

A handwritten signature in black ink, appearing to read "Mike Jones", is written over a horizontal line.

Mike Jones, Director of Emergency Services



AGENDA ITEM REQUEST FORM: K. 6.

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Smith

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### Agenda Item

Discussion and possible action to approve the appointment of David Edwards as the Hays County representative to the Board of Commissioners of the Texas Housing Foundation, a Texas regional housing authority. **SMITH**

### Summary

The Court recently passed a resolution on or about June 6, 2023 admitting Hays County as a member of the Texas Housing Foundation, a Texas Regional Housing Authority which is authorized to provide affordable housing to lower income residents.

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### Attachments

David Edwards Bio

David Edwards

Austin, Tx 78737

#### BACKGROUND -

Born and reared in Slaton, Texas, a small town near Lubbock

#### EDUCATION -

Graduated from Texas Tech with a BBA in Finance

#### CAREER –

Began banking career with community banks in Houston area. Moved to San Marcos as officer of Hays County National Bank, now Wells Fargo. Moved to Dripping Springs in 1983 with Dripping Springs National Bank, now Wells Fargo Bank. Retired as Sr. Vice President from Broadway Bank in Dripping Springs in 2016.

#### CIVIC ACTIVITIES -

In Dripping Springs, where he has lived since 1983, Dave has served several terms on the board of the Chamber of Commerce, has served on the board of the Lions Club, as an active member of the Rotary Club, and on the city's Economic Development Committee.

#### Current activities -

Chair of the DS City Tax Increment Reinvestment Zone

Chair of Hometown Missions, a local non-profit serving housing needs of low-income residents

Treasurer of Board of Directors of Hill Country Senior Citizens Center

Board Member of LOOMC Charities in Dripping Springs

Elder of Hill Country Bible Church Dripping Springs



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Smith

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### Agenda Item:

Discussion and possible action to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and American Legion Post 290 Dripping Springs regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **SMITH**

### Summary:

Funds can only be used by Grantee for the agreed upon capital expenditures to respond to public health needs from the direct and indirect impacts of COVID-19.

Attachment: ARPA Agreement  
PW

### Fiscal Impact:

Amount Requested: \$5,605.00

Line Item Number: 011-763-99-159.5600\_036

### Budget Office:

Source of Funds: American Rescue Plan Act (ARPA) Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$5,605) - Increase Intergovernmental Revenue 011-763-99-159.4301

\$5,605 - Increase American Legion Post 290 Project Contributions 011-763-99-159.5600\_036

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: ARPA Beneficiary Agreement

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$5,605 from ARPA 2nd tranche

Comments:

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### Attachments

ARPA Agreement -AL Post 290 DS  
PW & Grant Application

# **HAYS COUNTY AMERICAN RESCUE PLAN RECOVERY GRANT AGREEMENT**

PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY, CONSULT WITH YOUR COUNSEL AS APPROPRIATE, AND DO NOT SIGN IT IF YOU HAVE ANY QUESTIONS, AS YOUR SIGNATURE BELOW BINDS YOU TO EACH OF THE REPRESENTATIONS AND OBLIGATIONS DETAILED IN THIS AGREEMENT.

This Agreement is entered into by and between Hays County (“Hays County”) and Harold Leung, Finance Officer, of American Legion Post 290 Dripping Springs (“Beneficiary”), located at PO Box 1413, Dripping Springs, TX 78620 on the date below written.

## **SECTION 1 – FUNDING**

The parties acknowledge that funding for this Agreement comes solely as a grant made of a sum not to exceed \$5,605.00 in funds received from Hays County allocation of American Rescue Plan (ARP) State and Local Fiscal Recovery Fund (SLFRF), CSLFRF Assistance Listing Number Hays County ALN 21.027. As such, ARP funding must be administered by Hays County for utilization in accordance with eligible ARP activities as described under subsection (c)(1) of Section 603 of Title VI of the Social Security Act, as added by Section 9901 of ARP. Hays County does not have any obligation or commitment whatsoever (1) to provide Beneficiary with funds from any other source, or (2) to provide any sum in excess of the amount above set forth allocated hereunder by Hays County. Any public mention of the Grant shall acknowledge Hays County as Funder. Printed copies of said acknowledgement shall be provided to Hays County.

## **SECTION 2 - EXPENDITURES ELIGIBLE FOR GRANT**

Grant funds may be used to mitigate Beneficiary’s financial hardship from the increased costs and revenue loss as a result of the public health emergency or its negative economic impacts. Through the grant the Beneficiary will be able to recover decreased revenue and increased costs.

## **SECTION 3 – BENEFICIARY REPRESENTATIONS AND OBLIGATIONS**

Funds are provided to Beneficiary to support continued operations of Beneficiary’s current Hays County business/special-purpose unit of local government /non-profit entity (501(c)(3) and 501(c)(19) organizations only).

Beneficiary acknowledges that the use of Grant funds can only be used for working capital to mitigate and recover from the extraordinary expenses and revenue loss resulting from the shutdowns and other direct and indirect impacts of COVID-19. The use of grant funds for prohibited expenses or investments may result in an action to recover funds misspent, with interest and such costs as may be allowable by law.



Grantee certifies, warrants and represents that Beneficiary is in full compliance with and not delinquent in payment of any taxation to which Beneficiary is subject, Beneficiary is a special-purpose unit of local government or a 501(c)(3) or a 501(c)(19) or is a small business that has no more than five hundred (500) full-time equivalent employees as of July 11, 2023 or is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and that Beneficiary fully qualifies for receipt of federal funds originally disbursed to Hays County to address negative economic impacts associated with the COVID-19 pandemic.

Beneficiary will provide and cooperate with any information and documentation requests necessary to evaluate compliance with this Agreement, including, without limitation, applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). Additionally, Beneficiary will provide and cooperate with any information and documentation requests necessary to support subrecipient compliance with administration of ARP funding, including reporting requirements contained in subsection (d) of Section 603 of Title VI of the Social Security Act.

By signing below, *Beneficiary certifies that all of the following statements are true:*

- The business/special-purpose unit of local government /non-profit (501(c)(3) or 501(c)(19) entity only) is located in Hays County and has a valid license or authorization to operate in the State of Texas.
- The Beneficiary is either:
  - A special-purpose unit of local government
  - A 501(c)(3); or
  - A 501(c)(19); or
  - A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632); or
  - A small business that has no more than 500 payroll employees as of July 11, 2023.
- The Beneficiary experienced a financial loss or hardship due to the COVID-19 crisis and the working capital need to be supported by this grant is connected to the COVID-19 emergency and subsequent recovery.
- Beneficiary agrees and certifies that the funds will be spent for working capital expenses, and are not required to be used to pay for governmental related expenses (i.e. taxes, licenses, or governmental fees.)
- The working capital will be used to continue operations of the business/special-purpose unit of local government /non-profit entity.
- Beneficiary will return any unused funds to Hays County if the business awarded goes out of business before all of the funds are spent.
- Beneficiary has not been suspended or debarred in connection with any federal procurement.
- Beneficiary is not actively pursuing a bankruptcy declaration.
- Beneficiary does not have any Federal, State or Local Tax Liens.
- Beneficiary is not any of the following:
  - K-12 School
  - College or university

- Library
  - A nonprofit *other than* a 501(c)(3) or (19).
- Additionally, by signing below:
  - Beneficiary certifies that it has not received Funding (private, state, or federal) for the same expenses covered by the proceeds of this grant.
  - Beneficiary certifies that 0 employees were employed by the business/special-purpose unit of local government/non-profit as of July 11, 2023.

#### **SECTION 4 - NONDISCRIMINATION CLAUSE**

During the performance of this Agreement, Beneficiary covenants and agrees to comply with all federal and state nondiscrimination laws, including but not limited to, 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA).

#### **SECTION 5 – MISCELLANEOUS**

A. Compliance with Laws: Beneficiary covenants and agrees to comply with all existing applicable laws, ordinances, codes, regulations, and lawful orders of local, state and federal governments (including the publicly available terms of the Grant), all as now in effect or hereafter amended.

B. Unilateral Termination: Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

C. Survival: The terms, conditions and obligations undertaken by the parties herein that by their sense and context are intended to survive the completion of performance or earlier termination of the Agreement shall so survive. Termination shall not in any event terminate this Agreement with respect to any actions or omissions by Beneficiary made or taken before such termination.

D. Defense and Indemnity: Beneficiary agrees to defend, indemnify and hold Hays County, its officers, directors, agents, employees and assigns from and against any and all claims, suits, judgments or orders resulting or alleged to have resulted from this Grant Agreement or Beneficiary's performance or lack thereof hereunder.

E. No Third-Party Beneficiary: This Agreement shall not be construed as a third-party beneficiary contract, being exclusively between the named parties herein, and is not entered into for the benefit of Beneficiary's creditors irrespective of status.

F. Dispute Resolution: Except as otherwise provided herein, if a bona fide dispute arises among the parties, their respective chief executives will confer in an effort to negotiate a resolution within ten (10) business days such dispute arises. This effort shall precede any judicial or quasi-judicial action with respect thereto, provided that the failure or refusal of any party to participate in such negotiate shall eliminate this condition precedent to judicial or quasi-judicial action.

G. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, to the jurisdiction of which the parties hereby submit. Venue in any suit arising out of this Agreement shall lie in a District Court in Hays County, Texas, or in the United States District Court—Western District, Austin Division, if applicable.

H. Assignment: Neither this Agreement nor any right or claim hereunder shall be transferred or assigned by Beneficiary without the prior consent of Hays County which consent may be withheld for any reason deemed sufficient by Hays County.

I. Notices: Notices may be hand delivered or emailed. In each case when delivered, or sent first class US Mail postage prepaid effective three business days after mailing, and in any case to the person and address indicated below or if different, to the address indicated in the last notice provided by the other party.

J. Severability: If any term or condition hereof, or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other terms, conditions or applications of the Agreement that can be given effect without such term, condition or application, to which end the terms hereof are declared severable.

K. Integration: This Agreement and any exhibits hereto represent the entire agreement between the parties. No other understandings, oral or written in any form, shall be binding upon any party hereto, provided that Beneficiary's application for the Grant shall remain effective for purposes of inducing the Grant.

L. Public Disclosure: The transaction evidenced by this Agreement is subject to such publicity & public records accessibility as Hays County, or their designees may from time to time determine. This right shall expressly survive termination of this Agreement for any reason. Beneficiary understands that any assurance in any form to the contrary is unauthorized and void.

All of the above is understood and confirmed as accurate and the Beneficiary as eligible and agreed to as a condition of accepting the Grant under this Agreement created July 11, 2023 through December 31, 2026.

## **SECTION 6 – PAYMENT**

A. Amount of Grant: The amount to be paid to the Beneficiary for the provision and administration of Eligible Activities under this Grant Agreement shall be the total budget amount included in the Section 1 of this Grant Agreement, payable as follows: Fifty percent (50%) of the total amount of SLFRF Funds (Initial Payment) authorized under this Grant Agreement shall be payable upon execution of this Agreement and the remaining fifty percent (50%) of the SLFRF Funds authorized under this Agreement (Final Payment), shall be payable upon verification of expenditure of Initial Payment, validation of actual expenditures and subject to compliance with the voucher procedures as described below. Beneficiary will be required to provide documentation of (a) deposit of funds into the Beneficiary's bank account, (b) provide support from the general ledger showing expenditures, and (c) provide invoice or payroll support for those expenditures.

B. Vouchers; Voucher Review, Approval and Audit: Initial Payment and Final Payment shall be made to the Beneficiary as authorized in Section 6 (A) above and shall be expressly contingent upon (i) the Beneficiary submitting a claim voucher (the "Voucher") in a form satisfactory to the County, that (a) states with reasonable specificity the Eligible Activities performed and the payment requested as reimbursement for such Eligible Activities, (b) certifies that the Eligible Activities performed and the payment requested are in accordance with the terms of this Grant Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, including, where applicable, a certified payroll statement setting forth the names, positions and salaries paid by the Beneficiary during the preceding month, and (ii) review, approval and audit of the Voucher by the County Auditor or his or her duly designated representative (the "Auditor"). Drawdowns for the payment of eligible expenses shall be made against the Eligible Activities specified herein and in accordance with applicable performance requirements.

**(SIGNATURES TO FOLLOW ON NEXT PAGE)**

**IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates written below.**

BENEFICIARY: American Legion Post 290 Dripping Springs

Owner Name: Harold Leung

Owner Title: Finance Officer

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

Hays County

Ruben Becerra

Hays County Judge

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



# HCTX111\_American Legion Post 290 Dripping Springs

HAYS COUNTY ARPA SLFRF PROJECT

# HCTX111\_American Legion Post 290 Dripping Springs

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# 1 AMERICAN LEGION POST 290 DRIPPING SPRINGS

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## 1.1 DESIGNATING A PUBLIC HEALTH IMPACT

The American Legion Post 290 Dripping Springs is a 501(C)(19) nonprofit organization comprised of veterans and active-duty military service members committed to mentoring and sponsorship of youth programs in local communities, advocating patriotism and honor, promoting a strong national security, and continued devotion to our fellow service members and veterans.

American Legion Post 290 Dripping Springs meets the 1st Thursday of every month at Patriots' Hall at 231 Patriots Hall Blvd, off Hwy 290, in Dripping Springs TX 78620.<sup>1</sup>

American Legion Post 290 Dripping Springs funds support programs such as Youth Leadership Program for Boys, Youth Leadership Program for Girls, and Wreaths Across America.

American Legion Post 290 Dripping Springs income sources are member dues, donations, and fundraising events. They also work with Dripping Springs VFW to do the parking concession for the Dripping Springs Founders Day event, with the monies raised being equally shared between the two groups.

In 2019 they were able to raise \$9,153. But in 2020 COVID-19 group and crowd restrictions prohibited in-person fund raising events and the Dripping Springs Founders Day Festival from being held, reducing their funding by \$5,129.

*Figure 1: AL Post 290 DS – Meeting Location*



## 1.2 DESIGNING A RESPONSE TO A PANDEMIC HARM

American Legion Post 290 Dripping Springs monthly bank statements show deposits for 2019, 2020, and 2021 document a \$5,129 decrease in revenue due to a pandemic-related decrease in contributions and fund raising. American Legion Post 290 Dripping Springs has less than \$50,000 in gross income and is not required to submit Form-990s. They are also not required to produce quarterly audits to a district or national commander.

Under the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Responding to the public health emergency or its negative economic impacts eligible use category, Hays County will mitigate American Legion Post 290 Dripping Springs financial hardship from the revenue loss. Through a grant of \$5,605 Dripping Springs VFW will be able to:

- Recover decreased revenue

The Final Rule enumerated Assistance to Nonprofits, defining them as 501(c)(3)s or (19)s, as an eligible use in which recipients could consider declines in revenues, e.g., from donations and fees, or increased

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<sup>1</sup> Figure 1 Google Earth Imagery



costs, e.g., uncompensated increases in service need, or technical assistance, as impacts of the pandemic.

### 1.3 PROGRAM SUMMARY

American Legion Post 290 Dripping Springs provided their IRS confirmation of submission of Form 900-N 9e-Postcard) to support their eligibility as a beneficiary under the SLFRF. In 2020, COVID-19 group and crowd restrictions prohibited in-person fund raising events and the Dripping Springs Founders Day Festival from being held, reducing their funding by \$5,129.

The validation and cost reasonableness analysis determined Dripping Springs VFW can demonstrate a pandemic related harm up to \$5,605 the second year of the pandemic. Dripping Springs VFW award is \$5,605.

## 2 COMPARATIVE ANALYSIS

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### 2.1 REASONABLENESS & PROPORTIONALITY

Due to the pandemic American Legion Post 290 Dripping Springs saw a reduction in its revenue, which is primarily funded by member dues, donations, and fundraising events.

Income recorded in their monthly bank statements for the years 2018 to 2021, include(s) membership dues, donations, and monies from fund raising events; however, there were no deposits for Founder's Day in 2020 and 2021 as the event was cancelled both years due to Covid-19 Group and Crowd Restrictions. Expenses included liability insurance, office supplies, and U.S. Postal Service costs.

The ARPA SLFRF grant is critical to help American Legion Post 290 Dripping Springs recover lost revenue experienced as a result of the COVID-19 pandemic. Table 1 shows there was a 56% drop in revenue from 2019 to 2020. Using the revenue loss formula provided by 31 CFR Part 35<sup>2</sup> to measure revenue loss against a pre-pandemic baseline in accordance with the US Treasury's revenue loss calculation, Dripping Springs VFW's loss of revenue is \$5,605 for 2020.

*Table 1: Revenue Loss*

	2019	2020
Total Revenue	9,153	4,024
		(5,129)
		-56%
Projected Growth		\$9,629
Revenue Loss		(5,605)

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<sup>2</sup> 31 CFR Part 35 Final Rule, C. Revenue Loss, Step 2, Footnote 282, "the final rule updates the percentage to 5.2% as shown in Step 2".

## 3 ELIGIBILITY

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### 3.1 FINAL RULE<sup>3</sup>

Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of “specifically those that are 501(c)(3) or 501(c)(19) tax exempt organizations”.

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- Decreased revenue, e.g., from reduced contributions

When a recipient provides funds to address that impact, it is then providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603 of Title VI of the Social Security Act, amended by ARPA. Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- Loans or grants to mitigate financial hardship

#### 3.1.1 Disproportionately Impacted Communities

“The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: 1) COVID-19 mitigation and prevention, 2) medical expenses, 3) behavioral health care, and 4) preventing and responding to violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: 1) assistance to households, 2) assistance to small businesses, and 3) assistance to nonprofits”. These categories include enumerated eligible uses for impacted and disproportionately impacted beneficiaries<sup>4</sup>

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<sup>3</sup> 31 CFR Part 35 - PANDEMIC RELIEF PROGRAMS Subpart A— CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

<sup>4</sup> 31 CFR Part 35 Final Rule A. Public Health and Negative Economic Impacts 1. General Provisions: Structure and Standards, Rule Structure



## American Rescue Plan State and Local Fiscal Recovery Fund Grant Application

### Applicant Information

<u>Applicant Name</u>	AMERICAN LEGION POST 290 DRIPPING SPRINGS		
<u>Address</u>	PO BOX 1413		
<u>City</u>	DRIPPING SPRINGS	<u>State</u>	TX
<u>Zip Code</u>	78620		
<u>Organization Type</u>	501 (c)(19)		
<u>Telephone</u>	347-684-3572		
<u>Point of Contact</u>	HAROLD LEUNG		
<u>Title</u>	FINANCE OFFICER		
<u>DUNS, UEI, or EIN Number</u>	74-2755099		
<u>Amount Requested</u>	\$5,605.00		

### Eligibility

- 1 Is the Organization a 501(c)(3), 501(c)(19), or a special-purpose units of local government?  
Yes
- 2 Is the organization located in Hays County and possessing a valid license or authorization to operate in the State of Texas?  
Yes
- 3 Is the Organization currently in operation?  
Yes
- 4 What is the Period of Performance for this grant?  
March 3, 2021 through December 31, 2026
- 5 Does anyone with any ownership or other financial or management control of this Organization work for Hays County, or have any other conflict of interest with Hays County?  
Yes

Our 1st Vice Commander John Burns is Hays County Justice of the Peace Precinct 4.
- 6 Has any federal, state, or local funding been received for this service or program?  
No



6a If yes to 6, provide information including:

Name of Funding Source	
Amount	
Date Received	
Other	

## Eligibility Documentation

7 Proof of 501(c)(3), 501(c)(19), or special-purpose units of local government :

Form 990 IRS Filing 2019 or later	X
IRS Determination Letter	
Texas Exemption Verification Letter	
Other	
Specify:	

8 Documents showing increased cost due to the pandemic:

Proof of Payment (general ledger, canceled check, electronic funds transfer, etc.)	
Invoices for Costs	
Estimates for Costs	
Labor Hours and Rates	
Change Orders	
Other	
Specify:	N/A

9 Documents showing the increase in need generated by the pandemic:

Specify:	N/A
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10 Documents showing decreased revenue:

Other	
Specify:	Bank statements



## Certifications

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- 11 I certify that organization does not and shall not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.

Initials

HWL  
HWL 6/15/2023

- 12 Maintenance of Records: If granted an award applicant will retain financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to the award for a period of three years from the date of submission of the final expenditure report.

Initials

HWL  
HWL 6/15/2023

- 13 Financial and Audit Management: The applicant will be required to follow the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) (the Uniform Guidance).

Initials

HWL  
HWL 6/15/2023

Harold Leung  
Signature

Harold Leung  
Print Name

Finance Officer  
Title

15-Jun-23  
Date





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Smith

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### Agenda Item:

Discussion and possible action to authorize the County Judge to execute the Hays County American Rescue Plan Recovery Grant Agreement between Hays County and Buda VFW Post 12161 regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **SMITH**

### Summary:

Funds can only be used by Grantee for working capital to mitigate and recover from the extraordinary expense and revenue loss resulting from the shutdowns and other direct and indirect impacts of COVID-19.

Attachment: Grant Agreement  
PW

### Fiscal Impact:

Amount Requested: \$21,203.00

Line Item Number: 011-763-99-159.5600\_037

### Budget Office:

Source of Funds: American Rescue Plan Act (ARPA) Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$21,203) - Increase Intergovernmental Revenue 011-763-99-159.4301

\$21,203 - Increase American Legion Post 290 Project Contributions 011-763-99-159.5600\_037

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: ARPA Beneficiary Agreement

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$21,203 from ARPA 2nd tranche funding

Comments:

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### Attachments

ARPA Agreement - Buda VFW 12161  
PW & Grant Agreement

# **HAYS COUNTY AMERICAN RESCUE PLAN RECOVERY GRANT AGREEMENT**

PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY, CONSULT WITH YOUR COUNSEL AS APPROPRIATE, AND DO NOT SIGN IT IF YOU HAVE ANY QUESTIONS, AS YOUR SIGNATURE BELOW BINDS YOU TO EACH OF THE REPRESENTATIONS AND OBLIGATIONS DETAILED IN THIS AGREEMENT.

This Agreement is entered into by and between Hays County (“Hays County”) and Frank Mendez, Principal Officer of VFW Post 12161 (“Beneficiary”), located at P.O. Box 12161, Buda, TX 78610 on the date below written.

## **SECTION 1 – FUNDING**

The parties acknowledge that funding for this Agreement comes solely as a grant made of a sum not to exceed \$21,203.00 in funds received from Hays County allocation of American Rescue Plan (ARP) State and Local Fiscal Recovery Fund (SLFRF), CSLFRF Assistance Listing Number Hays County ALN 21.027. As such, ARP funding must be administered by Hays County for utilization in accordance with eligible ARP activities as described under subsection (c)(1) of Section 603 of Title VI of the Social Security Act, as added by Section 9901 of ARP. Hays County does not have any obligation or commitment whatsoever (1) to provide Beneficiary with funds from any other source, or (2) to provide any sum in excess of the amount above set forth allocated hereunder by Hays County. Any public mention of the Grant shall acknowledge Hays County as Funder. Printed copies of said acknowledgement shall be provided to Hays County.

## **SECTION 2 - EXPENDITURES ELIGIBLE FOR GRANT**

Grant funds may be used to mitigate Beneficiary’s financial hardship from the increased costs and revenue loss as a result of the public health emergency or its negative economic impacts. Through the grant the Beneficiary will be able to recover decreased revenue and increased costs.

## **SECTION 3 – BENEFICIARY REPRESENTATIONS AND OBLIGATIONS**

Funds are provided to Beneficiary to support continued operations of Beneficiary’s current Hays County business/special-purpose unit of local government /non-profit entity (501(c)(3) and 501(c)(19) organizations only).

Beneficiary acknowledges that the use of Grant funds can only be used for working capital to mitigate and recover from the extraordinary expenses and revenue loss resulting from the shutdowns and other direct and indirect impacts of COVID-19. The use of grant funds for prohibited expenses or investments may result in an action to recover funds misspent, with interest and such costs as may be allowable by law.

Grantee certifies, warrants and represents that Beneficiary is in full compliance with and not delinquent in payment of any taxation to which Beneficiary is subject, Beneficiary is a special-purpose unit of local government or a 501(c)(3) or a 501(c)(19) or is a small business that has no more than five hundred (500) full-time equivalent employees as of July 11, 2023 or is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632), and that Beneficiary fully qualifies for receipt of federal funds originally disbursed to Hays County to address negative economic impacts associated with the COVID-19 pandemic.

Beneficiary will provide and cooperate with any information and documentation requests necessary to evaluate compliance with this Agreement, including, without limitation, applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). Additionally, Beneficiary will provide and cooperate with any information and documentation requests necessary to support subrecipient compliance with administration of ARP funding, including reporting requirements contained in subsection (d) of Section 603 of Title VI of the Social Security Act.

By signing below, *Beneficiary certifies that all of the following statements are true:*

- The business/special-purpose unit of local government /non-profit (501(c)(3) or 501(c)(19) entity only) is located in Hays County and has a valid license or authorization to operate in the State of Texas.
- The Beneficiary is either:
  - A special-purpose unit of local government
  - A 501(c)(3); or
  - A 501(c)(19); or
  - A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632); or
  - A small business that has no more than 500 payroll employees as of July 11, 2023.
- The Beneficiary experienced a financial loss or hardship due to the COVID-19 crisis and the working capital need to be supported by this grant is connected to the COVID-19 emergency and subsequent recovery.
- Beneficiary agrees and certifies that the funds will be spent for working capital expenses, and are not required to be used to pay for governmental related expenses (i.e. taxes, licenses, or governmental fees.)
- The working capital will be used to continue operations of the business/special-purpose unit of local government /non-profit entity.
- Beneficiary will return any unused funds to Hays County if the business awarded goes out of business before all of the funds are spent.
- Beneficiary has not been suspended or debarred in connection with any federal procurement.
- Beneficiary is not actively pursuing a bankruptcy declaration.
- Beneficiary does not have any Federal, State or Local Tax Liens.
- Beneficiary is not any of the following:
  - K-12 School
  - College or university



- Library
  - A nonprofit *other than* a 501(c)(3) or (19).
- Additionally, by signing below:
  - Beneficiary certifies that it has not received Funding (private, state, or federal) for the same expenses covered by the proceeds of this grant.
  - Beneficiary certifies that 0 (zero) employees were employed by the business/special-purpose unit of local government/non-profit as of July 11, 2023.

#### **SECTION 4 - NONDISCRIMINATION CLAUSE**

During the performance of this Agreement, Beneficiary covenants and agrees to comply with all federal and state nondiscrimination laws, including but not limited to, 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA).

#### **SECTION 5 – MISCELLANEOUS**

A. Compliance with Laws: Beneficiary covenants and agrees to comply with all existing applicable laws, ordinances, codes, regulations, and lawful orders of local, state and federal governments (including the publicly available terms of the Grant), all as now in effect or hereafter amended.

B. Unilateral Termination: Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.

C. Survival: The terms, conditions and obligations undertaken by the parties herein that by their sense and context are intended to survive the completion of performance or earlier termination of the Agreement shall so survive. Termination shall not in any event terminate this Agreement with respect to any actions or omissions by Beneficiary made or taken before such termination.

D. Defense and Indemnity: Beneficiary agrees to defend, indemnify and hold Hays County, its officers, directors, agents, employees and assigns from and against any and all claims, suits, judgments or orders resulting or alleged to have resulted from this Grant Agreement or Beneficiary's performance or lack thereof hereunder.

E. No Third-Party Beneficiary: This Agreement shall not be construed as a third-party beneficiary contract, being exclusively between the named parties herein, and is not entered into for the benefit of Beneficiary's creditors irrespective of status.

F. Dispute Resolution: Except as otherwise provided herein, if a bona fide dispute arises among the parties, their respective chief executives will confer in an effort to negotiate a resolution within ten (10) business days such dispute arises. This effort shall precede any judicial or quasi-judicial action with respect thereto, provided that the failure or refusal of any party to participate in such negotiate shall eliminate this condition precedent to judicial or quasi-judicial action.

G. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, to the jurisdiction of which the parties hereby submit. Venue in any suit arising out of this Agreement shall lie in a District Court in Hays County, Texas, or in the United States District Court—Western District, Austin Division, if applicable.

H. Assignment: Neither this Agreement nor any right or claim hereunder shall be transferred or assigned by Beneficiary without the prior consent of Hays County which consent may be withheld for any reason deemed sufficient by Hays County.

I. Notices: Notices may be hand delivered or emailed. In each case when delivered, or sent first class US Mail postage prepaid effective three business days after mailing, and in any case to the person and address indicated below or if different, to the address indicated in the last notice provided by the other party.

J. Severability: If any term or condition hereof, or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other terms, conditions or applications of the Agreement that can be given effect without such term, condition or application, to which end the terms hereof are declared severable.

K. Integration: This Agreement and any exhibits hereto represent the entire agreement between the parties. No other understandings, oral or written in any form, shall be binding upon any party hereto, provided that Beneficiary's application for the Grant shall remain effective for purposes of inducing the Grant.

L. Public Disclosure: The transaction evidenced by this Agreement is subject to such publicity & public records accessibility as Hays County, or their designees may from time to time determine. This right shall expressly survive termination of this Agreement for any reason. Beneficiary understands that any assurance in any form to the contrary is unauthorized and void.

All of the above is understood and confirmed as accurate and the Beneficiary as eligible and agreed to as a condition of accepting the Grant under this Agreement created July 11, 2023 through December 31, 2026.

## **SECTION 6 – PAYMENT**

A. Amount of Grant: The amount to be paid to the Beneficiary for the provision and administration of Eligible Activities under this Grant Agreement shall be the total budget amount included in the Section 1 of this Grant Agreement, payable as follows: Fifty percent (50%) of the total amount of SLFRF Funds (Initial Payment) authorized under this Grant Agreement shall be payable upon execution of this Agreement and the remaining fifty percent (50%) of the SLFRF Funds authorized under this Agreement (Final Payment), shall be payable upon verification of expenditure of Initial Payment, validation of actual expenditures and subject to compliance with the voucher procedures as described below. Beneficiary will be required to provide documentation of (a) deposit of funds into the Beneficiary's bank account, (b) provide support from the general ledger showing expenditures, and (c) provide invoice or payroll support for those expenditures.

B. Vouchers; Voucher Review, Approval and Audit: Initial Payment and Final Payment shall be made to the Beneficiary as authorized in Section 6 (A) above and shall be expressly contingent upon (i) the Beneficiary submitting a claim voucher (the "Voucher") in a form satisfactory to the County, that (a) states with reasonable specificity the Eligible Activities performed and the payment requested as reimbursement for such Eligible Activities, (b) certifies that the Eligible Activities performed and the payment requested are in accordance with the terms of this Grant Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, including, where applicable, a certified payroll statement setting forth the names, positions and salaries paid by the Beneficiary during the preceding month, and (ii) review, approval and audit of the Voucher by the County Auditor or his or her duly designated representative (the "Auditor"). Drawdowns for the payment of eligible expenses shall be made against the Eligible Activities specified herein and in accordance with applicable performance requirements.

**(SIGNATURES TO FOLLOW ON NEXT PAGE)**

**IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates written below.**

BENEFICIARY: VFW Post 12161

Owner Name: Frank Mendez

Owner Title: Commander ( as of July 1, 2023)

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

Hays County

Ruben Becerra

Hays County Judge

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



# HCTX111\_Buda VFW Post 12161

HAYS COUNTY ARPA SLFRF PROJECT

# HCTX111\_Buda VFW Post 12161

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# 1 BUDA VFW POST 12161 OVERVIEW

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## 1.1 DESIGNATING A PUBLIC HEALTH IMPACT

The Veterans of Foreign Wars (VFW) of the United States is a nonprofit organization comprised of eligible veterans and military service members from the active, guard and reserve forces whose mission is to ensure that veterans are respected and recognized for their service and sacrifice and always receive their earned entitlements. Buda VFW Post 12161 (Buda VFW) is a 501(C)(19) where members must be past or present members of the United States Armed Forces.

Buda VFW meets the 3<sup>rd</sup> Wednesday of every month at Buda City Hall, 405 E. Loop Street, Building 100, Buda City Hall and Public Library, Buda, TX 78610.<sup>1</sup>

Buda VFW's funds support veterans and their families.

Programs such as relief to help older, sick, or disabled veterans and yearly scholarship(s) contests to award a local Teacher, Doctor, Firefighter, or Police Officer are examples of support.

Buda VFW's income sources include member dues, donations, and fundraising events. Prior to June 2020, they were housed at a city-owned building at 100 Houston St, Buda, TX 78610 and they also received income from renting rooms in that building as meeting space to veteran-owned businesses.

*Figure 1: Buda VFW Post 12161 – Meeting Location  
Buda City Hall, 78610*



In June 2020, Buda VFW was unable to manage room rentals and building maintenance due to pandemic lockdowns. It was decided that the Buda VSO Alliance (Buda VFW, AmVets, American Legion & Riders, and F7 Group) would become the property manager for the building at 100 Houston Street, and Buda VFW was to turn over the monies in their Building Fund.

In 2019 they were able to raise over \$40,000. But in 2020 COVID-19 group and crowd restrictions prohibited collection of fees from renting rooms to local veteran-owned businesses, fund-raising events, and payment from their Building Fund (\$3,130) toward the management of their former meeting location, reducing their funding by \$19,113.

## 1.2 DESIGNING A RESPONSE TO A PANDEMIC HARM

Buda VFW Trustees' Report of Audit quarterly reports 2019 (\$40,198) and 2020 (\$21,085) document a \$19,113 decrease in revenue due to a pandemic-related decrease in contributions and fund raising. Buda VFW has less than \$50,000 in gross income and is not required to submit Form-990s. VFW Posts are required to produce quarterly audits to the Post Trustee.

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<sup>1</sup> Figure 1 Hays Free Press June 20, 2018 [Buda City Hall to open for business by end of July, Library set for August](https://www.haysfreepress.com/news/buda-city-hall-to-open-for-business-by-end-of-july-library-set-for-august) ([haysfreepress.com](https://www.haysfreepress.com))

Under the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) Responding to the public health emergency or its negative economic impacts eligible use category, Hays County will mitigate Buda VFW's financial hardship from the revenue loss. Through a grant of \$21,203 Buda VFW will be able to:

- Recover decreased revenue

The Final Rule enumerated Assistance to Nonprofits, defining them as 501(c)(3)s or (19)s, as an eligible use in which recipients could consider declines in revenues, e.g., from donations and fees, or increased costs, e.g., uncompensated increases in service need, or technical assistance, as impacts of the pandemic.

### 1.3 PROGRAM SUMMARY

Buda VFW provided their quarterly reports for 2018, 2019, and 2020 to support their eligibility as a beneficiary under the SLFRF. In 2020, COVID-19 group and crowd restrictions prohibited in-person fund raising events reducing their funding by \$19,113.

The validation and cost reasonableness analysis determined Buda VFW can demonstrate a pandemic related harm up to \$21,203 the first year of the pandemic. Buda VFW award is \$21,203.

## 2 COMPARATIVE ANALYSIS

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### 2.1 REASONABLENESS & PROPORTIONALITY

Due to the pandemic Buda VFW saw a reduction in its revenue, which is primarily funded by contributions and grants.

Income and expenses recorded in their General Fund includes dues, donations, and monies from fund raising events. This is used for most income and expenses that are not dedicated to specific item(s), e.g., Poppies on Memorial Day and Veterans Day. Funds for specific items are:

Relief Fund: income from the distribution of Buddy Poppies on Memorial Day and Veterans Day. This money is used ONLY for relief to help older or sick or disabled veterans.

Building Fund: used for renovation and maintenance of their former meeting location a 100 Houston St; monies now used to help maintain meeting location within Patriots' Hall

Life membership: receipt of partial paid membership dues back from VFW National to assist a Post Veteran in need that could not pay their dues. The assistance is voted on by members.

Honor Guard/Flag Fund: monies are used to purchase uniforms and flags for events such as parades.

Scholarship: are awarded annually via contests to local teachers, doctors, etc.; the scholarships are required by VFW National.

Museum Fund: Donations and fundraisers to create the Veterans Museum that was located inside of their former meeting hall at 100 Houston Street



The ARPA SLFRF grant is critical to help Buda VFW post 21261 recover lost revenue experienced as a result of the COVID-19 pandemic. Table 1 shows there was a 48% decrease in revenue from 2019 to 2020. Using the revenue loss formula provided by 31 CFR Part 35<sup>2</sup> to measure revenue loss against a pre-pandemic baseline in accordance with the US Treasury's revenue loss calculation, Buda VFW's loss of revenue is \$21,203.32 for 2020.

*Table 1: Revenue Loss*

	2019	2020
Total Revenue	40,198	21,085
		(19,113)
		-48%
Projected Growth		\$42,288
Revenue Loss		(21,203)

### 3 ELIGIBILITY

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#### 3.1 FINAL RULE<sup>3</sup>

Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of “specifically those that are 501(c)(3) or 501(c)(19) tax exempt organizations”.

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- Decreased revenue, e.g., from reduced contributions

When a recipient provides funds to address that impact, it is then providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603 of Title VI of the Social Security Act, amended by ARPA. Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- Loans or grants to mitigate financial hardship

##### 3.1.1 Disproportionately Impacted Beneficiaries

“The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: 1) COVID-19 mitigation and prevention, 2) medical expenses, 3) behavioral health care, and 4) preventing and responding to

<sup>2</sup> 31 CFR Part 35 Final Rule, C. Revenue Loss, Step 2, Footnote 282, “the final rule updates the percentage to 5.2% as shown in Step 2”.

<sup>3</sup> 31 CFR Part 35 - PANDEMIC RELIEF PROGRAMS Subpart A— CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: 1) assistance to households, 2) assistance to small businesses, and 3) assistance to nonprofits”. These categories include enumerated eligible uses for impacted and disproportionately impacted beneficiaries<sup>4</sup>

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<sup>4</sup> 31 CFR Part 35 Final Rule A. Public Health and Negative Economic Impacts 1. General Provisions: Structure and Standards, Rule Structure

## American Rescue Plan State and Local Fiscal Recovery Fund Grant Application

### Applicant Information

<u>Applicant Name</u>	VFW POST 12161		
<u>Address</u>	P.O. Box 1271		
<u>City</u>	BUDA	<u>State</u>	TX
<u>Zip Code</u>	78610		
<u>Organization Type</u>	501 (C)(19)		
<u>Telephone</u>	(512) 466-0090		
<u>Point of Contact</u>	FRANK MENDEZ		
<u>Title</u>	COMMANDER		
<u>DUNS, UEI, or EIN Number</u>	81-4718079		
<u>Amount Requested</u>	\$21,203.00		

### Eligibility

1 Is the Organization a 501(c)(3), 501(c)(19), or a special-purpose units of local government?	Yes	
2 Is the organization located in Hays County and possessing a valid license or authorization to operate in the State of Texas?	Yes	
3 Is the Organization currently in operation?	Yes	
4 What is the Period of Performance for this grant?	March 3, 2021 through December 31, 2026	
5 Does anyone with any ownership or other financial or management control of this Organization work for Hays County, or have any other conflict of interest with Hays County?	No	
6 Has any federal, state, or local funding been received for this service or program?	No	

6a	If yes to 6, provide information including:	
	Name of Funding Source	
	Amount	
	Date Received	
	Other	
<b>Eligibility Documentation</b>		
7	Proof of 501(c)(3), 501(c)(19), or special-purpose units of local government :	
	Form 990 IRS Filing 2019 or later	
	IRS Determination Letter	
	Texas Exemption Verification Letter	
	Other	
	Specify:	Quarterly reporting to Quartermaster
8	Documents showing increased cost due to the pandemic:	
	Proof of Payment (general ledger, canceled check, electronic funds transfer, etc.)	
	Invoices for Costs	
	Estimates for Costs	
	Labor Hours and Rates	
	Change Orders	
	Other	
	Specify:	N/a
9	Documents showing the increase in need generated by the pandemic:	
	Specify:	N/A
10	Documents showing decreased revenue:	
	Other	
	Specify:	Quarterly reporting to Quartermaster

## Certifications

- 11 I certify that organization does not and shall not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.

Initials

jm

- 12 Maintenance of Records: If granted an award applicant will retain financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to the award for a period of three years from the date of submission of the final expenditure report.

Initials

jm

- 13 Financial and Audit Management: The applicant will be required to follow the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) (the Uniform Guidance).

Initials

jm

Signature

Franklin Mendez

Frank Mendez

Print Name

Franklin Mendez

Commander

Title

Date

06/16/2023



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Smith

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### Agenda Item:

Discussion and possible action to authorize the County Judge to execute the Hays County Social Service Funding Agreement between Hays County and Dripping Springs Water Supply Corporation regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **SMITH**

### Summary:

Funds can only be used by Grantee for the agreed upon capital expenditures to respond to public health needs from the direct and indirect impacts of COVID-19.

Attachment: ARPA Agreement  
PW

### Fiscal Impact:

Amount Requested: \$50,000

Line Item Number: 011-763-99-159.5600\_038

### Budget Office:

Source of Funds: American Rescue Plan Act (ARPA) Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$50,000) - Increase Intergovernmental Revenue 011-763-99-159.4301

\$50,000 - Increase American Legion Post 290 Project Contributions 011-763-99-159.5600\_038

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Social Service Funding Agreement

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$50,000 from ARPA 2nd tranche funding

Comments:

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### Attachments

ARPA Agreement - DSWSC

Exhibit A

Exhibit B - Supplemental Conditions

Exhibit C - Sample Expenditure Report

PW - DSWSC

## **HAYS COUNTY SOCIAL SERVICE FUNDING AGREEMENT WITH DRIPPING SPRINGS WATER SUPPLY CORPORATION**

This Social Service Funding Agreement ("the Agreement"), is made by and between **Hays County, Texas** (the "County") located at 712 S. Stagecoach Trail, Suite 1071, Texas 78666, and the **Dripping Springs Water Supply Corporation** (the "Agency"), a non-profit corporation, located at 101 Hays Street, Suite 406 Dripping Springs, Texas 78620.

### **RECITALS**

**WHEREAS**, on March 13, 2020, a Declaration of State of Disaster was issued by Governor Abbott certifying that the novel coronavirus (COVID-19), which has been recognized globally as a contagious respiratory virus, posed an imminent threat of disaster for all counties in Texas; and

**WHEREAS**, on April 12, 2020, Governor Abbott determined that that state of disaster continues to exist due to COVID-19 and issued a Proclamation renewing the disaster declaration for all counties; and

**WHEREAS**, on May 12, 2020, Governor Abbott determined that the state of disaster continues to exist due to COVID-19 and issued a Proclamation further renewing the disaster declaration for all counties; and

**WHEREAS**, as a result of COVID-19 and the response measures taken, the Agency is in need of assistance to meet the additional needs and services of the community, specifically funds to purchase two 400kw generator as a necessary investment in water infrastructure; and

**WHEREAS**, the Agency would like to request funding from the County made available under Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act ("ARPA Act");

**WHEREAS**, the County seeks to implement funding derived from the ARPA Act after March 2, 2021 in order to maximize benefits for Hays County residents; and

**WHEREAS**, the County desires to engage the Agency as a subrecipient to assist the County in utilizing the ARPA Act funds.

**NOW, THEREFORE, WITNESSETH:**

**Recitals.** The recitals to this Agreement are hereby incorporated for all purposes.

1. **Effective Date.** The effective date of this Agreement ("Effective Date") is the date this Agreement has been finally approved by the County. Agency understands that this Agreement is dependent upon the approval of the County.
2. **Term.** The initial term of this Agreement is from the Effective Date to provide ARPA Act funding through December 31, 2024. Unless terminated by either party pursuant to paragraph 4.6, the Agreement will automatically renew for purposes of administering ARPA Act Funds, until December 31, 2024. After 2024, the contract must be revisited by County's governing body.



## **I.**

### **GENERAL OVERVIEW**

- 1.1 Purpose. The County has in good faith determined that this Agreement serves a public purpose. This public purpose includes, but is not limited to, the Agency's efforts to meet the additional needs and services of the community, specifically staffing costs, unemployment insurance costs, professional fees, additional contract services, supplies and related equipment and additional financial assistance, all incurred due to the impact of COVID-19 or in the delivery of public health and safety operations for Hays County residents.
- 1.2 Use of Funds. The Agency understands that the funds provided to it by the County will be used solely for the program services as more particularly described in Exhibit "A", attached hereto and incorporated herein ("Allowable Expenditures").
- 1.3 Distribution of ARPA Act Funds. The County will pay ARPA Act funds during the period that begins on the Effective Date and ends on December 31, 2024. All funding will comply with ARPA program guidelines and services described in Exhibit A as attached.

The Agency agrees to accept the not to exceed amount of \$50,000.00 that will be disbursed from ARPA Act Funds.

## **II.**

### **AGENCY PERFORMANCE REQUIREMENTS**

- 2.1 Subrecipient Status. The County and the Agency agree that the Agency is a Subrecipient as described in 2 C.F.R. §§ 200.93. A Subrecipient is a non-Federal agency that receives a subaward from a pass-through entity to carry out a part of a Federal program. The Agency, as a subrecipient, will be responsible for administering the expenditures of the ARPA Act funds (SLFRF Assistance Listing Number – Hays County ALN 21.027 awarded by United States Department of the Treasury) consistent with the terms and conditions of this Agreement and the Act. As a Subrecipient, the Agency will be responsible for, among other things, determining eligibility for distribution of Federal funds, making programmatic decisions, and taking responsibility for compliance with the ARPA Act and other federal laws.
- 2.2 Single Audit Act. The Allowable Expenditures are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. §§ 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. The Agency agrees to comply with the above.
- 2.3 Allowable Expenditures. The Agency agrees to comply with all applicable federal, state and local laws and regulations governing the expenditure of funds under this Agreement. The Agency shall submit to the County Auditor's office all necessary invoicing and appropriate documentation evidencing expenditures and that said expenditures are Allowable Expenditures. Allowable Expenditures are limited to those expenditures shown on Exhibit "A", attached hereto and incorporated herein. The agency may elect to take the 10% de minimis indirect cost rate allowed



by 2 C.F.R. Part 200. Despite this agreed upon payment, Agency agrees to return to the County the amount representing the prorated amount of the funds unearned if Agency's project progress is insufficient or this agreement is terminated for any reason or if Agency fails in any other respect under this agreement.

- 2.4 County Audit. The Agency agrees to allow the County to review Agency records to determine their compliance with the terms of this Agreement. Agency, during normal business hours shall allow County reasonable access to its records and books and all other relevant records related to the administrative services provided for in this Agreement.

### **III.**

#### **COUNTY PERFORMANCE REQUIREMENTS**

- 3.1 County Payment Responsibility. After receipt of the Agency's invoices, the County will endeavor to pay the Allowable Expenditures as soon as possible, but in any event no more than once monthly. The County shall have no obligation to pay Agency any Allowable Expenses over \$50,000.00 from ARPA Act Funds.

### **IV.**

#### **ADDITIONAL REQUIREMENTS RELATED TOTHE AMERICAN RESCUE PLAN ACT (ARPA) (A.L.N. 21.027)**

- 4.1 Use of Funds
- a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
- 4.2 Scope of Activities; Budget.
- a. Activities. The Agency shall provide and administer the ARPA Act activities with the provisions of this Agreement (hereinafter "Activities").
    - i. Such Activities shall include those activities included in the ARPA Act funds budget attached to this Agreement as Exhibit A.
    - ii. The Agency shall make no unauthorized changes in the ARPA Act Activities as approved by the County; however, amounts allocated to line items within the total amount of the Budget may be transferred without formal amendment among items upon written request by the Agency and approval by the County. All other changes must be amended in accordance with Section V of this Agreement.
  - b. Budget. The Agency has submitted for approval to the County a detailed ARPA Act funds budget; which, in its approved form, is attached hereto as Exhibit A (hereinafter "Budget"). The County

and the Agency may mutually agree to revise said budget from time to time in accordance with existing County policies. The County will pay to Agency ARPA Act funds consistent with Agency's Budget and in accordance with applicable County procedures, if any.

Except for lump sum advance payments authorized by the federal regulations and approved by the County, all payments made by Agency will be made for eligible expenses actually incurred and shall not exceed actual cash requirements.

- 4.3 Period of Performance The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on the Effective Date, and ends on December 31, 2026.
- 4.4 Reporting Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
- 4.5 Payment
- a. Amount of Grant. The amount to be paid to the Agency for the provision and administration of Activities under this Agreement shall be the total budget amount included in the ARPA funds budget attached to this contract as Exhibit A, payable as follows: drawdowns for the payment of eligible expenses shall be made upon Exhibit C, reviewed and approved by Hays County Program Manager for eligibility under the ARPA and for compliance with the terms of this Agreement.
  - b. Vouchers; Voucher Review, Approval and Audit. Payments shall be made to the Agency as a reimbursement and shall be expressly contingent upon (i) the Agency submitting a request on Exhibit C, that (a) states costs of equipment, services, capital expenditures, or other assistance that is used to purchase and install 400kW generators, (b) certifies that the activities performed and the payment requested are in accordance with the terms of this Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, including, where applicable, contracts, invoices, and canceled checks paid by the Agency during the preceding month, and (ii) review, approval and audit of the Exhibit C by the County Program Manager and/or the County Auditor or his or her duly designated representative (the "Auditor"). Drawdowns for the payment of eligible expenses shall be made against the activities specified herein and in accordance with applicable performance requirements.
- 4.6 Insurance Payments Funds may be used to pay for Insurance Premiums for Hays County Residents who are uninsured.
- 4.7 Maintenance of and Access to Records
- a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
- 4.8 Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from

this award.

- 4.9 Administrative Costs Recipient may use funds provided under this award to cover both direct and indirect costs.
- 4.10 Cost Sharing Cost sharing or matching funds are not required to be provided by Recipient.
- 4.11 Conflicts of Interest Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.
- 4.12 Compliance with Applicable Law and Regulations
- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F - Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
  - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

4.13 Remedial Actions In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.

4.14 Hatch Act Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

4.15 False Statements Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

4.16 Publications, Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

4.17 Debts Owed the Federal Government

- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined

to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.

- b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

#### 4.18 Disclaimer

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

#### 4.19 Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

#### 4.20 Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

- 4.21 Reducing Text Messaging While Driving Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

## V

### GENERAL CONDITIONS

- 5.1. Amendments or Modifications. No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.
- 5.2. Relationship of Parties. In performing this Agreement, both the County and Agency will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.
- 5.3. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.
- 5.4. Venue and Law. Venue for any legal action related to this Agreement is in Hays County, Texas. This Agreement is subject to all legal requirements of County, State and Federal laws, and Agency agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, County and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of laws provisions of Texas law.
- 5.5. Sole Agreement. This Agreement constitutes the sole Agreement between County and Agency. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.
- 5.6. Termination: This Agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving thirty (30) days written notice thereof.
- 5.7. Survival of terms of Agreement and obligations of parties. The terms of this Agreement and the obligation of the parties relating to Section 14 shall survive the termination of this Agreement.
- 5.8. Public Information Act Requirements. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Agency agrees that the contract can be terminated if the Agency knowingly or intentionally fails to comply with a requirement of that subchapter.
- 5.9. Certificate of Interested Parties. Agency agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.

5.10 Notices. Notices required by this Agreement are as follows:

County;

County Judge  
111 E. San Antonio St., Ste. 300  
San Marcos, Texas 78666

and

County Auditor  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

Agency:

Dripping Springs Water Supply Corporation  
101 Hays Street Suite 406, Suite 406  
Dripping Springs, Texas 78620  
Attention: William Jackson

5.11 Procurement. The Parties recognize that Agency's status as a Subrecipient satisfies procurement requirements under 2 C.F.R. Part 200. However, should the laws of the State of Texas also or instead be applied to this Agreement, then the Parties agree that the Hays County Commissioners Court, by way of approving this Agreement, has granted an exemption to competitive procurement pursuant to Texas Local Government Code §262.024(a)(4) and §262.024(a)(2).

(SIGNATURE PAGE FOLLOWS)

HAYS COUNTY, TEXAS.

By: \_\_\_\_\_  
Ruben Becerra  
Hays County Judge

\_\_\_\_\_ Date

ATTEST:

By: \_\_\_\_\_  
Elaine H. Cardenas MBA PhD

\_\_\_\_\_ Date

Dripping Springs Water Supply Corporation

By: \_\_\_\_\_  
William Jackson  
President

\_\_\_\_\_ Date



# Exhibit A

Budget		
Line	Item	Approved Budget
	<b>PERSONNEL</b>	
1	Salaries	\$0.00
2	Fringe Benefits	\$0.00
3	<b><i>SUBTOTAL PERSONNEL</i></b>	<b>\$0.00</b>
	<b>OPERATIONS</b>	
4	Professional Services - Behavioral	\$0.00
5	Equipment	\$50,000.00
6	Supplies	\$0.00
7	Contractual Services	\$0.00
8	Rent/Utilities	\$0.00
9	Department Specific Costs	\$0.00
10	Outreach	\$0.00
11		\$0.00
12		\$0.00
13		\$0.00
14		\$0.00
15		\$0.00
16		\$0.00
17		\$0.00
18		\$0.00
19		\$0.00
20	<b><i>SUBTOTAL OPERATIONS</i></b>	<b>\$50,000.00</b>
21	<b><i>Personnel and Operations Subtotal</i></b>	<b>\$50,000.00</b>
	<b>INDIRECT COST</b>	
22	Administration - 10% de minimus	\$0.00
23	<b><i>SUBTOTAL Indirect Cost</i></b>	<b>\$0.00</b>
	<b>TOTALS</b>	<b>\$50,000.00</b>

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**SUPPLEMENT OF FEDERALLY REQUIRED CONTRACT PROVISIONS PURSUANT  
TO THE AMERICAN RESCUE PLAN ACT**

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The County of Hays (the “County”) is the recipient of American Rescue Plan Act (“ARPA”) funds from the United States Department of the Treasury (the “U.S. Treasury”). The County will be utilizing ARPA funds to pay for eligible expenses incurred under an agreement dated as of July 11, 2023 [AS AMENDED], by and between the Agency] and the County (the “Agreement”). Since the County will be utilizing ARPA funds to pay for expenses incurred under the Agreement, the Subrecipient shall comply with the following federally required supplementary conditions (the “Supplementary Conditions”) which are hereby incorporated into the Agreement.

Notwithstanding anything to the contrary in the Agreement, except as expressly provided under the terms of these Supplementary Conditions, the terms of these Supplementary Conditions shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of these Supplementary Conditions.

## SUPPLEMENTARY CONDITIONS

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The following terms and conditions apply to the Agreement.

### **GENERAL CONDITIONS**

- 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in the Agreement and/or these Supplementary Conditions, including, but not limited to all federal laws, regulations, executive orders, policies, procedures, and directives applicable to the receipt of ARPA funds, shall be deemed to be inserted herein and the Agreement and Supplementary Conditions shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement and/or Supplementary Conditions shall forthwith be supplemented to make such insertion or correction.
- 2. STATUTORY AND REGULATORY COMPLIANCE.** Subrecipient shall comply with all laws and regulations applicable to the ARPA funds, including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of ARPA funds and/or set forth certain cost principles, including the allowability of certain expenses.
- 3. BREACH OF CONTRACT TERMS.** The County reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of the Agreement, in instances where the Subrecipient or any of its subcontractors violate or breach any Agreement term. If the Subrecipient or any of its subcontractors violate or breach any Agreement term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by these Supplementary Conditions and the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 4. ADMINISTRATIVE, COST, AUDIT AND PROGRAM REQUIREMENTS.** The Subrecipient must comply with the most recent version (unless a specific version is noted) of the Administrative Requirements, Cost Principles, and Audit requirements, and to the extent necessary cooperate and maintain information and documentation to allow County to comply with the applicable regulations governing use of the ARPA funds, including, but not limited to, 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Failure to do so may result in disallowance of costs upon audit. The Subrecipient, and, if applicable, subcontractors, shall only use ARPA funds for eligible ARPA activities as described under subsection (c)(1) of Section 603 of Title VI of the Social Security Act, as added by Section 9901 of ARPA, Section 35(b) of the ARPA Interim Final Rule (and final rule when effective), and all other applicable laws and regulations governing the use of ARPA funds.

**5. RECORDS AND REPORTING REQUIREMENTS.** The Subrecipient shall establish and maintain complete records, including accurate books, records, documents, accounts, financial records, supporting documents, statistical records, and all other evidence and records pertinent to performance of work done for the County under the Agreement (the “Records”) consistent with generally accepted bookkeeping practices. Subrecipient shall retain the Records in accordance with Section 16 below. The County and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Subrecipient within the County of Hays or, if no such office is available, at a mutually agreeable and reasonable venue within the County of Hays, for the term specified above for the purposes of inspection, auditing and copying. Nothing contained herein shall diminish, or in any way adversely affect, the County’s right to discovery in any pending or future litigation. The Subrecipient shall complete and submit all reports, in such form and according to such schedule, as may be required by the County. The Subrecipient shall cooperate with all County efforts to comply with ARPA related requirements and regulations pertaining to recordkeeping and reporting.

**6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the County in any resulting invention in accordance with 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the U.S. Treasury.

**7. DEBARMENT AND SUSPENSION.** The Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the Subrecipient is required to verify that the Subrecipient and none of its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Subrecipient must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction (e.g., subcontract) it enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Subrecipient did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Subrecipient agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C throughout the period of the Agreement. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**8. CONFLICTS OF INTEREST.** The Subrecipient shall notify the County as soon as possible if the Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Subrecipient shall explain the actual or potential conflict in writing in sufficient detail so that the County is able to assess such actual or potential conflict. The Subrecipient shall provide the County any additional information necessary for the County to fully assess and address such actual or potential conflict of interest. The Subrecipient shall accept any reasonable conflict mitigation strategy employed by the County, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict. If requested by

the County, Subrecipient shall sign a certification affirming that it has no conflict of interest arising from performance of work on a specific task.

**9. SUBCONTRACTING.** The Subrecipient represents to the County that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under the Agreement. The Subrecipient will include these Supplementary Conditions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

**10. ASSIGNABILITY.** The Subrecipient shall not assign any interest in the Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the County.

**11. INDEMNIFICATION.** The Subrecipient shall indemnify, defend, and hold harmless the County and their agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Subrecipient in the performance of the services called for in the Agreement.

**12. TERMINATION.** If the Agreement does not include termination provisions elsewhere, the following termination provisions apply:

- A. **TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000).** If, through any cause, the Subrecipient shall fail to fulfill in a timely and proper manner his obligations under the Agreement, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of the Agreement, the County shall thereupon have the right to terminate the Agreement by giving written notice to the Subrecipient of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Subrecipient under the Agreement shall, at the option of the County, become the County's property and the Subrecipient shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Subrecipient, and the County may withhold any payments to the Subrecipient for the purpose of set-off until such time as the exact amount of damages due the County from the Subrecipient is determined.
- B. **TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000).** The County may terminate the Agreement at any time by giving at least ten (10) days' notice in writing to the Subrecipient. If the Agreement is terminated by the County as provided herein, the Subrecipient will be paid for the time provided and expenses incurred up to the termination date.

**13. LOBBYING (Applicable to Agreements exceeding \$100,000).** The Subrecipient certifies, to the best of its knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**15. AUDIT / ACCESS TO RECORDS.** The County, U.S. Treasury, the Comptroller General of the United States, the Office of the Hays County Auditor, pertinent federal agencies, and other designated entities, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Subrecipient which are directly pertinent to the Agreement, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions. Such audits may include review of the Subrecipient's accounting, financial, and reporting practices to determine compliance with the Agreement and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and County guidelines. The Subrecipient agrees to provide the above referenced entities or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement. The foregoing is not intended to limit the County's right to audit and/or access Subrecipient records that may be provided under the Agreement.

**16. MAINTENANCE/RETENTION OF RECORDS.** Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (collectively, the "Records") (i) for three (3) years from the time of closeout of ARPA funds to the

County that are applicable to the Agreement or for the period provided in other applicable laws and program requirements, such as 2 C.F.R. Part 200, (ii) for six (6) years after the closeout of the Agreement, (iii) for the minimum retention period that may be provided under the Agreement, or (iv) as long as required by state law, whichever may be longer.

**17. COPYRIGHT.** Any creative or literary work developed or commissioned by the Subrecipient with ARPA funding provided by the County under the Agreement shall become the property of the County, entitling the County to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them or if the ARPA funding provisions provide otherwise.

- A. If the County shares its right to copyright such work with the Subrecipient, the County and U.S. Treasury reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed using ARPA funding provided by the County under the Agreement; and (b) any rights of copyright to which the Subrecipient, sub-Subrecipient, or a Subrecipient purchases ownership with ARPA funding support provided by the County under the Agreement.
- B. The Subrecipient shall submit one copy of all reports and publications resulting from the Agreement to the County within thirty (30) calendar days of completion. Any document generated pursuant to the ARPA funding must contain the following language:

“This project was supported by ARPA funding administered by the County of Hays, Texas and the U.S. Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the County of Hays, New York or the U.S. Department of the Treasury.”

**18. COUNTY SEAL, LOGO, AND FLAGS.** The Subrecipient shall not use the County seal(s), logos, crests, or reproductions of flags or likenesses of County agency officials without specific County pre-approval.

**19. NO OBLIGATION BY FEDERAL GOVERNMENT.** The Federal Government is not a party to the Agreement or these Supplementary Conditions and is not subject to any obligations or liabilities to the County, Subrecipient, or any other party pertaining to any matter resulting from the Agreement.

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** The Subrecipient acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Subrecipient’s actions pertaining to the Agreement.

**21. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

- A. The Subrecipient and/or applicable subcontractor is prohibited from obligating or expending loan or grant funds to:
1. procure or obtain;
  2. extend or renew a contract to procure or obtain; or
  3. enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - I. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - II. Telecommunications or video surveillance services provided by such entities or using such equipment.
    - III. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- B. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- C. The Subrecipient and/or applicable subcontractor’s attention is directed to Public Law 115–232, section 889 for additional information.



- D. The Subrecipient and/or applicable subcontractor's attention is directed to 2 CFR § 200.471.

## **22. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

- A. As appropriate and to the extent consistent with law, the Subrecipient and applicable subcontractors should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- B. For purposes of this section:
1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  2. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **CIVIL RIGHTS AND DIVERSITY PROVISIONS**

**23. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.** The Subrecipient will comply with the small and minority firms, women's business enterprise, and labor surplus area requirements as set forth at 2 C.F.R. Part 200. Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in these Supplementary Conditions, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-Americans, and American Indians. The County may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The Subrecipient will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**24. TITLES VI AND VIII OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 11063.** The Subrecipient shall comply with the provisions of Titles VI and VIII of the Civil Rights Act of 1964 and with Executive Order 11063. No person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. No person shall, on the grounds of race, color, religion, sex, or national origin, be discriminated against in the sale, rental, or financing of dwellings. To the extent that any such sale, lease or other transfer of land shall occur, Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, will not itself so discriminate.

**25. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990.** The Subrecipient shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations, and with the Americans with Disabilities Act of 1990 (42 U.S.C. § 126), as amended, and any applicable regulations. The Subrecipient agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance.

**26. AGE DISCRIMINATION ACT OF 1975.** The Subrecipient shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

**27. NONDISCRIMINATION.** The Subrecipient shall comply with all federal, state, and local statutory, regulatory and constitutional non-discrimination provisions. Except as otherwise provided under 41 CFR Part 60, if the Agreement meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, the Subrecipient shall comply with and must include in each non-exempt subcontract the following equal opportunity clause provided under 41 CFR

§ 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor":

- A. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subrecipient's legal duty to furnish information.
- D. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of

Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- G. In the event of the Subrecipient's noncompliance with the nondiscrimination clauses of these Supplementary Conditions or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Subrecipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Subrecipient will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however, that in the event a Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

With respect to construction contracts and subcontracts exceeding \$10,000, The Subrecipient shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967; Executive Order 11478 of August 8, 1969; Executive Order 12107 of December 28, 1978; Executive Order 12086 of October 5, 1978; and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Subrecipient shall include the following specifications, which are required pursuant to 41 C.F.R. 60-4.3 in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director (as such term is defined below) pursuant to and as referenced in 41 C.F.R. 60-4.6 and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order 11246. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**29. SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000).** The Subrecipient shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

- A. The Subrecipient will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Subrecipient agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
1. Recruitment, advertising, and job application procedures;
  2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  3. Rates of pay or any other form of compensation and changes in compensation;
  4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  5. Leaves of absence, sick leave, or any other leave;
  6. Fringe benefits available by virtue of employment, whether or not administered by the Subrecipient;
  7. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  8. Activities sponsored by the Subrecipient including social or recreational programs; and
  9. Any other term, condition, or privilege of employment.
- B. The Subrecipient agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973.
- C. In the event of the Subrecipient's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973.
- D. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Subrecipient's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Subrecipient must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subrecipient may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- E. The Subrecipient will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subrecipient is bound by the terms of section 503 of the Rehabilitation Act of 1973, as

amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

- F. The Subrecipient will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Rehabilitation Act of 1973, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

# Exhibit C

## SAMPLE INVOICE

### Hays County CONTRACT EXPENDITURE REPORT

Report Period: **JANUARY 2023**

Invoice Number: **01**

Agency: **Dripping Springs Water Supply Corporation**  
 Agency contact: Rick Broun 512-858-7897  
 E-mail: [rickb@drippingspringswater.com](mailto:rickb@drippingspringswater.com)

Program:

Current contract term:

Line	Approved Budget		Actual Expenditures & Balance		
	Item	Approved Budget	Programmatic Expenditures	Cumulative Expenditures	Budget Balance
	<b>PERSONNEL</b>				
1	Salaries	\$0.00	\$0.00	\$0.00	\$0.00
2	Finge Benefits	\$0.00	\$0.00	\$0.00	\$0.00
3	<b>SUBTOTAL PERSONNEL</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<b>OPERATIONS</b>				
4	Professional Services - Plans	\$0.00	\$0.00	\$0.00	\$0.00
5	Equipment	\$0.00	\$0.00	\$0.00	\$0.00
6	Supplies	\$50,000.00	\$0.00	\$0.00	\$50,000.00
7	Contractual Services	\$0.00	\$0.00	\$0.00	\$0.00
8	Rent/Utilities	\$0.00	\$0.00	\$0.00	\$0.00
9	Department Specific Costs	\$0.00	\$0.00	\$0.00	\$0.00
10	Outreach	\$0.00	\$0.00	\$0.00	\$0.00
11		\$0.00	\$0.00	\$0.00	\$0.00
12		\$0.00	\$0.00	\$0.00	\$0.00
13		\$0.00	\$0.00	\$0.00	\$0.00
14		\$0.00	\$0.00	\$0.00	\$0.00
15		\$0.00	\$0.00	\$0.00	\$0.00
16		\$0.00	\$0.00	\$0.00	\$0.00
17		\$0.00	\$0.00	\$0.00	\$0.00
18		\$0.00	\$0.00	\$0.00	\$0.00
19		\$0.00	\$0.00	\$0.00	\$0.00
20	<b>SUBTOTAL OPERATIONS</b>	<b>\$50,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$50,000.00</b>
21	<b>Personnel and Operations Subtotal</b>	<b>\$50,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$50,000.00</b>
	<b>INDIRECT COST</b>				
22	Administration - 10% de minimus	\$0.00	\$0.00	\$0.00	\$0.00
23	<b>SUBTOTAL Indirect Cost</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
24	<b>PAYMENT REQUEST</b>				
25	<b>TOTALS</b>	<b>\$50,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$50,000.00</b>

Preparer's Signature: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_

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

**APH USE ONLY:**

Reviewed & approved by: \_\_\_\_\_

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



# HCTX113\_Dripping Springs Water Supply Corporation

HAYS COUNTY ARPA SLFRF PROJECT



# HCTX113\_Dripping Springs Water Supply Corporation

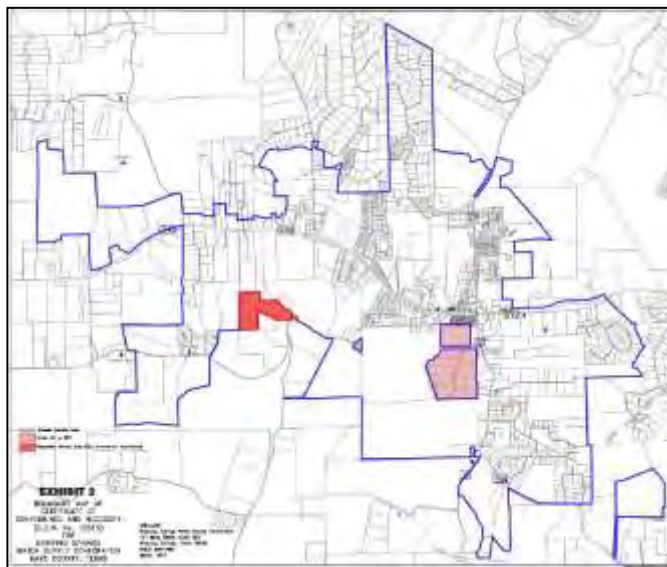
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# 1 DRIPPING SPRINGS WATER SUPPLY CORPORATION OVERVIEW

## 1.1 INVESTMENT IN WATER AND SEWER INFRASTRUCTURE

Dripping Springs Water Supply Corporation (DSWC) is a 501(c)(12) that began with its first water well in 1964. It now operates four groundwater well sites that can produce up to 1.5 million gallons per day, three pump stations and a surface water connection site. It has more than 900,000 gallons of water storage in three ground storage sites and two standpipes. It also has a raw water contract of 1 million gallons per day of surface water from the Lower Colorado River Authority, which is treated and sold to DSWC by the West Travis County Public Utility Agency.<sup>1</sup> DSWC is managed by an Administration General Manager, an Operations General Manager, and a five-member Board of Directors elected by voters residing in the DSWC service boundaries. DSWC serves customers in Northern Hays County.<sup>2</sup>

Figure 1: DSWC CNN Map



The mission of DSWC is to provide safe, high quality water services to their community of 4,100 metered residents. The geographic area identified in their Certificate of Convenience and Necessity (CNN) is shown in Figure 1.<sup>3</sup>

In February of 2021 Winter Storm Uri had a statewide and regional impact, more than 200,000 people in Texas live in areas where water systems were completely non-operational. In addition to equipment problems, demand for electricity in Texas hit a record 69,692 megawatts (MW) on February 14 — 3,200 MW higher than the previous record set in January 2018 and 12,329 MW higher than its current capacity.<sup>4 5</sup> The Electric Reliability Council of Texas (ERCOT) initiated rotating outages at 1:25am on February 15.<sup>6</sup> However, a retrospective Houston Chronicle article a year later said peak demand was even higher: 76,819 megawatts on Feb. 16, 2021.<sup>7</sup>

The rotating outages prevented electricity demand from overwhelming the grid, a scenario which could have caused equipment to catch fire and power lines to go down, potentially resulting in a much more

<sup>1</sup> [Dripping Springs Water Supply Corporation SCADA Software Upgrade \(vtscada.com\)](https://www.vtscada.com/)

<sup>2</sup> [Home | Dripping Springs WSC \(drippingspringswater.com\)](https://www.drippingspringswater.com/)

<sup>3</sup> [Area We Serve | Dripping Springs WSC \(drippingspringswater.com\)](https://www.drippingspringswater.com/)

<sup>4</sup> Hourly Load Data Archives. [ercot.com](https://www.ercot.com/)

<sup>5</sup> Texas' power grid set a new winter peak demand record Sunday evening

<sup>6</sup> ERCOT calls for rotating outages as extreme winter weather forces generating units offline

<sup>7</sup> Houston Chronicle, How devastating was 2021's deadly Texas freeze, exactly? Here's what the numbers say

severe blackout.<sup>8</sup> At the peak, over 5 million people in Texas were without power,<sup>9</sup> with 11 million experiencing an outage at some point,<sup>10</sup> some for more than 3 days.<sup>11</sup>

As a result of Uri's impact, the State of Texas passed State Bill 3 (SB 3) of the 87th Legislature (2021-2022). To prepare Texas's critical infrastructure for extreme weather emergencies, SB 3 requires water utilities to develop and implement emergency preparedness plans to keep their services operating during an extended power outage.<sup>12</sup>

## 1.2 DESIGNING A NECESSARY INVESTMENT IN WATER AND SEWER INFRASTRUCTURE

Water utilities, like DSWSC, have multiple options for meeting the requirements of SB 3, including backup generators, alternate power sources, redundant interconnectivity between pressure zones and increased levels of storage, as well as options for water demand management strategies.

According to the SLFRF guidance, "[A] 'necessary' investment in infrastructure must be:

- (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise,
- (2) a cost-effective means for meeting that need, taking into account available alternatives, and
- (3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life."<sup>13</sup>

SB 3 identified the need for investment in water infrastructure and DSWSC has identified a cost-effective means for meeting that need. They have purchased two Cummins 400kW with 484 hours, 605 HP at 1800 RPM standby diesel generators (Model DFCE) from Central States Diesel Generators for \$49,500.00 each.

Hays County would be able to implement DSWSC's emergency preparedness plans to keep their services operating during an extended power outage through a Subrecipient Agreement. The award to DSWSC is \$50,000 and the remaining cost of the generators will be paid by DSWSC.

## 1.3 PROGRAM SUMMARY

Through a subrecipient agreement for the amount of \$50,000, DSWSC would be assisted with the cost incurred to purchase two Cummins 400kW with 484 hours, 605 HP at 1800 RPM standby diesel generators (Model DFCE) from Central States Diesel Generators in order to meet the requirements of SB 3. This necessary investment in water infrastructure is a cost-effective means of keeping their services operating during extended power outages.

As the subrecipient, DSWSC, will be responsible for collecting and managing all eligibility documentation. The subrecipient agreement ensures access to DSWSC's records pertaining to this

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<sup>8</sup> Texas was 'seconds and minutes' away from catastrophic monthslong blackouts, officials say - Texas Tribune.

<sup>9</sup> Millions in Texas without power as deadly storm brings snow, freezing weather - NBC News.

<sup>10</sup> The Texas Electric Grid Failure Was a Warm-up". Texas Monthly

<sup>11</sup> 'It's Life And Death': Texans Still Without Power As Nation Faces More Winter Storms - NPR.

<sup>12</sup> New Law Sets Early 2022 Deadline for All Texas Water Utilities

<sup>13</sup> Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule, US Treasury | January 2022

program. Audits will be performed by the Hays County Auditor to determine compliance with program requirements. Oversight of spending and program progress will be monitored through submission of DSWSC's reporting.

## 2 COMPARATIVE ANALYSIS

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### 2.1 REASONABLENESS & PROPORTIONALITY

Table 1 shows a range of prices from multiple manufacturers for stand-by diesel generators with power required for use in industrial settings. The range is from \$42,200 to \$63,400 and each product has numerous factors contributing to price.

*Table 1: 400 kW Diesel Generators Prices*

<b>Manufacturer</b>	<b>kW</b>	<b>Cost</b>
Cummins	400	\$42,200
Kohler	400	\$63,400
Cummins	400	\$49,900
Gillette	400	\$52,881
<b>Average</b>		<b>\$52,095</b>

The average costs of a 400kW generator yield a cost of \$52,095. The price quoted by Central States Diesel Generators, LLC to DSWSC for a 400kW diesel generator \$49,500. This cost is determined to be reasonable.

## 3 ELIGIBILITY

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### 3.1 FINAL RULE<sup>14</sup>

A recipient may use funds to make necessary investments in water and sewer infrastructure:

Projects eligible under EPA's Drinking Water State Revolving Fund (DWSRF).

#### 3.1.1 DWSRF

Under the DWSRF Examples of Other Capital Projects, large capital equipment purchases, such as stand-by power generators and associated accessories are an eligible expense.<sup>15</sup>

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<sup>14</sup> [31 CFR 35.6\(e\)](#)

<sup>15</sup> DWSRF Eligibility Handbook

### 3.2 CAPITAL EXPENDITURE

If a project has total capital expenditures of less than \$1 million and the use is enumerated by Treasury as eligible, then no written justification is required.<sup>16</sup>

Treasury has also indicated in its reporting guidance that recipients will only need to provide documentation of wages and labor standards for capital expenditure projects and infrastructure projects over \$10 million.<sup>17</sup>

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<sup>16</sup> Final Rule (b) Capital Expenditures

<sup>17</sup> Coronavirus State and Local Fiscal Recovery Funds Final Rule: Frequently Asked Questions 6.15 | July 27, 2022



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Commissioner Ingalsbe

Co-Sponsor:

Commissioner Shell

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### Agenda Item:

Discussion and possible action to authorize the County Judge to execute the Hays County Social Service Funding Agreement between Hays County and San Marcos Area Chamber of Commerce, Inc. regarding recovery assistance for direct or indirect impacts of COVID-19 and amend the budget accordingly. **INGALSBE/SHELL**

### Summary:

Funds can only be used by Grantee for the agreed upon program expenditures to respond to negative economic impacts from the direct and indirect impacts of COVID-19.

Attachment: ARPA Agreement  
PW

### Fiscal Impact:

Amount Requested: \$100,000.00

Line Item Number: 011-763-99-159.5600\_039

### Budget Office:

Source of Funds: American Rescue Plan Act (ARPA) Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$100,000) - Increase Intergovernmental Revenue 011-763-99-159.4301

\$100,000 - Increase San Marcos Chamber of Commerce Project Contributions 011-763-99-159.5600\_039

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Social Service Funding Agreement

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$100,000 from ARPA 2nd tranche funding

Comments:

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### Attachments

Funding Agreement - SMCC  
PW - SMCC

**HAYS COUNTY SOCIAL SERVICE FUNDING AGREEMENT  
WITH SAN MARCOS AREA CHAMBER OF COMMERCE, INC.**

This Social Service Funding Agreement ("the Agreement"), is made by and between **Hays County, Texas** (the "County") located at 712 S. Stagecoach Trail, Suite 1071, Texas 78666, and the **San Marcos Area Chamber of Commerce, Inc.** (the "Agency"), a non-profit corporation, located at 202 North C M Allen Parkway, San Marcos, Texas 78666.

**RECITALS**

**WHEREAS**, on March 13, 2020, a Declaration of State of Disaster was issued by Governor Abbott certifying that the novel coronavirus (COVID-19), which has been recognized globally as a contagious respiratory virus, posed an imminent threat of disaster for all counties in Texas; and

**WHEREAS**, on April 12, 2020, Governor Abbott determined that that state of disaster continues to exist due to COVID-19 and issued a Proclamation renewing the disaster declaration for all counties; and

**WHEREAS**, on May 12, 2020, Governor Abbott determined that the state of disaster continues to exist due to COVID-19 and issued a Proclamation further renewing the disaster declaration for all counties; and

**WHEREAS**, as a result of COVID-19 and the response measures taken, the Agency is in need of assistance to meet the additional needs and services of the community, specifically funds to to address student academic and social needs in the high-poverty San Marcos Consolidated Independent School District by providing assistance in job training and workforce development through an Education & Talent Pipeline Coordinator; and

**WHEREAS**, the Agency would like to request funding from the County made available under Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act ("ARPA Act");

**WHEREAS**, the County seeks to implement funding derived from the ARPA Act after March 2, 2021 in order to maximize benefits for Hays County residents; and

**WHEREAS**, the County desires to engage the Agency as a subrecipient to assist the County in utilizing the ARPA Act funds.

**NOW, THEREFORE, WITNESSETH:**

**Recitals.** The recitals to this Agreement are hereby incorporated for all purposes.

1. **Effective Date.** The effective date of this Agreement ("Effective Date") is the date this Agreement has been finally approved by the County. Agency understands that this Agreement is dependent upon the approval of the County.
2. **Term.** The initial term of this Agreement is from the Effective Date to provide ARPA Act funding through December 31, 2024. Unless terminated by either party pursuant to paragraph 4.6, the Agreement will automatically renew for purposes of administering ARPA Act Funds, until December 31, 2024. After 2024, the contract must be revisited by County's governing body.

## **I.**

### **GENERAL OVERVIEW**

- 1.1 Purpose. The County has in good faith determined that this Agreement serves a public purpose. This public purpose includes, but is not limited to, the Agency's efforts to meet the additional needs and services of the community, specifically staffing costs, unemployment insurance costs, professional fees, additional contract services, supplies and related equipment and additional financial assistance, all incurred due to the impact of COVID-19 or in the delivery of public health and safety operations for Hays County residents.
- 1.2 Use of Funds. The Agency understands that the funds provided to it by the County will be used solely for the program services as more particularly described in Exhibit "A", attached hereto and incorporated herein ("Allowable Expenditures").
- 1.3 Distribution of ARPA Act Funds. The County will pay ARPA Act funds during the period that begins on the Effective Date and ends on December 31, 2024. All funding will comply with ARPA program guidelines and services described in Exhibit A as attached.

The Agency agrees to accept the not to exceed amount of \$100,000.00 that will be disbursed from ARPA Act Funds.

## **II.**

### **AGENCY PERFORMANCE REQUIREMENTS**

- 2.1 Subrecipient Status. The County and the Agency agree that the Agency is a Subrecipient as described in 2 C.F.R. §§ 200.93. A Subrecipient is a non-Federal agency that receives a subaward from a pass-through entity to carry out a part of a Federal program. The Agency, as a subrecipient, will be responsible for administering the expenditures of the ARPA Act funds (SLFRF Assistance Listing Number – Hays County ALN 21.027 awarded by United States Department of the Treasury) consistent with the terms and conditions of this Agreement and the Act. As a Subrecipient, the Agency will be responsible for, among other things, determining eligibility for distribution of Federal funds, making programmatic decisions, and taking responsibility for compliance with the ARPA Act and other federal laws.
- 2.2 Single Audit Act. The Allowable Expenditures are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. §§ 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. The Agency agrees to comply with the above.
- 2.3 Allowable Expenditures. The Agency agrees to comply with all applicable federal, state and local laws and regulations governing the expenditure of funds under this Agreement. The Agency shall submit to the County Auditor's office all necessary invoicing and appropriate



documentation evidencing expenditures and that said expenditures are Allowable Expenditures. Allowable Expenditures are limited to those expenditures shown on Exhibit "A", attached hereto and incorporated herein. The agency may elect to take the 10% de minimis indirect cost rate allowed by 2 C.F.R. Part 200. Despite this agreed upon payment, Agency agrees to return to the County the amount representing the prorated amount of the funds unearned if Agency's project progress is insufficient or this agreement is terminated for any reason or if Agency fails in any other respect under this agreement.

- 2.4 County Audit. The Agency agrees to allow the County to review Agency records to determine their compliance with the terms of this Agreement. Agency, during normal business hours shall allow County reasonable access to its records and books and all other relevant records related to the administrative services provided for in this Agreement.

### **III.**

#### **COUNTY PERFORMANCE REQUIREMENTS**

- 3.1 County Payment Responsibility. After receipt of the Agency's invoices, the County will endeavor to pay the Allowable Expenditures as soon as possible, but in any event no more than once monthly. The County shall have no obligation to pay Agency any Allowable Expenses over \$100,000.00 from ARPA Act Funds.

### **IV.**

#### **ADDITIONAL REQUIREMENTS RELATED TOTHE AMERICAN RESCUE PLAN ACT (ARPA) (A.L.N. 21.027)**

- 4.1 Use of Funds
- a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
- 4.2 Scope of Activities; Budget.
- a. Activities. The Agency shall provide and administer the ARPA Act activities with the provisions of this Agreement (hereinafter "Activities").
    - i. Such Activities shall include those activities included in the ARPA Act funds budget attached to this Agreement as Exhibit A.
    - ii. The Agency shall make no unauthorized changes in the ARPA Act Activities as approved by the County; however, amounts allocated to line items within the total amount of the Budget may be transferred without formal amendment among items upon written request by the Agency and approval by the County. All other changes must be amended in accordance with Section V of this Agreement.

- b. Budget. The Agency has submitted for approval to the County a detailed ARPA Act funds budget; which, in its approved form, is attached hereto as Exhibit A (hereinafter "Budget"). The County and the Agency may mutually agree to revise said budget from time to time in accordance with existing County policies. The County will pay to Agency ARPA Act funds consistent with Agency's Budget and in accordance with applicable County procedures, if any.

Except for lump sum advance payments authorized by the federal regulations and approved by the County, all payments made by Agency will be made for eligible expenses actually incurred and shall not exceed actual cash requirements.

- 4.3 Period of Performance The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on the Effective Date, and ends on December 31, 2026.
- 4.4 Reporting Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
- 4.5 Payment
  - a. Amount of Grant. The amount to be paid to the Agency for the provision and administration of Activities under this Agreement shall be the total budget amount included in the ARPA funds budget attached to this contract as Exhibit A, payable as follows: drawdowns for the payment of eligible expenses shall be made upon Exhibit C, reviewed and approved by Hays County Program Manager for eligibility under the ARPA and for compliance with the terms of this Agreement.
  - b. Vouchers; Voucher Review, Approval and Audit. Payments shall be made to the Agency as a reimbursement and shall be expressly contingent upon (i) the Agency submitting a request on Exhibit C, that (a) states Workforce Development Services, Administration, Salaries and Fringe Benefits for Agency Staff, and certain costs for delivering Workforce Development Services including Equipment, Supplies, Contractual Services, and Outreach Costs, (b) certifies that the activities performed and the payment requested are in accordance with the terms of this Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, including, where applicable, copy of Payroll Reports that show Salary and Fringe Benefits for Agency Staff, Contracts for Workforce Development Services, Invoices and Proof of Payment for Workforce Development Services, Equipment, Supplies, Contractual Services, Administrative and Outreach Costs paid by the Agency during the preceding month, and (ii) review, approval and audit of the Exhibit C by the County Program Manager and/or the County Auditor or his or her duly designated representative (the "Auditor"). Drawdowns for the payment of eligible expenses shall be made against the activities specified herein and in accordance with applicable performance requirements.
- 4.6 Insurance Payments Funds may be used to pay for Insurance Premiums for Hays County Residents who are uninsured.
- 4.7 Maintenance of and Access to Records
  - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of

Recipient in order to conduct audits or other investigations.

- c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

4.8 Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

4.9 Administrative Costs Recipient may use funds provided under this award to cover both direct and indirect costs.

4.10 Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.

4.11 Conflicts of Interest Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

4.12 Compliance with Applicable Law and Regulations

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F - Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
- v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

- vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- 4.13 Remedial Actions In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
- 4.14 Hatch Act Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
- 4.15 False Statements Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

- 4.16 Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
- 4.17 Debts Owed the Federal Government
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
  - b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
- 4.18 Disclaimer
- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
  - b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.
- 4.19 Protections for Whistleblowers.
- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
  - b. The list of persons and entities referenced in the paragraph above includes the following:
    - i. A member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Treasury employee responsible for contract or grant oversight or management;
    - v. An authorized official of the Department of Justice or other law enforcement agency;
    - vi. A court or grand jury; or
    - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
  - c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

- 4.20 Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the- job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- 4.21 Reducing Text Messaging While Driving Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

## V

### GENERAL CONDITIONS

- 5.1. Amendments or Modifications. No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.
- 5.2. Relationship of Parties. In performing this Agreement, both the County and Agency will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.
- 5.3. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.
- 5.4. Venue and Law. Venue for any legal action related to this Agreement is in Hays County, Texas. This Agreement is subject to all legal requirements of County, State and Federal laws, and Agency agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, County and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of laws provisions of Texas law.
- 5.5. Sole Agreement. This Agreement constitutes the sole Agreement between County and Agency. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.
- 5.6. Termination: This Agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving thirty (30) days written notice thereof.
- 5.7. Survival of terms of Agreement and obligations of parties. The terms of this Agreement and the obligation of the parties relating to Section 14 shall survive the termination of this Agreement.
- 5.8. Public Information Act Requirements. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Agency agrees that the contract can be

terminated if the Agency knowingly or intentionally fails to comply with a requirement of that subchapter.

- 5.9. Certificate of Interested Parties. Agency agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.

- 5.10 Notices. Notices required by this Agreement are as follows:

County;

County Judge  
111 E. San Antonio St., Ste. 300  
San Marcos, Texas 78666

and

County Auditor  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

Agency:

San Marcos Area Chamber of Commerce, Inc.  
202 North C M Allen Parkway  
San Marcos, Texas 78666  
Attention: Page Michel

- 5.11 Procurement. The Parties recognize that Agency's status as a Subrecipient satisfies procurement requirements under 2 C.F.R. Part 200. However, should the laws of the State of Texas also or instead be applied to this Agreement, then the Parties agree that the Hays County Commissioners Court, by way of approving this Agreement, has granted an exemption to competitive procurement pursuant to Texas Local Government Code §262.024(a)(4) and §262.024(a)(2).

(SIGNATURE PAGE FOLLOWS)

HAYS COUNTY, TEXAS.

By: \_\_\_\_\_  
Ruben Becerra  
Hays County Judge

\_\_\_\_\_ Date

ATTEST:

By: \_\_\_\_\_  
Elaine H. Cardenas MBA PhD

\_\_\_\_\_ Date

San Marcos Area Chamber of Commerce, Inc.

By: \_\_\_\_\_  
Page Michel  
President

\_\_\_\_\_ Date



# Exhibit A

Budget		
Line	Item	Approved Budget
	<b>PERSONNEL</b>	
1	Salaries	\$40,000.00
2	Fringe Benefits	\$12,000.00
3	<b><i>SUBTOTAL PERSONNEL</i></b>	<b>\$52,000.00</b>
	<b>OPERATIONS</b>	
4	Professional Services - Behavioral	\$0.00
5	Equipment	\$0.00
6	Supplies	\$15,000.00
7	Contractual Services	\$12,000.00
8	Rent/Utilities	\$0.00
9	Department Specific Costs	\$0.00
10	Outreach	\$12,000.00
11		\$0.00
12		\$0.00
13		\$0.00
14		\$0.00
15		\$0.00
16		\$0.00
17		\$0.00
18		\$0.00
19		\$0.00
20	<b><i>SUBTOTAL OPERATIONS</i></b>	<b>\$39,000.00</b>
21	<b><i>Personnel and Operations Subtotal</i></b>	<b>\$91,000.00</b>
	<b>INDIRECT COST</b>	
22	Administration - 10% de minimus	\$9,000.00
23	<b><i>SUBTOTAL Indirect Cost</i></b>	<b>\$9,000.00</b>
	<b>TOTALS</b>	<b>\$100,000.00</b>

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**SUPPLEMENT OF FEDERALLY REQUIRED CONTRACT PROVISIONS PURSUANT  
TO THE AMERICAN RESCUE PLAN ACT**

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The County of Hays (the “County”) is the recipient of American Rescue Plan Act (“ARPA”) funds from the United States Department of the Treasury (the “U.S. Treasury”). The County will be utilizing ARPA funds to pay for eligible expenses incurred under an agreement dated as of July 11, 2023, by and between the Agency] and the County (the “Agreement”). Since the County will be utilizing ARPA funds to pay for expenses incurred under the Agreement, the Subrecipient shall comply with the following federally required supplementary conditions (the “Supplementary Conditions”) which are hereby incorporated into the Agreement.

Notwithstanding anything to the contrary in the Agreement, except as expressly provided under the terms of these Supplementary Conditions, the terms of these Supplementary Conditions shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of these Supplementary Conditions.

## SUPPLEMENTARY CONDITIONS

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The following terms and conditions apply to the Agreement.

### **GENERAL CONDITIONS**

- 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in the Agreement and/or these Supplementary Conditions, including, but not limited to all federal laws, regulations, executive orders, policies, procedures, and directives applicable to the receipt of ARPA funds, shall be deemed to be inserted herein and the Agreement and Supplementary Conditions shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement and/or Supplementary Conditions shall forthwith be supplemented to make such insertion or correction.
- 2. STATUTORY AND REGULATORY COMPLIANCE.** Subrecipient shall comply with all laws and regulations applicable to the ARPA funds, including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of ARPA funds and/or set forth certain cost principles, including the allowability of certain expenses.
- 3. BREACH OF CONTRACT TERMS.** The County reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of the Agreement, in instances where the Subrecipient or any of its subcontractors violate or breach any Agreement term. If the Subrecipient or any of its subcontractors violate or breach any Agreement term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by these Supplementary Conditions and the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 4. ADMINISTRATIVE, COST, AUDIT AND PROGRAM REQUIREMENTS.** The Subrecipient must comply with the most recent version (unless a specific version is noted) of the Administrative Requirements, Cost Principles, and Audit requirements, and to the extent necessary cooperate and maintain information and documentation to allow County to comply with the applicable regulations governing use of the ARPA funds, including, but not limited to, 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Failure to do so may result in disallowance of costs upon audit. The Subrecipient, and, if applicable, subcontractors, shall only use ARPA funds for eligible ARPA activities as described under subsection (c)(1) of Section 603 of Title VI of the Social Security Act, as added by Section 9901 of ARPA, Section 35(b) of the ARPA Interim Final Rule (and final rule when effective), and all other applicable laws and regulations governing the use of ARPA funds.

**5. RECORDS AND REPORTING REQUIREMENTS.** The Subrecipient shall establish and maintain complete records, including accurate books, records, documents, accounts, financial records, supporting documents, statistical records, and all other evidence and records pertinent to performance of work done for the County under the Agreement (the “Records”) consistent with generally accepted bookkeeping practices. Subrecipient shall retain the Records in accordance with Section 16 below. The County and any person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Subrecipient within the County of Hays or, if no such office is available, at a mutually agreeable and reasonable venue within the County of Hays, for the term specified above for the purposes of inspection, auditing and copying. Nothing contained herein shall diminish, or in any way adversely affect, the County’s right to discovery in any pending or future litigation. The Subrecipient shall complete and submit all reports, in such form and according to such schedule, as may be required by the County. The Subrecipient shall cooperate with all County efforts to comply with ARPA related requirements and regulations pertaining to recordkeeping and reporting.

**6. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the County in any resulting invention in accordance with 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the U.S. Treasury.

**7. DEBARMENT AND SUSPENSION.** The Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the Subrecipient is required to verify that the Subrecipient and none of its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Subrecipient must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction (e.g., subcontract) it enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Subrecipient did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Subrecipient agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C throughout the period of the Agreement. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**8. CONFLICTS OF INTEREST.** The Subrecipient shall notify the County as soon as possible if the Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Subrecipient shall explain the actual or potential conflict in writing in sufficient detail so that the County is able to assess such actual or potential conflict. The Subrecipient shall provide the County any additional information necessary for the County to fully assess and address such actual or potential conflict of interest. The Subrecipient shall accept any reasonable conflict mitigation strategy employed by the County, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict. If requested by

the County, Subrecipient shall sign a certification affirming that it has no conflict of interest arising from performance of work on a specific task.

**9. SUBCONTRACTING.** The Subrecipient represents to the County that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under the Agreement. The Subrecipient will include these Supplementary Conditions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

**10. ASSIGNABILITY.** The Subrecipient shall not assign any interest in the Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the County.

**11. INDEMNIFICATION.** The Subrecipient shall indemnify, defend, and hold harmless the County and their agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Subrecipient in the performance of the services called for in the Agreement.

**12. TERMINATION.** If the Agreement does not include termination provisions elsewhere, the following termination provisions apply:

- A. **TERMINATION FOR CAUSE (Applicable to contracts exceeding \$10,000).** If, through any cause, the Subrecipient shall fail to fulfill in a timely and proper manner his obligations under the Agreement, or if the Subrecipient shall violate any of the covenants, agreements, or stipulations of the Agreement, the County shall thereupon have the right to terminate the Agreement by giving written notice to the Subrecipient of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Subrecipient under the Agreement shall, at the option of the County, become the County's property and the Subrecipient shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Subrecipient shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Subrecipient, and the County may withhold any payments to the Subrecipient for the purpose of set-off until such time as the exact amount of damages due the County from the Subrecipient is determined.
- B. **TERMINATION FOR CONVENIENCE (Applicable to contracts exceeding \$10,000).** The County may terminate the Agreement at any time by giving at least ten (10) days' notice in writing to the Subrecipient. If the Agreement is terminated by the County as provided herein, the Subrecipient will be paid for the time provided and expenses incurred up to the termination date.

**13. LOBBYING (Applicable to Agreements exceeding \$100,000).** The Subrecipient certifies, to the best of its knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**15. AUDIT / ACCESS TO RECORDS.** The County, U.S. Treasury, the Comptroller General of the United States, the Office of the Hays County Auditor, pertinent federal agencies, and other designated entities, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Subrecipient which are directly pertinent to the Agreement, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions. Such audits may include review of the Subrecipient's accounting, financial, and reporting practices to determine compliance with the Agreement and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and County guidelines. The Subrecipient agrees to provide the above referenced entities or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement. The foregoing is not intended to limit the County's right to audit and/or access Subrecipient records that may be provided under the Agreement.

**16. MAINTENANCE/RETENTION OF RECORDS.** Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (collectively, the "Records") (i) for three (3) years from the time of closeout of ARPA funds to the

County that are applicable to the Agreement or for the period provided in other applicable laws and program requirements, such as 2 C.F.R. Part 200, (ii) for six (6) years after the closeout of the Agreement, (iii) for the minimum retention period that may be provided under the Agreement, or (iv) as long as required by state law, whichever may be longer.

**17. COPYRIGHT.** Any creative or literary work developed or commissioned by the Subrecipient with ARPA funding provided by the County under the Agreement shall become the property of the County, entitling the County to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them or if the ARPA funding provisions provide otherwise.

- A. If the County shares its right to copyright such work with the Subrecipient, the County and U.S. Treasury reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed using ARPA funding provided by the County under the Agreement; and (b) any rights of copyright to which the Subrecipient, sub-Subrecipient, or a Subrecipient purchases ownership with ARPA funding support provided by the County under the Agreement.
- B. The Subrecipient shall submit one copy of all reports and publications resulting from the Agreement to the County within thirty (30) calendar days of completion. Any document generated pursuant to the ARPA funding must contain the following language:

“This project was supported by ARPA funding administered by the County of Hays, Texas and the U.S. Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the County of Hays, New York or the U.S. Department of the Treasury.”

**18. COUNTY SEAL, LOGO, AND FLAGS.** The Subrecipient shall not use the County seal(s), logos, crests, or reproductions of flags or likenesses of County agency officials without specific County pre-approval.

**19. NO OBLIGATION BY FEDERAL GOVERNMENT.** The Federal Government is not a party to the Agreement or these Supplementary Conditions and is not subject to any obligations or liabilities to the County, Subrecipient, or any other party pertaining to any matter resulting from the Agreement.

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** The Subrecipient acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Subrecipient’s actions pertaining to the Agreement.

**21. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

- A. The Subrecipient and/or applicable subcontractor is prohibited from obligating or expending loan or grant funds to:
1. procure or obtain;
  2. extend or renew a contract to procure or obtain; or
  3. enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - I. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - II. Telecommunications or video surveillance services provided by such entities or using such equipment.
    - III. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- B. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- C. The Subrecipient and/or applicable subcontractor’s attention is directed to Public Law 115–232, section 889 for additional information.



- D. The Subrecipient and/or applicable subcontractor's attention is directed to 2 CFR § 200.471.

## **22. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

- A. As appropriate and to the extent consistent with law, the Subrecipient and applicable subcontractors should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- B. For purposes of this section:
1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  2. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **CIVIL RIGHTS AND DIVERSITY PROVISIONS**

**23. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.** The Subrecipient will comply with the small and minority firms, women's business enterprise, and labor surplus area requirements as set forth at 2 C.F.R. Part 200. Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in these Supplementary Conditions, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans, Asian-Americans, and American Indians. The County may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

The Subrecipient will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

**24. TITLES VI AND VIII OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 11063.** The Subrecipient shall comply with the provisions of Titles VI and VIII of the Civil Rights Act of 1964 and with Executive Order 11063. No person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. No person shall, on the grounds of race, color, religion, sex, or national origin, be discriminated against in the sale, rental, or financing of dwellings. To the extent that any such sale, lease or other transfer of land shall occur, Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, will not itself so discriminate.

**25. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990.** The Subrecipient shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations, and with the Americans with Disabilities Act of 1990 (42 U.S.C. § 126), as amended, and any applicable regulations. The Subrecipient agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance.

**26. AGE DISCRIMINATION ACT OF 1975.** The Subrecipient shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

**27. NONDISCRIMINATION.** The Subrecipient shall comply with all federal, state, and local statutory, regulatory and constitutional non-discrimination provisions. Except as otherwise provided under 41 CFR Part 60, if the Agreement meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, the Subrecipient shall comply with and must include in each non-exempt subcontract the following equal opportunity clause provided under 41 CFR

§ 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor":

- A. The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Subrecipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subrecipient's legal duty to furnish information.
- D. The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subrecipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of

Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- G. In the event of the Subrecipient's noncompliance with the nondiscrimination clauses of these Supplementary Conditions or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Subrecipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Subrecipient will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided*, however, that in the event a Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

With respect to construction contracts and subcontracts exceeding \$10,000, The Subrecipient shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967; Executive Order 11478 of August 8, 1969; Executive Order 12107 of December 28, 1978; Executive Order 12086 of October 5, 1978; and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Subrecipient shall include the following specifications, which are required pursuant to 41 C.F.R. 60-4.3 in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director (as such term is defined below) pursuant to and as referenced in 41 C.F.R. 60-4.6 and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive Order 11246. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**29. SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000).** The Subrecipient shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

- A. The Subrecipient will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Subrecipient agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
1. Recruitment, advertising, and job application procedures;
  2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  3. Rates of pay or any other form of compensation and changes in compensation;
  4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  5. Leaves of absence, sick leave, or any other leave;
  6. Fringe benefits available by virtue of employment, whether or not administered by the Subrecipient;
  7. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  8. Activities sponsored by the Subrecipient including social or recreational programs; and
  9. Any other term, condition, or privilege of employment.
- B. The Subrecipient agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973.
- C. In the event of the Subrecipient's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973.
- D. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Subrecipient's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Subrecipient must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subrecipient may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- E. The Subrecipient will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subrecipient is bound by the terms of section 503 of the Rehabilitation Act of 1973, as

amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

- F. The Subrecipient will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Rehabilitation Act of 1973, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Subrecipient will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

# Exhibit C

## SAMPLE INVOICE

### Hays County CONTRACT EXPENDITURE REPORT

Report Period: **JANUARY 2022**

Invoice Number: **01**

Agency: **San Marcos Area Chamber of Commerce**

Program:

Agency contact: Page Michel

512-393-5900

Current contract term:

E-mail: [page@sanmarcostexas.com](mailto:page@sanmarcostexas.com)

Line	Approved Budget		Actual Expenditures & Balance		
	Item	Approved Budget	Programmatic Expenditures	Cumulative Expenditures	Budget Balance
	<b>PERSONNEL</b>				
1	Salaries	\$40,000.00	\$0.00	\$0.00	\$40,000.00
2	Fringe Benefits	\$12,000.00	\$0.00	\$0.00	\$12,000.00
3	<b>SUBTOTAL PERSONNEL</b>	<b>\$52,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$52,000.00</b>
	<b>OPERATIONS</b>				
4	Professional Services - Plans	\$0.00	\$0.00	\$0.00	\$0.00
5	Equipment	\$0.00	\$0.00	\$0.00	\$0.00
6	Supplies	\$15,000.00	\$0.00	\$0.00	\$15,000.00
7	Contractual Services	\$12,000.00	\$0.00	\$0.00	\$12,000.00
8	Rent/Utilities	\$0.00	\$0.00	\$0.00	\$0.00
9	Department Specific Costs	\$0.00	\$0.00	\$0.00	\$0.00
10	Outreach	\$12,000.00	\$0.00	\$0.00	\$12,000.00
11		\$0.00	\$0.00	\$0.00	\$0.00
12		\$0.00	\$0.00	\$0.00	\$0.00
13		\$0.00	\$0.00	\$0.00	\$0.00
14		\$0.00	\$0.00	\$0.00	\$0.00
15		\$0.00	\$0.00	\$0.00	\$0.00
16		\$0.00	\$0.00	\$0.00	\$0.00
17		\$0.00	\$0.00	\$0.00	\$0.00
18		\$0.00	\$0.00	\$0.00	\$0.00
19		\$0.00	\$0.00	\$0.00	\$0.00
20	<b>SUBTOTAL OPERATIONS</b>	<b>\$39,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$39,000.00</b>
21	<b>Personnel and Operations Subtotal</b>	<b>\$91,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$91,000.00</b>
	<b>INDIRECT COST</b>				
22	Administration - 10% de minimus	\$9,000.00	\$0.00	\$0.00	\$9,000.00
23	<b>SUBTOTAL Indirect Cost</b>	<b>\$9,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$9,000.00</b>
24	<b>PAYMENT REQUEST</b>				
25	<b>TOTALS</b>	<b>\$100,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$100,000.00</b>

Preparer's Signature: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_

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

#### APH USE ONLY:

Reviewed & approved by: \_\_\_\_\_

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



# HCTX111\_San Marcos Chamber of Commerce

HAYS COUNTY ARPA SLFRF PROJECT



# HCTX111\_San Marcos Chamber of Commerce

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# 1 SAN MARCOS CHAMBER OF COMMERCE OVERVIEW

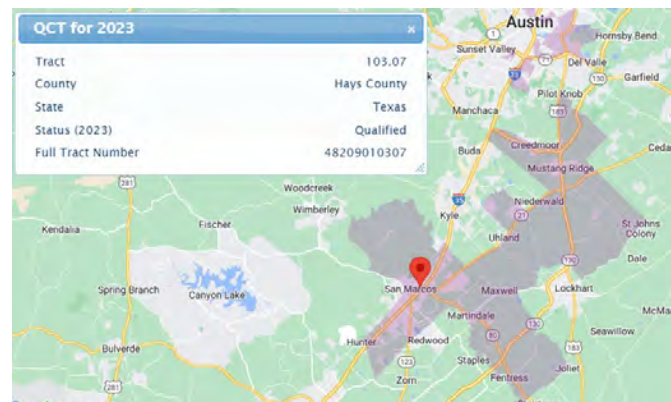
## 1.1 DESIGNATING A PUBLIC HEALTH IMPACT

The San Marcos Area Chamber of Commerce (The Chamber) is a 501(c)(6) nonprofit that aims to improve the economic wellbeing of the Greater San Marcos area. Since 1903 the Chamber has been a catalyst for economic growth and prosperity, striving to be the unified voice of business that advocates, promotes and inspires business and leaders in the greater San Marcos Area.

When COVID-19 hit schools and businesses began closing across Texas, creating an economic crisis that continues to wreak havoc on small firms and Texas residents. The pandemic brought about the steepest and fastest drop in Texas economic activity in modern history.<sup>1</sup> This negative economic impact disproportionately affected communities with a large proportion of low-income residents.<sup>2</sup>

Figure 1: San Marcos QCT Map

Qualified Census Tracts (QCT) are a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. QCTs must have 50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more.<sup>3</sup> Most of San Marcos falls within a QCT.



While there are signs of improvement, the COVID-19 pandemic continues to disproportionately impact low-income communities. For both communities and the organizations serving them, inflation, labor shortages and the availability of childcare were top challenges. Household financial stability, which includes income loss, income instability, increasing costs and debt, 41% of respondents of an August 2022 Fed survey indicated significant disruption.

When asked about primary sources of disruption to household financial stability, the top responses were related to inflation, including increases in the price of consumer goods (26%) and increases in housing prices (25%), followed by issues with employment (16%) and the expiration of government relief (16%). Among small businesses serving low-income communities, 34% of respondents indicated significant disruptions. Labor shortages (45%) and increases in the price of goods (21%) were noted as primary sources of disruptions for small businesses.<sup>4</sup>

What this survey shows is that low-income residents face higher prices for basic necessities like food and shelter while employment becomes less stable and support from the government dissipates. Likewise, small business budgets are squeezed by increased costs but overwhelmingly their primary issue is labor shortages. The confluence of these two groups' issues is jobs.

<sup>1</sup> Texas Economy Mends in Fits and Starts from Pandemic's Onslaught | Dallas Fed

<sup>2</sup> Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule

<sup>3</sup> Statutorily Mandated Designation of Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

<sup>4</sup> The Impact of COVID-19 on Communities and The Entities Serving Them

## 1.2 DESIGNING A RESPONSE TO A PANDEMIC HARM

The Treasury recognizes the following enumerated projects:

- Assistance to individuals who want and are available for work, including job training, assistance to unemployed individuals to start small businesses & development of job and workforce training centers.
- Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic and social needs.

The Chamber proposes combining these two scopes in the form of an Education & Talent Pipeline Initiative. The goal is to help address the negative economic effects caused by COVID-19 by aiding workforce development for local small businesses and students in San Marcos Consolidated Independent School District (SMCISD).

Through this initiative, the Chamber will coordinate programs that connect businesses, teachers and students with resources and training programs in the San Marcos local workforce development ecosystem. It will work in tandem with Workforce Solutions Rural Capital Area, the Greater San Marcos Partnership, Texas State University and other education service providers, while not duplicating efforts.

The Education & Talent Pipeline initiative will include the following:

- Partner with the local Consolidated Independent School District to shape K-12 education programs that enable local employers to meet their workforce needs:
  - Identify educational gaps and work with educational leaders and businesses to come up with innovative ways to address those gaps
  - Advocate for new program and curriculum development that produces the skills and capabilities that match the needs of area businesses
- Deliver and grow existing successful initiatives including:
  - S.T.E.A.M. Fair to promote careers in science, technology, engineering, arts and mathematics.
  - Summer Externships Program for Teachers.
  - Regional Education & Workforce Development Summit (in partnership with GSMP)
  - Youth Leadership San Marcos program for high school students.
- Evaluate the addition of new initiatives. Potential examples are:
  - Survey local employers and workers to monitor current needs and opportunities.
  - College preparation that explores integrating Texas State University students and community members to advise on college/career readiness.
  - Financial Aid Saturdays to help families with FAFSA applications via organized volunteered efforts.
  - Mass communications and marketing to families most affected by COVID to inform them of college/career opportunities.

The Chamber has drafted a proforma budget for two years of the Education & Talent Pipeline initiative.

Table 1 outlines funding sources and needed revenue.

*Table 1: Education & Talent Pipeline Initiative Revenue, 2023-2026*

<b>Revenue</b>	<b>2023-2024</b>	<b>2024-2025</b>
	<b>Year 1</b>	<b>Year 2</b>
ARPA Funds	\$56,000	\$44,000
Wkfc Solutions RCA Grant: STEAM Fair	\$5,000	\$5,000
Wkfc Solutions RCA Grant: Summer Externships	\$12,000	\$12,000
Donations		\$4,000
<b>TOTAL REVENUE</b>	<b>\$73,000</b>	<b>\$65,000</b>

Expenses would include wages and fringe benefits for the Chamber of Commerce staff dedicating time to the Education & Talent Pipeline initiative, the costs of contracting with partners to provide externships and development programs, computing and IT supplies, and outreach to promote the program and develop relationships with community members and partners. The estimated costs are outlined in Table 2.

*Table 2: Education & Talent Pipeline Initiative Expenses, 2023-2026*

<b>Expense</b>	<b>2023-2024</b>	<b>2024-2025</b>
	<b>Year 1</b>	<b>Year 2</b>
<b>Salaries</b>	<b>\$20,000</b>	<b>\$20,000</b>
Salary 30% - staff position	\$20,000	\$20,000
<b>Fringe Benefits</b>	<b>\$6,000</b>	<b>\$6,000</b>
Payroll taxes/insurance/benefits	\$6,000	\$6,000
<b>Contractual Services</b>	<b>\$12,000</b>	<b>\$12,000</b>
Summer Teacher Externships	\$12,000	\$12,000
<b>Supplies</b>	<b>\$15,000</b>	<b>\$7,000</b>
Computer station/equipment	\$5,000	\$2,000
Technology/IT, software subscriptions	\$10,000	\$5,000
<b>Outreach</b>	<b>\$14,000</b>	<b>\$14,000</b>
Promotions & marketing	\$4,000	\$4,000
S.T.E.A.M. Fair at SMHS	\$6,000	\$6,000
Staff training & conferences	\$1,000	\$1,000
State of Workforce & Education event	\$3,000	\$3,000
<b>de minimus</b>	<b>\$6,000</b>	<b>\$6,000</b>
<b>TOTAL EXPENSE</b>	<b>\$73,000</b>	<b>\$65,000</b>

Hays County will be able to address student academic and social needs in the high poverty SMCISD by providing assistance in job training and workforce development through an Education & Talent Pipeline initiative. This will also support small businesses operating in the QCTs in the city of San Marcos. This will be achieved through a Subrecipient Agreement of \$100,000 with the Chamber.

### 1.3 PROGRAM SUMMARY

Through a subrecipient agreement for the amount of \$100,000, the Chamber will be able to implement an Education & Talent Pipeline initiative partnering with SMCISD to shape K-12 education programs that help local employers to meet their workforce needs, continue and expand existing initiatives, and evaluate the addition of new initiatives for students.

As the subrecipient, the Chamber will be responsible for collecting and managing all eligibility documentation. The subrecipient agreement ensures access to the Chamber's records pertaining to this program. Audits will be performed by the Hays County to determine compliance with program requirements. Oversight of spending and program progress will be monitored through submission of the Chamber's general ledger. The Chamber will earn an administrative fee that is not to exceed 10% of the ARPA SLFRF monies.

## 2 COMPARATIVE ANALYSIS

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### 2.1 REASONABLENESS & PROPORTIONALITY

The Chamber has drafted a proforma budget for two years of the Education & Talent Pipeline Initiative. Expenses for each year would include the wages and fringe benefits for the Chamber staff dedicating time to the Education & Talent Pipeline initiative, the costs of contracting with partners to provide externships and development programs, computing and IT supplies, and outreach to promote the program and develop relationships with community members and partners.

The wages for the staff time dedicated to the Education & Talent Pipeline initiative are presented at a range of 30% of a \$67,000 average salaried staff member over the two-year period. The Austin–Round Rock–San Marcos metropolitan statistical area demonstrates in Table 3 that a full-time employee would average \$45,000 as opposed to the proposed \$20,000. Fringe costs of \$6,000 are in line with Bureau of Labor Statistics evaluation that the employer cost for a civilian worker averages benefits account for 31 percent of total compensation.<sup>5</sup>

*Table 3: Bureau of Labor Statistics Mean Salaries, Austin MSA*

Occupation	Mean Salary
Adult Basic Education, Adult Secondary Education, and English as a Second Language Instructors	\$48,010
Community and Social Service Specialists, All Other	\$49,820
Demonstrators and Product Promoters	\$41,750
Human Resources Assistants, Except Payroll and Timekeeping	\$44,440
Office and Administrative Support Occupations	\$45,610
Office and Administrative Support Workers, All Other	\$42,160
Social and Human Service Assistants	\$41,790
<b>Average</b>	<b>\$44,797</b>

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<sup>5</sup> Employer Costs for Employee Compensation - December 2022 | BLS

Supplies for the Education & Talent Pipeline Coordinator are listed as laptop, printer, monitor, and cubicle partitions. The purchase of supplies is not limited to the listed items but does serve as a bulk of potential costs. Table 4 outlines the average and maximum of advertised costs for supply types. The average costs for listed supplies total around \$2,000 while the maximum amount range above \$4,000.

*Table 4: Cost Analysis of Listed Supplies*

	<b>Average</b>	<b>Max</b>
Laptop	\$534	\$1,149
Dual Monitor	\$420	\$1,140
Printer	\$274	\$869
Cubicle Partition	\$650	\$800
8.25% Sales Tax	\$155	\$327
<b>Total Cost</b>	<b>\$2,033</b>	<b>\$4,285</b>

A monthly fee of technology and software subscriptions of \$833 is presented which aligns with available pricing for certain products displayed in Table 5.

*Table 5: Technology and Software Subscriptions*

<b>Product</b>	<b>Monthly Fee</b>
Office 365	\$19
Adobe Suite	\$85
Canva	\$150
Social Sprout	\$399
AT&T wifi hotspot	\$55
Microsite Hosting	\$54
<b>Total</b>	<b>\$762</b>

Outreach costs include the S.T.E.A.M. Fair at San Marcos High School, the Chamber's State of Workforce & Education event, staff training & conferences, and promotions & marketing. Contractual Services include Summer Teacher Externships. The U.S. Small Business Administration recommends spending 7 to 8 percent of your gross revenue for marketing and advertising which the \$4,000 cost for promotions & marketing aligns with. The remainder of the Outreach and Contractual Services costs will have to be evaluated as reimbursement requests are submitted to the County due to the myriad of costs that make up these estimates.

With the caveat that Outreach and Contractual Service costs will be evaluated upon submission, the \$65,000 to \$73,000 per year cost proposed by the Chamber is reasonable.

### 3 ELIGIBILITY

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#### 3.1 FINAL RULE<sup>6</sup>

A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes, including:

A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including Investments in communities to promote improved health outcomes and public safety such as parks, and recreation facilities.

#### 3.2 DISPROPORTIONATELY IMPACTED COMMUNITIES<sup>7</sup>

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- Households residing in Qualified Census Tracts
- Small businesses operating in Qualified Census Tracts
- Nonprofits operating in Qualified Census Tracts

The Chamber serves these populations defined as disproportionately impacted in Title 31 Part 35.6(b)(2).

Hays County awarding \$100,000 to the Chamber as a subrecipient of ARPA SLRFR monies is an enumerated eligible use as the County would be investing in the community to promote assistance to individuals who want and are available for work, including job training, assistance to unemployed individuals to start small businesses and development of job and workforce training centers and services to address educational disparities, including assistance to high-poverty school districts and educational and evidence-based services to address student academic and social needs.

#### 3.3 COMPENSATION — PERSONAL SERVICES<sup>8</sup>

General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in §200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

- 1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

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<sup>6</sup> [31 CFR 35.6\(b\)](#)

<sup>7</sup> Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

<sup>8</sup> 2 CFR 200.430(a)

- 2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
- 3) Is determined and supported as provided in paragraph (i) of this section, when applicable.





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Marcus Pacheco, Development Services Director

Sponsor:

Commissioner Ingalsbe

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### Agenda Item

Discussion and possible action to consider granting a variance from Section 705.2.01 of the Hays County Development Regulations and allow issuance of a development authorization for an entry monument on a property along Yarrington Road for the Sunset Oaks Subdivision. **INGALSBE/PACHECO**

### Summary

Pape-Dawson Engineers, acting as the Builder, is seeking to construct an Entry Monument on Parcel ID R163110, consisting of 5.89 acres along Yarrington Road in Precinct 1. Per the 2018 Preliminary Plan for Sunset Oaks Subdivision, this parcel was to be known as "Commercial/Storage, Block U, Lot 22, 5.71 AC". The Final Plats for Sunset Oaks excluded this parcel, along with at least one other parcel in the immediate vicinity, remaining as raw, unplatted acreage.

Per Chapter 705 § 2.01 of the Hays County Development Regulations, any person who subdivides a tract of land or creates a condominium style development shall:

- (A) Comply in all respects with these Regulations; and,
- (B) Prepare and submit to the Commissioners Court an Application for approval or registration of the proposed Subdivision in accordance with the terms and procedures set forth in this Chapter.
- (C) Comply in all respects with Hays County's Specifications for Roadway Design, Paving, and Drainage Improvements.

The Applicant is seeking a variance to Chapter 705 § 2.01 for General Subdivision Requirements. Hays County is unable to issue development permits on tracts of land that do not comply with the County Subdivision Regulations, so this property would need to be platted prior to any permit issuance. The request for the waiver comes at the concern that the platting process with Hays County could cause undue hardship pertaining to the construction of a non-residential structure geared to serve a nearly complete residential development.

Response and justification is provided in the back-up.

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### Attachments

Variance Request

Recorded Plat

Recorded Easement



# Hays County Development Services

2171 Yarrington Rd, Suite 100, Kyle Texas 78640

(P) 512-393-2150 (Web) [www.hayscountytexas.com](http://www.hayscountytexas.com)

## Variance Request Form

### Overview:

The Variance Request Form is for a non-compliant property seeking a variance from a Regulation adopted by Hays County. The decision to grant or deny a variance is at the complete discretion of the Hays County Development Services and/or the Hays County Commissioners Court.

### Instructions:

The Variance Request Form should be completed in its entirety. Any incomplete forms will not be accepted and returned to the Owner / Applicant. Documents are required to be attached to the Variance Request Form. Recorded copies of the required documents can be obtained at the Hays County Clerk's Office.

### Fee:

Type I – Administrative Variance - \$100

Type II – Commissioners Court Determination Variance - \$500

### Definitions:

**Applicant** – A person seeking approval of an application submitted pursuant to the Hays County Development Regulations.

**Owner(s)** – The holder(s) of a legal or equitable interest in real property as shown by the deed records of the county in which the property is located, and which has been included in an application or Development Authorization under the Hays County Development Regulations.

**Variance** – A grant of relief by Hays County from a Regulation adopted by Hays County under the authority of the Hays County Commissioners Court.

Owner / Applicant Information:

Business Name: \_\_\_\_\_  
Owner Name: \_\_\_\_\_  
Owner Address: \_\_\_\_\_  
Primary Phone: \_\_\_\_\_ Secondary Phone: \_\_\_\_\_  
Primary E-mail: \_\_\_\_\_ Secondary E-mail: \_\_\_\_\_

Applicant Name: Jon Adame, P.E.  
Applicant Address: 2000 NW Loop 410 San Antonio, TX 78213  
Primary Phone: (210) 375-9000 Secondary Phone: \_\_\_\_\_  
Primary E-mail: jadame@pape-dawson.com Secondary E-mail: \_\_\_\_\_

Property Information:

Subdivision Name: Sunset Oaks  
Phase: 2 Section: 1 Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
If not located in a subdivision,  
Survey / Abstract: William Hemphill Survey No 221  
Recorded (Vol/Page/Instrument): Doc ID No. 22045849  
Hays Central Appraisal District Property ID “R” Number: R163110  
Hays County Commissioner Precinct: ☒ 1 ☐ 2 ☐ 3 ☐ 4

Type of Variance (check all that apply):

- ☒ Variance to the Hays County Development Regulations  
☐ Variance to the Hays County Rules for Junkyards and Automotive Wrecking and Salvage Yards  
☐ Variance to the Hays County Development Services Fee Schedule

Variance Justification:

All variance requests must be accompanied by the section of current Regulations being appealed and the reason sought for the variance. Please fill out the below section, attaching any additional sheets needed to support the reason sought for the variance.

Chapter / Section of Regulations being Appealed	Reason for Variance
Chapter 705 Section 2	A monument sign for the Sunset Oaks subdivision is proposed on an unplatted ±6 acre lot at the corner of Yarrington Road (CR 159) and Lone Pasture Trail. The sign's construction documents were submitted to Hays County on permit number 2022-39467 and rejected by County Environmental staff in December 2022. This was due to the subject tract being under 10 acres, and that a permit would not be issued until the property became a compliant parcel. This perspective was reiterated by County Planning in reference to Chapter 705, Section 2 which requires a preliminary and final plat to establish compliant lots. This variance request is in reference to that code section.
	The requirement to plat this lot is an unnecessary burden for constructing the proposed monument sign. The unplatted subject tract is ±6 acres in size which is consistent with the approved 2017 Sunset Oaks Subdivision preliminary plat. Therefore, this remaining parcel acreage has been anticipated for some time. Furthermore, neither this variance's applicant nor the Sunset Oaks Section One, Phase Two developer (LGI Homes - Texas, LLC) own the subject tract. It is therefore not possible for either to plat the subject tract. However, support for the sign's construction has been given by the subject tract's owner, RFJJ2 Investments, LLC. They granted and recorded a landscape and monument sign easement in September 2022 for the sign.
	Additional support for this variance has been given by County Commissioner Debbie Inglsabe via email on May 31, 2023. Development Services Director Marcus Pacheco has also expressed interest in this variance being placed on the commission court agenda.
	Attachments: Recorded Landscape and Monument Easement Recorded Plat Construction Plans - Sunset Oaks Entry Feature

### Hardship Findings:

1. Describe the actual situation of the property in question in relation to neighboring or similar properties such that no special privilege not enjoyed by other similar situated properties may be granted.

The future sign is proposed on a ±6 acre unplatted lot at the main entrance to Sunset Oaks on the corner of Yarrington Road (CR 159) and Lone Pasture Trail. This lot provides the only feasible land to place a monument entry sign for the Sunset Oaks subdivision. The sign has been granted a recorded easement and given support from owner, RFJJ2 Investments.

2. Describe how strict enforcement of the Regulation would deny the Applicant the privileges or safety of similarly situated property with similar development.

Neither the applicant nor developer LGI Homes owns the subject tract on which the monument sign is proposed. Therefore, if property platting was enforced, it would not be possible for either to plat the subject tract due to lack of ownership. The intent of Chapter 705, Section 2 is to ensure lots are compliant and have access to existing infrastructure. The monument sign is proposed within a recorded easement and does not obstruct access to existing utilities or public right of ways for the subject tract.

3. Describe how the granting of a variance will not be detrimental to public health, safety, and welfare, or injurious to other property, or will not prevent the orderly development of the land in the area in accordance with these Regulations.

Support for the monument sign's construction has been given by land owner RFJJ2 Investments. The recorded landscape and monument easement they issued shows not only support for the construction, but that it should not undermine their future development plans. The increase in impervious cover from the sign's development is insignificant when compared to the overall parcel size, and the proposed landscaping surrounding the sign would help in treating runoff.

4. Describe how the hardship sought to be avoided is not the result of the Applicant's own actions being self-imposed or self-created and/or economic or financial hardship.

The subject tract being under 10 acres lead to an initial plan rejection leading to this variance request. However, this ±6 remaining acres has been anticipated since the 2017 Sunset Oaks Subdivision preliminary plat approval. RFJJ2 Investment's support was required for monument sign construction since neither the applicant nor developer LGI Homes own the subject tract. Their ownership support came via the recorded landscape and monument sign easement. Therefore, there is no implication of this hardship being self or economically imposed. Support for this sign was needed, sought, and received.

**Required Documents (please attach the below documents to this request):**

1. Deed(s) – A copy of the deed(s) for all properties relating to this request.
2. Survey / Metes & Bounds – A copy of any survey or metes and bounds description for all properties relating to this request.

**Acknowledgement:**

I hereby certify that I have submitted an application in compliance with the Hays County Development Regulations and other applicable local, state, and federal laws. I know that this Request Form will not be acted upon unless a completed application currently exists with Hays County Development Services. Submittal of this Request form without an existing application may result in immediate denial.

**Owner's / Applicant's Certification:**

I hereby certify that I have carefully read and completed this Request Form. All the above information is true and correct to the best of my knowledge. I hereby agree to comply with all provisions of local, state, and federal laws whether they are herein specified or not. As the Owner of the above-mentioned property or a duly authorized Applicant, I hereby grant permission to the County to enter the premises and make all necessary inspection and to take all other actions necessary to review and act upon this request.

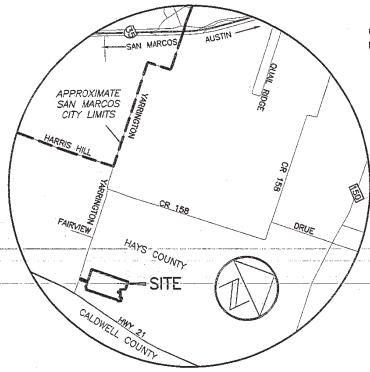
Date: June 22 , 2023

Print ~~Owner~~ / Applicant Name: Jon Adame, P.E.

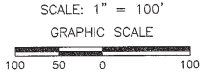
~~Owner~~ / Applicant Signature: Jon Adame

Digitally signed by Jon Adame  
DN: C=US, E=jadame@pape-dawson.com, CN=Jon Adame  
Date: 2023.06.22 22:17:01-05'00'

# FINAL SUBDIVISION PLAT: SUNSET OAKS SECTION ONE, PHASE TWO HAYS COUNTY, TEXAS



LOCATION MAP  
NOT TO SCALE



LEGEND	
●	1/2" REBAR WITH CHAPARRAL CAP FOUND UNLESS OTHERWISE NOTED
○	1/2" REBAR WITH "CHAPARRAL" CAP SET
▲	PK NAIL FOUND
△	CALCULATED POINT
P.U.E.	PUBLIC UTILITY EASEMENT
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
---	SIDEWALK LOCATION
( )	RECORD INFORMATION

THIS IS A SURFACE DRAWING.

BEARING BASIS: THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), SOUTH CENTRAL ZONE, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE POSITIONING USER SERVICE (OPUS) FOR CHAPARRAL CONTROL POINT "P941".

4" ALUMINUM DISK SET IN CONCRETE

SURFACE COORDINATES:  
N 13885328.23  
E 2332261.23

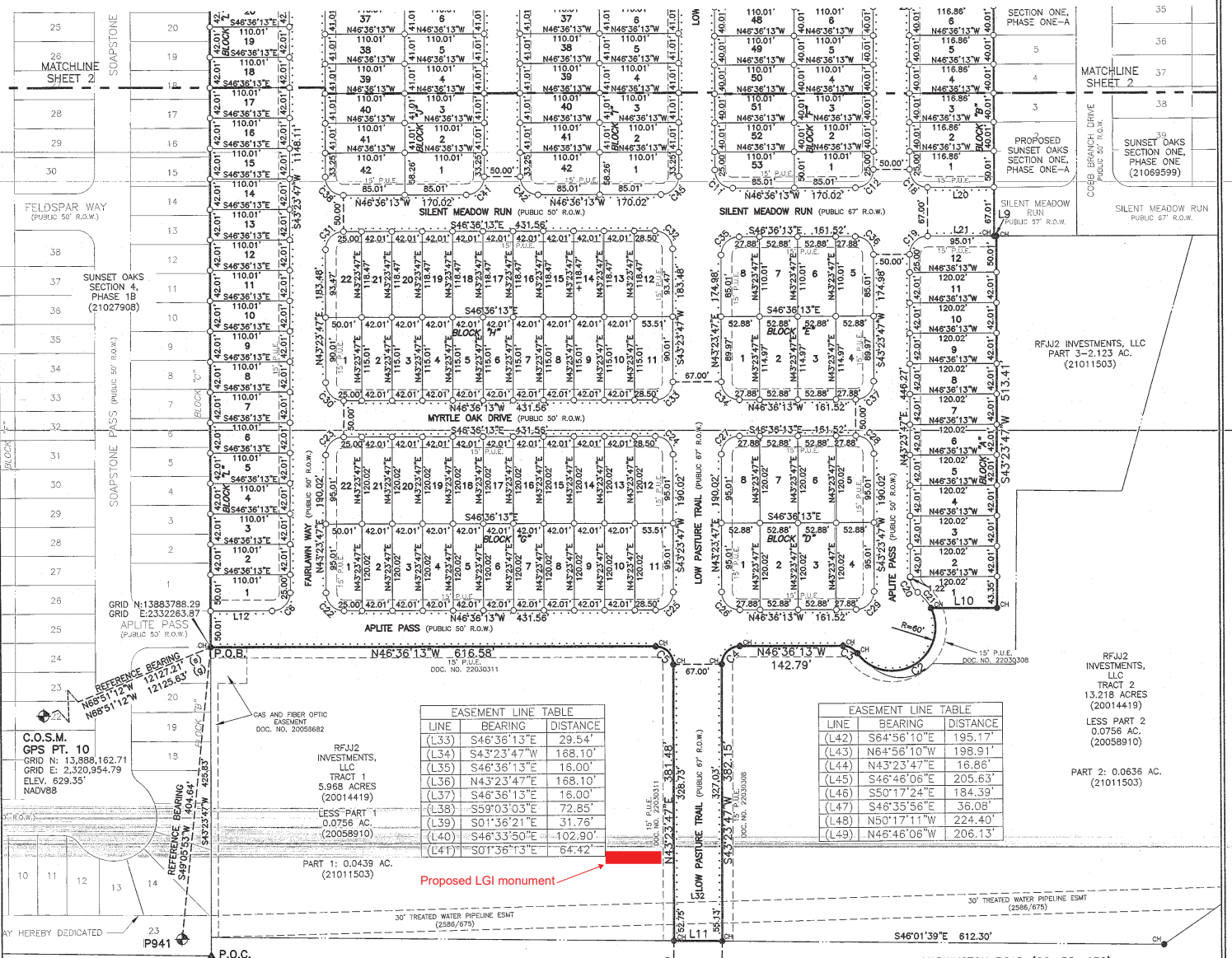
TEXAS STATE PLANE COORDINATES:  
N 13885323.37  
E 2331958.07

ELEVATION = 672.80'  
VERTICAL DATUM: NAVD 88 (GEOID 12B)

COMBINED SCALE FACTOR = 0.999870017  
(FOR SURFACE TO GRID CONVERSION)

INVERSE SCALE FACTOR = 1.000130  
(FOR GRID TO SURFACE CONVERSION)

SCALED ABOUT 0.0  
THETA ANGLE: 0°33'44"



EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
(L33)	S46°36'13"E	29.54'
(L34)	S43°23'47"W	168.10'
(L35)	S46°36'13"E	16.00'
(L36)	N43°23'47"E	168.10'
(L37)	S46°36'13"E	16.00'
(L38)	S59°03'03"E	72.85'
(L39)	S01°36'21"E	31.76'
(L40)	S46°33'50"E	102.90'
(L41)	S01°36'13"E	64.42'

EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
(L42)	S64°56'10"E	195.17'
(L43)	N64°56'10"W	198.91'
(L44)	N43°23'47"E	16.86'
(L45)	S46°46'06"E	205.63'
(L46)	S50°17'24"E	184.39'
(L47)	S46°35'56"E	36.08'
(L48)	N50°17'11"W	224.40'
(L49)	N46°46'08"W	206.13'

ALAMO CONCRETE PRODUCTS, LTD  
(36.14 ACRES)  
VOL. 2475, PG. 584

OWNER AND DEVELOPER:  
SHANNON BIRT  
LGI HOMES-TEXAS LLC  
1450 LAKE ROBBINS DRIVE SUITE 410  
THE WOODLANDS, TX 77380  
(281) 210-2571  
ATTN: SHANNON BIRT

ENGINEER:  
BINKLEY & BARFIELD, INC.  
2401 DOUBLE CREEK DRIVE, SUITE 200  
ROUND ROCK, TEXAS 78664  
(512) 292-0006

SURVEYOR:  
CHAPARRAL PROFESSIONAL LAND SURVEYING, INC.  
3500 McCall Lane  
AUSTIN, TX 78744  
(512) 443-1724

SUBMITTAL DATE: June 26, 2020  
TOTAL AREA OF THIS PLAT: 49.478 AC.  
TOTAL NUMBER OF LOTS: 275  
RESIDENTIAL: 271  
OPEN SPACE:  
UTILITY/DRAINAGE EASEMENT: 4

RIGHT-OF-WAY DEDICATION SUMMARY

NAME	LENGTH	R.O.W. WIDTH	CLASSIFICATION
LOW PASTURE TRAIL	2100'	67'50"	MINOR COLLECTOR/LOCAL
APLITE PASS	2753'	67'50"	MINOR COLLECTOR/LOCAL
SILENT MEADOW RUN	952'	67'50"	MINOR COLLECTOR/LOCAL
FAIRLAWN WAY	1518'	50'	LOCAL
SURREY OAKS	945'	50'	LOCAL
CITRINE CREST	135'	50'	LOCAL
CABRIO GARDENS	675'	50'	LOCAL
SPRING HEARTH STREET	142'	50'	LOCAL
MYRTLE OAK DRIVE	810'	50'	LOCAL

LOT SIZE CHART

SIZE(AC)	#
≥10	-
≥5 <10	1
≥2 <5	-
≥1 <2	-
<1	274

SURVEY ABSTRACT: WILLIAM HEMPHILL SURVEY, ABS. 221  
SUBMITTAL DATE: June 26, 2020  
TOTAL AREA OF THIS PLAT: 49.478 AC.  
TOTAL NUMBER OF LOTS: 275  
RESIDENTIAL: 271  
OPEN SPACE:  
UTILITY/DRAINAGE EASEMENT: 4

YARRINGTON ROAD (CO. RD. 159)  
(RIGHT-OF-WAY WIDTH VARIES)

Professional Land Surveying, Inc.  
Surveying and Mapping

3500 McCall Lane  
Austin, Texas 78744  
512-443-1724  
Firm No. 10124500

PROJECT NO.: 1434-001  
DRAWING NO.: 1434-001-PL S1 P2 r1  
PLOT DATE: 08/12/2022  
PLOT SCALE: 1"=100'  
DRAWN BY: RGH  
SHEET 01 OF 04



**LANDSCAPE AND MONUMENT EASEMENT**

**STATE OF TEXAS**

§

§

**COUNTY OF HAYS**

§

THIS LANDSCAPE AND MONUMENT EASEMENT is made as of the 22 day of August, 2022 by and between RFJJ2 INVESTMENTS, LLC, a Texas limited liability company ("Grantor"), and LGI HOMES – TEXAS, LLC, a Texas limited liability company ("Grantee").

**WITNESSETH:**

WHEREAS, Grantor desires to grant to Grantee certain landscape and monument easements over Grantor's property described in Exhibit A and Exhibit B attached hereto and made a part hereof (collectively the "Easement Area").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Grantor has this day GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto Grantee, its successors and assigns the following easements:

(i) A perpetual, non-exclusive easement (the "Landscape Easement") for the installation, operation, maintenance and replacement of decorative landscaping (including, without limitation, plantings and hardscape installations), irrigation and lighting for such landscaping, and other necessary appurtenances thereto, over, under and across the property described in Exhibit A attached hereto and made part hereof; and

(ii) A perpetual, non-exclusive easement (the "Monument Easement") for the installation, operation, maintenance and replacement of monuments and landscaping for such monuments and other necessary appurtenances thereto, over, under and across the property described in Exhibit B attached hereto and made a part hereof.

The Landscape Easement and Monument Easement are collectively referred to herein as the "Easement".

TO HAVE AND TO HOLD, the Easement unto said Grantee, its successors and assigns, together with the right and privilege at any and all times to enter said Easement Area for the purposes set forth herein; provided, however, that Grantor, its successors and assigns, reserves the right to enter upon and use the Easement Area, but in no event shall Grantor (i) use the Easement Area in any manner which interferes or is inconsistent with the Easement granted to Grantee hereunder, or (ii) erect or permit to be erected a building, structure or improvements of any kind on any portion of the Easement Area that interferes with the Easement or the visibility thereof in the case of the Monument Easement.

This Easement does not impose any obligation on Grantee to construct any improvements in the Easement Area.

In performing any construction, installation, maintenance or repairs or any other work of any kind in connection with the Easement Area, Grantee shall keep the Easement Area free and clear of any and all mechanic's, construction and materialman's liens and any other liens arising from or pertaining to such construction, installation, maintenance, repairs or other work.

Additionally, Grantee agrees by its acknowledgement hereof that it shall be solely responsible, and in no event shall Grantor be held responsible, for any and all maintenance or repairs of the Easement Area, including but not limited to all electricity costs to light or maintain the Easement Area in any way, all water, labor and other costs incurred to landscape and maintain said landscape on the Easement Area, and any labor or equipment costs to repair or maintain the Easement Area.

Grantee, in their sole and absolute discretion, shall have the right to assign the Easement to a homeowner's association or similar property owner's association, whereupon Grantee shall be released from any rights and liabilities pertaining to the Easement.

This Easement is subject to all matters of record in Hays County, Texas, including, without limitation, all existing recorded easements validly subsisting against the Easement Area on the Effective Date. The Easement and covenants created herein and the covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder shall run with the land.

All notices, demands, statements, and requests (collectively, "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date the Notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and properly addressed with the addresses set forth below, or (ii) on the date the Notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the party to whom it is directed, provided it is sent prepaid, return receipt requested, and properly addressed with the addresses set forth below.

The addresses of the signatories to this Agreement are set forth below:

GRANTOR: RFJJ2 Investments, LLC  
3736 Bee Cave Road  
#1-122  
West Lake Hills, Texas 78746

GRANTEE: LGI Homes – Texas, LLC  
1450 Lake Robbins Drive  
Suite 430  
The Woodlands, Texas 77380



Any party's address for Notice may be changed by Notice similarly given.

Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the Easement unto said Grantee, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. This Easement shall bind and inure to the benefit of the respective parties, their successors and assigns.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below to be effective the 22 day of August, 2022 (the "Effective Date").

**GRANTOR:**

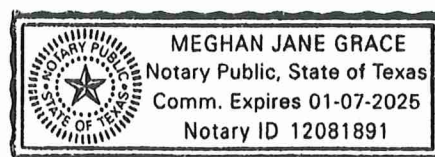
**RFJJ2 INVESTMENTS, LLC**  
a Texas limited liability company

By: [Signature]  
Joe F. Stafford, Manager

STATE OF Texas §  
§  
COUNTY OF Denton §

The foregoing instrument was acknowledged before me this 22 day of August, 2022 by Joe F. Stafford, Manager RFJJ2 INVESTMENTS, LLC, a Texas limited liability company, on behalf of said company.

[Signature]  
Notary Public in and for  
The State of Texas



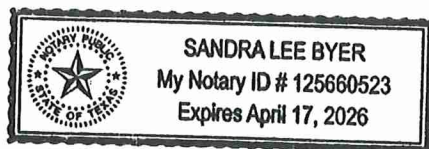
**GRANTEE:**

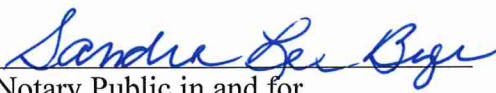
**LGI HOMES – TEXAS, LLC**  
a Texas limited liability company

By:   
Shannon Birt, Authorized Agent

STATE OF TEXAS           §  
   §  
COUNTY OF Montgomery §

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of August, 2022 by Shannon Birt, authorized agent for LGI HOMES – TEXAS, LLC, a Texas limited liability company, on behalf of said company.



  
Notary Public in and for  
The State of Texas

**AFTER RECORDING RETURN TO:**

LGI Homes – Texas, LLC  
1450 Lake Robbins Drive  
Suite 430  
The Woodlands, Texas 77380

**EXHIBIT A**

**DESCRIPTION OF LANDSCAPE EASEMENT**



Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-389-0943

3500 McCall Lane  
Austin, Texas 78744

**0.3531 ACRE  
LANDSCAPE EASEMENT  
WILLIAM HEMPHILL SURVEY, ABSTRACT NO. 221  
HAYS COUNTY, TEXAS**

**A DESCRIPTION OF 0.3531 ACRE (APPROXIMATELY 15,382 SQ. FT.) IN THE WILLIAM HEMPHILL SURVEY NO. 221, HAYS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF THAT 5.968 ACRE TRACT DESCRIBED IN THE GENERAL WARRANTY DEED WITH VENDOR'S LIEN TO RFJJ2 INVESTMENTS, INC. RECORDED IN DOCUMENT NO. 20014419, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS (OPRHCT), AND ALL OF THAT CERTAIN 0.0439 ACRE TRACT DESCRIBED AS TRACT 1 IN THE DEED TO RFJJ2 INVESTMENTS, INC. RECORDED IN DOCUMENT NUMBER 21011503, OPRHCT; SAID 0.3531 ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING** at a mag nail with washer stamped "CHAPARRAL BOUNDARY" set in asphalt on the northeasterly right-of-way line of Yarrington Road (Co. Rd. 159, right-of-way width varies) at the most southerly corner of Lot 23, Block B, Sunset Oaks Section 4, Phase 1B, a subdivision recorded in Document Number 21027908, Plat Records, Hays County, Texas (PRHCT).

**THENCE** with the southeast line of said Block B, Sunset Oaks Section 4, Phase 1B, the following two (2) courses and distances:

1. North 43°23'47" East, passing at 25.81 feet, the calculated west corner of said 5.968 acre tract and continuing with the northwest line of same for a total distance of 410.83 feet to the calculated northwest corner and **POINT OF BEGINNING** herein, and
2. North 43°23'47" East, continuing with the northwest line of said 5.968 acre tract, a distance of 15.00 feet to a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found on the southeast line of said Block B, Sunset Oaks Section 4, Phase 1B, for the east corner of Lot 21, said Block B, the northwest corner of said 5.968 acre tract, the west corner of said 0.0439 acre tract, and being a southwest corner of that 48.521 acre tract described in the Special Warranty Deed to LGI Homes Texas LLC, recorded in Document Number 20060389, OPRHCT; and from which point a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for the northwest corner of said 48.521 acre tract bears North 43° 23' 47" East, 2002.35 feet.

**THENCE** with the south line of said 48.521 acre tract, the following three (3) courses and distances:

1. South 46°36'13" East, with the north line of said 0.0439 acre tract, 616.58 feet to



a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for point of curvature for a curve to the right,

2. with said curve to the right, having a radius of 25.00 feet, a delta angle of 90°00'00", passing at an arc length of 18.79 feet, the east line of said 0.0439 acre tract, being the north line of that 0.0756 acre tract described as Part 1 in the Deed to LGI Homes-Texas, LLC, recorded in Document Number 20060389, OPRHCT and continuing with the north line of same for a total arc length of 39.27 feet, and a chord which bears South 01°36'13" East, 35.36 feet to a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found, and
3. South 43°23'47" West, with the north line of said 0.0756 acre tract, 381.48 feet to a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found on the northeast right-of-way line of said Yarrington Road, being a southwest line of said 48.521 acre tract, said 5.968 acre tract, and being the southwest corner herein.

**THENCE** North 46°01'39" West, with the northeast right-of-way line of said Yarrington Road and the southwest line of said 5.968 acre tract, 15.00 feet to a calculated southwest corner.


**THENCE** crossing said 5.968 acre tract, the following three (3) courses and distances:

1. North 43°23'47" East, 381.33 feet to a calculated point of curvature for a curve to the left,
2. With said curve to the left, having a radius of 10.00 feet, an arc length of 15.71 feet, and a chord which bears North 01°36'13" West, 14.14 feet to a calculated point, and
3. North 46°36'13" West, 616.58 feet to the **POINT OF BEGINNING**, containing 0.3531 acre of land.

Surveyed on the ground November 20, 2020.

Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions from the National Geodetic Survey (NGS) On-line Positioning User Service (OPUS) for Chaparral control point "P941".

Attachments: Drawing File 1434-001-LSE2.dwg

  
Bryan D. Newsome  
Registered Professional Land Surveyor  
State of Texas No. 5657  
TBPLS Firm No. 10124500

28 July  
2022



SKETCH TO ACCOMPANY A DESCRIPTION OF 0.3531 ACRE (APPROXIMATELY 15,382 SQ. FT.) IN THE WILLIAM HEMPHILL SURVEY NO. 221, HAYS COUNTY, TEXAS, BEING A PORTION OF A 5.968 ACRE TRACT DESCRIBED AS TRACT 1 IN A GENERAL WARRANTY DEED WITH VENDOR'S LIEN CONVEYED TO RFJ22 RECORDED IN DOCUMENT NO. 20014419 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

- LEGEND
- 1/2" REBAR WITH "CHAPARRAL" CAP FOUND
  - △ CALCULATED POINT
  - ( ) RECORD INFORMATION

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N43°23'58"E	15.00'
L2	N46°01'39"W	15.00'
L3	N43°23'47"E	2002.35'

CURVE TABLE				
CURVE	RADIUS	DELTA	ARC	CHORD
C1	25.00'	90°00'00"	39.27'	S01°36'13"E 35.36'
C2	10.00'	90°00'00"	15.71'	N01°36'13"W 14.14'

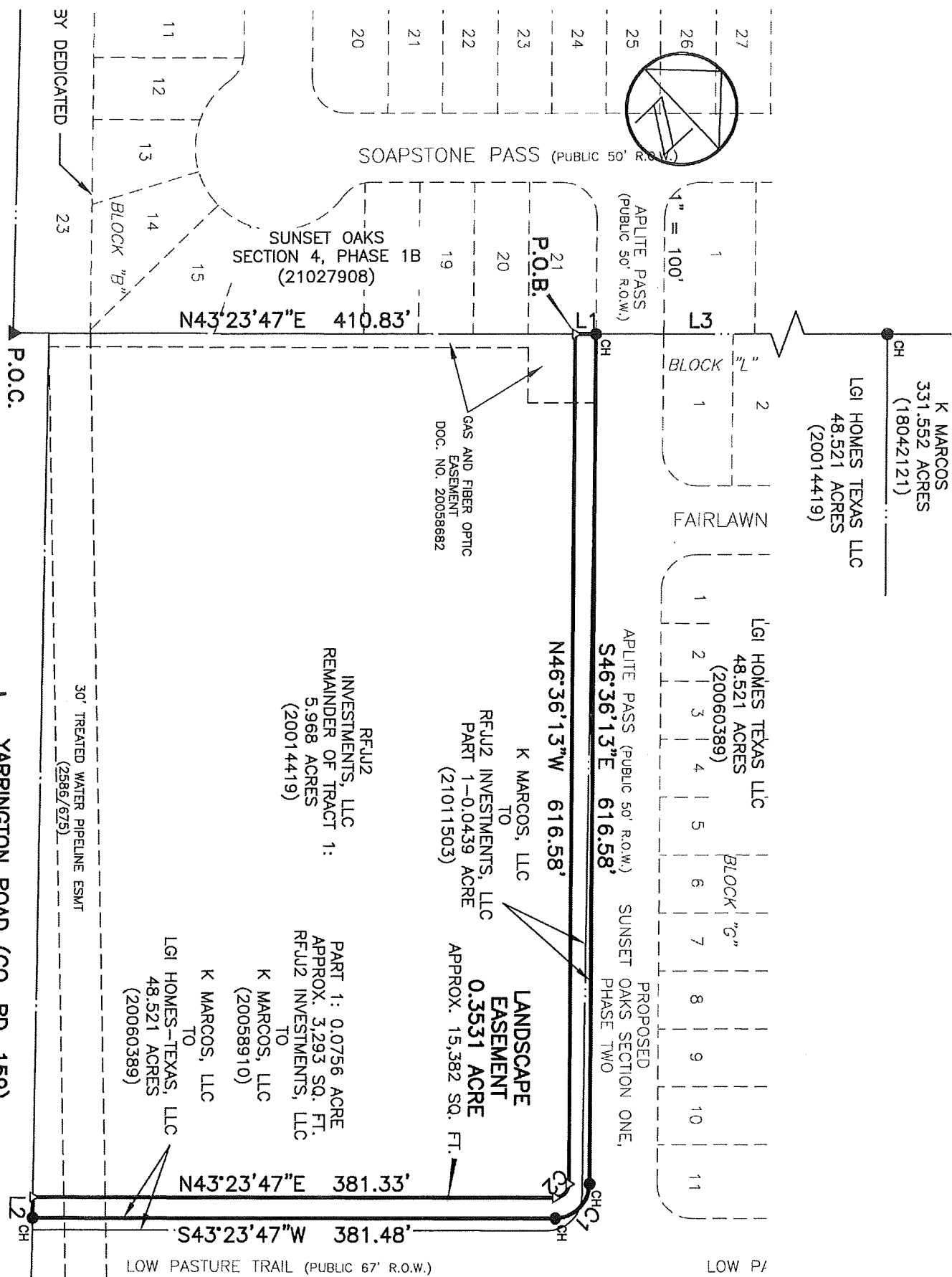


26 Jun 2022

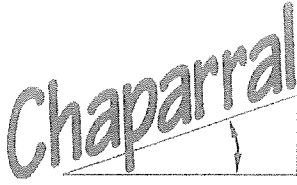
DATE OF SURVEY: 11/20/2020  
 PLOT DATE: 07/28/2022  
 DRAWING NO.: 1434-001-LSE2  
 PROJECT NO.: 1434-001  
 T.B.P.L.S. FIRM NO. 10124500  
 DRAWN BY: RGH  
 SHEET 1 OF 2

**Chaparral**

BEARING BASIS: THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), SOUTH CENTRAL ZONE, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE POSITIONING USER SERVICE (OPUS).  
 ATTACHMENTS: METES AND BOUNDS DESCRIPTION 1434-001-LSE2







Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-389-0943

3500 McCall Lane  
Austin, Texas 78744

**0.2638 ACRE  
LANDSCAPE EASEMENT  
WILLIAM HEMPHILL SURVEY, A-221  
HAYS COUNTY, TEXAS**

A DESCRIPTION OF 0.2638 ACRE OF LAND (APPROXIMATELY 11,489 SQ. FT.) IN THE WILLIAM HEMPHILL SURVEY NO. 221, HAYS COUNTY, TEXAS, BEING A PORTION OF A 13.218 ACRE TRACT DESCRIBED AS TRACT 2 IN THE GENERAL WARRANTY DEED WITH VENDOR'S LIEN TO RFJJ2 INVESTMENTS, LLC, RECORDED IN DOCUMENT NO. 20014419, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS (OPRHCT), BEING ALL OF THAT 0.00636 ACRE OF LAND DESCRIBED AS PART 2 AND A PORTION OF THAT 2.123 ACRE OF LAND DESCRIBED AS PART 3 IN THE DEED TO RFJJ2 INVESTMENTS LLC, RECORDED IN DOCUMENT NUMBER 21011503, OPRHCT; SAID 0.2638 ACRE OF LAND, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** at a mag nail with washer stamped "CHAPARRAL BOUNDARY" set in asphalt on the northeasterly right-of-way line of Yarrington Road (Co. Rd. 159, right-of-way width varies) at the most southerly corner of Lot 23, Block B, Sunset Oaks Section 4, Phase 1B, a subdivision recorded in Document Number 21027908, Plat Records, Hays County, Texas (PRHCT).

**THENCE** North 43°23'47" East, with the easterly line of said Lot 23, 25.81 feet to the calculated west corner of that certain 5.968 acre tract described as Tract 1 in the General Warranty Deed with Vendor's Lien from Cedar Stump Limited Partnership to RFJJ2 Investments, LLC, dated April 15, 2020 and recorded in Document No. 20014419, OPRHCT.

**THENCE** South 46°01'39" East, with the northeast right-of-way line of said Yarrington Road, passing at a distance of 641.62 feet a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for a northerly southwest corner of that certain 48.521 acre tract described in the Special Warranty Deed to LGI Homes – Texas, LLC in document No. 20060389 OPRHCT, and continuing for a total distance of 708.63 feet to a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for the southerly southwest corner of said 48.521 acre tract, also being southwest corner of said 0.0636 acre tract and **POINT OF BEGINNING** herein.

**THENCE** with the southerly line of said 48.521 acre tract, the following six (6) courses and distances:

1. North 43°23'47" East, with the northwest line of said 0.0636 acre tract, 382.15 feet to a ½-inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for a point of curvature for a curve to the right,

2. With said curve to the right, having a radius of 25.00 feet, a delta angle of  $90^{\circ}00'00''$ , an arc length of 39.27 feet, and a chord which bears North  $88^{\circ}23'47''$  East, 35.36 feet to a  $\frac{1}{2}$ -inch rebar with cap stamped "CHAPARRAL BOUNDARY" found,
3. South  $46^{\circ}36'13''$  East, 142.79 feet to a  $\frac{1}{2}$ -inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for a point of curvature for a curve to the right, and
4. With the arc of said curve to the right, having a radius of 25.00 feet, a delta angle of  $53^{\circ}57'55''$ , an arc length of 23.55 feet, and a chord which bears South  $19^{\circ}37'15''$  East, a distance of 22.69 feet to a  $\frac{1}{2}$ -inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for a point of reverse curvature for a curve to the left, and being on the intersection point with the southeast corner of said 0.0636 acre tract,
5. With said curve to the left, having a radius of 60.00 feet, a delta angle of  $170^{\circ}17'46''$ , an arc length of 178.33 feet, and a chord which bears  $S77^{\circ}47'10''$  East, passing at a distance of 24.29 feet a  $\frac{1}{2}$ -inch rebar found for the northwest corner of 2.123 acre tract and continuing for a total distance of 119.57 feet to a  $\frac{1}{2}$ -inch rebar with cap stamped "CHAPARRAL BOUNDARY" found for a southerly angle point of said 48.521 acre tract and a north corner of said 2.123 acre tract, and
6. South  $46^{\circ}36'13''$  East, with the common line of said 48.521 acre tract and said 2.123 acre tract, 16.34 feet to a calculated point of curvature for a curve to the right.

**THENCE** leaving said common line and crossing said 2.123 acre tract, then said 13.218 acre tract, the following five (5) courses and distances:

1. With said curve to the right, having a radius of 75.00 feet, a delta angle of  $164^{\circ}44'57''$ , passing at an arc distance of 83.60 feet the west line of said 2.123 acre tract and continuing across said 13.218 acre tract for a total arc length of 215.66 feet, and a chord which bears North  $75^{\circ}00'46''$  West, 148.67 feet to a calculated point of curvature for a curve to the left,
2. With said curve to the left, having a radius of 10.00 feet, a delta angle of  $53^{\circ}57'55''$ , an arc length of 9.42 feet, and a chord which bears North  $19^{\circ}37'15''$  West, 9.07 feet to a calculated point,
3. North  $46^{\circ}36'13''$  West, 142.79 feet to a calculated point of curvature for a curve to the left,
4. With said curve to the left, having a radius of 10.00, a delta angle of  $90^{\circ}00'00''$ , an arc length of 15.71 feet, and a chord which bears South  $88^{\circ}23'47''$  West, 14.14 feet to a calculated point, and

5. South  $43^{\circ}23'47''$  West, 382.30 feet to a calculated point on the southwest line of said 13.218 acre tract, also being on the northeast right-of-way line of said Yarrington Road.

**THENCE** North  $46^{\circ}01'39''$  West, with the common line of said 13.218 acre tract and said Yarrington Road, passing at a distance of 11.59 feet the southerly southwest corner of said 0.0636 acre tract and continuing for a total distance of 15.00 feet to the **POINT OF BEGINNING** and containing 0.2638 acre of land.

Surveyed on the ground November 20, 2020.

Bearing Basis: Grid Bearings of The Texas Coordinate System of 1983 (NAD83), South Central Zone (4204), US Survey Feet, based on GPS solutions from the National Geodetic Survey (NGS) On-line Positioning User Service (OPUS) for Chaparral control point "P941".

Attachments: Drawing 1434-001-LSE3.



28 July  
2022

Bryan D. Newsome  
Registered Professional Land Surveyor  
State of Texas No. 5657  
TBPLS Firm No. 10124500

Date



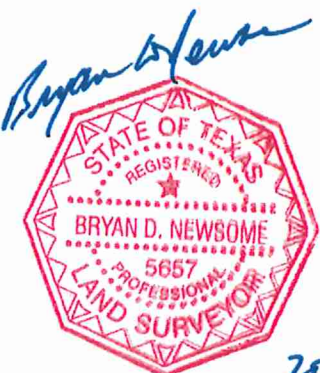
SKETCH TO ACCOMPANY A DESCRIPTION OF 0.2638 ACRE (APPROXIMATELY 11,489 SQ. FT.) IN THE WILLIAM HEMPHILL SURVEY NO. 221, HAYS COUNTY, TEXAS, BEING A PORTION OF A 13.218 ACRE TRACT DESCRIBED AS TRACT 2 IN A GENERAL WARRANTY DEED WITH VENDOR'S LIEN CONVEYED TO RFJ2 RECORDED IN DOCUMENT NO. 20014419 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

- LEGEND
- 1/2" REBAR WITH "CHAPARRAL" CAP FOUND
  - △ CALCULATED POINT
  - ( ) RECORD INFORMATION

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N43°23'47"E	25.81'
L2	S46°36'13"E	16.34'
L3	N46°01'39"W	15.00'

CURVE TABLE

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD
C1	25.00'	90°00'00"	39.27'	N88°23'47"E	35.36'
C2	25.00'	53°57'55"	23.55'	S19°37'15"E	22.69'
C3	60.00'	170°17'46"	178.33'	S77°47'10"E	119.57'
C4	75.00'	164°44'57"	215.66'	N75°00'46"W	148.67'
C5	10.00'	53°57'55"	9.42'	N19°37'15"W	9.07'
C6	10.00'	90°00'00"	15.71'	S88°23'47"W	14.14'

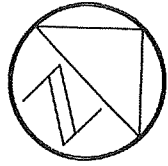


DATE OF SURVEY: 11/20/2020  
 PLOT DATE: 07/27/2022  
 DRAWING NO.: 1434-001-LSE3  
 PROJECT NO.: 1434-001  
 T.B.P.L.S. FIRM NO. 10124500  
 DRAWN BY: RGH  
 SHEET 1 OF 2

*Chaparral*

BEARING BASIS: THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), SOUTH CENTRAL ZONE, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE POSITIONING USER SERVICE (OPUS).

ATTACHMENTS: METES AND BOUNDS DESCRIPTION  
 1434-001-LSE3



1" = 100'

8	9	10	11
BLOCK "C"			

LOW PASTURE TR.

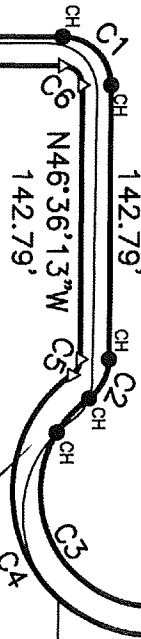
1	2	3	4
BLOCK "D"			
LGI HOMES TEXAS LLC 48,521 ACRES (20060389)			

APLITE PASS (PUBLIC 51

1	2	3
BLOCK "A"		

PROPOSED  
SUNSET OAKS SECTION ONE,  
PHASE TWO

S46°36'13"E



K MARCOS, LLC  
TO  
RFJL2 INVESTMENTS, LLC  
PART 2-0.0636 ACRE  
(21011503)

LANDSCAPE  
EASEMENT  
0.2638 ACRE  
APPROX. 11,489 SQ. FT.

RFJL2  
INVESTMENTS, LLC  
TRACT 2  
13,218 ACRES  
(20014419)

RFJL2  
INVESTMENTS, LLC  
TRACT 1  
5,968 ACRES  
(20014419)

K MARCOS, LLC  
(20058910)  
TO  
K MARCOS, LLC  
LGI HOMES-TEXAS, LLC  
48,521 ACRES  
(20060389)

LENNAR HOMES  
OF TEXAS LAND AND  
CONSTRUCTION, LTD.  
65.49 ACRES  
(20008358)

SUNSET OAKS  
SECTION 4, PHASE 1B  
(21027908)

BLOCK "B"

P.O.C.  
L1

641.62'

S46°01'39"E 708.63'

P.O.B.  
L3

67.01'

LOW PASTURE TRAIL (PUBLIC 67' R.O.W.)

N43°23'47"E 382.15'

S43°23'47"W 382.30'

30' TREATED WATER PIPELINE ESMT  
(2586/675)

YARRINGTON ROAD (CO. RD. 159)  
(RIGHT-OF-WAY WIDTH VARIES)

**EXHIBIT B**

**DESCRIPTION OF MONUMENT EASEMENT**



Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-389-0943

3500 McCall Lane  
Austin, Texas 78744

**0.0826 ACRE  
MONUMENT EASEMENT  
WILLIAM HEMPHILL SURVEY, ABSTRACT NO. 221  
HAYS COUNTY, TEXAS**

**A DESCRIPTION OF 0.0826 ACRE (APPROXIMATELY 3,601 SQ. FT.) IN THE WILLIAM HEMPHILL SURVEY NO. 221, HAYS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF THAT 5.968 ACRE TRACT DESCRIBED IN THE GENERAL WARRANTY DEED WITH VENDOR'S LIEN TO RFJJ2 INVESTMENTS, INC. RECORDED IN DOCUMENT NO. 20014419, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS (OPRHCT); SAID 0.0826 ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**COMMENCING** at a ½-inch rebar with a plastic cap stamped "CHAPARRAL BOUNDARY" found on the northeasterly right-of-way line of Yarrington Road (Co. Rd. 159, right-of-way width varies) being on the south line of said 5.968 acre tract, same being a southwest corner of that certain 0.0756 acre tract described in the Warranty Deed to K Marcos, LLC, and recorded in Document Number 20058910, OPRHCT, and being an aggregate portion of that 48.521 acre tract described in the Special Warranty Deed to LGI Homes - Texas, LLC, recorded in Document Number 20060389, OPRHCT; and from which point a ½-inch rebar found for the westerly corner of that certain 0.0636 acre tract described as Part 2 in the Deed to RFJJ2 Investments, recorded in Document Number 21011503, OPRHCT, and also being an aggregate portion of said 48.521 acre tract bears South 46°01'39" East, 67.01 feet.

**THENCE** over and across said 5.968 acre tract, the following five (5) courses and distances:

1. North 43°23'47" East, with a southwest line of said 48.521 acre tract, 82.76 feet to a ½-inch rebar with a plastic cap stamped "CHAPARRAL BOUNDARY" set for the southerly corner and **POINT OF BEGINNING** herein,
2. North 48°03'30" West, 90.03 feet to a ½-inch rebar with a plastic cap stamped "CHAPARRAL BOUNDARY" set,
3. North 43°24'47" East, 40.01 feet to a ½-inch rebar with a plastic cap stamped "CHAPARRAL BOUNDARY" set, and
4. South 48°03'30" East, 90.03 feet to a ½-inch rebar with a plastic cap stamped "CHAPARRAL BOUNDARY" set; and from which point a ½-inch rebar with a plastic cap stamped "CHAPARRAL BOUNDARY" found for an easterly corner of said 0.0756 acre tract and a southwest corner of said 48.521 acre tract bears North 43°23'47" East, 258.70 feet, and



5. South 43°23'47" West, with a southwest line of said 0.0756 acre tract and said 48.521 acre tract, 40.01 feet to the **POINT OF BEGINNING**, containing 0.0826 acre of land.

Surveyed on the ground November 20, 2020.

Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions from the National Geodetic Survey (NGS) On-line Positioning User Service (OPUS) for Chaparral control point "P941".

Attachments: Drawing File 1434-001-ME1.dwg

*Bryan D. Newsome*  
02 August 2022

Bryan D. Newsome  
Registered Professional Land Surveyor  
State of Texas No. 5657  
TBPLS Firm No. 10124500





SKETCH TO ACCOMPANY A DESCRIPTION OF 0.0826 ACRE (APPROXIMATELY 3,601 SQ. FT.) IN THE WILLIAM HEMPHILL SURVEY NO. 221, HAYS COUNTY, TEXAS, BEING A PORTION OF A 5.968 ACRE TRACT DESCRIBED AS TRACT 1 IN A GENERAL WARRANTY DEED WITH VENDOR'S LIEN CONVEYED TO RFJ2 RECORDED IN DOCUMENT NO. 20014419 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

LEGEND	
●	1/2" REBAR FOUND
○	1/2" REBAR WITH "CHAPARRAL" CAP SET
( )	RECORD INFORMATION

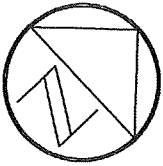
LINE TABLE		
LINE	BEARING	DISTANCE
L1	S46°01'39"E	67.01'
L2	N43°23'47"E	82.76'
L3	N48°03'30"W	90.03'
L4	N43°23'47"E	40.01'
L5	S48°03'30"E	90.03'
L6	N43°23'47"E	258.70'
L7	S43°23'47"W	40.01'

DATE OF SURVEY: 11/20/2020  
 PLOT DATE: 07/28/2022  
 DRAWING NO.: 1434-001-ME1  
 PROJECT NO.: 1434-001  
 T.B.P.L.S. FIRM NO. 10124500  
 DRAWN BY: RGH  
 SHEET 1 OF 2



BEARING BASIS: THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), SOUTH CENTRAL ZONE, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE POSITIONING USER SERVICE (OPUS).

ATTACHMENTS: METES AND BOUNDS DESCRIPTION  
 1434-001-ME1



1" = 50'

RFJUZ  
INVESTMENTS, LLC  
(REMAINDER) TRACT 1  
5.968 ACRES  
(20014419)

PART 1: 0.0756 ACRE  
APPROX. 3,293 SQ. FT.  
RFJUZ INVESTMENTS, LLC

TO  
K MARCOS, LLC  
(20058910)

K MARCOS, LLC  
TO  
LGI HOMES-TEXAS, LLC  
48,521 ACRES  
(20060389)

PUBLIC UTILITY EASEMENT  
DOC. NO. 22030311

LOW PASTURE TRAIL  
(PUBLIC 67' R.O.W.)

LGI HOMES-TEXAS, LLC  
48,521 ACRES  
(20060389)

K MARCOS, LLC  
TO  
RFJUZ INVESTMENTS, LLC  
PART 2-0.0636 ACRE  
(21011503)

RFJUZ  
INVESTMENTS, LLC  
TRACT 2  
13,218 ACRES  
(20014419)

PROPOSED  
SUNSET OAKS  
SECTION ONE  
PHASE TWO

P.O.B.

MONUMENT  
EASEMENT  
0.0826 ACRE  
APPROX. 3,601 SQ. FT.

30' TREATED WATER PIPELINE ESMT  
(2586/675)

YARRINGTON ROAD (CO. RD. 159)  
(RIGHT-OF-WAY WIDTH VARIES)

P.O.C.

CH

L1

CH

L2

L3

L4

L5

L7

L6

CH

THE STATE OF TEXAS

COUNTY OF HAYS

I hereby certify that this instrument was FILED on the  
date and the time stamped hereon by me and was duly  
RECORDED in the Records of Hays County, Texas.

**22045849 EASEMENT**

09/27/2022 01:58:30 PM Total Fees: \$102.00

 Elaine H. Cardenas

Elaine H. Cárdenas, MBA, PhD, County Clerk  
Hays County, Texas



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Jenifer O'Kane, Tax Assessor

Sponsor:

Judge Becerra

---

### Agenda Item:

Discussion and possible action to grant a purchasing waiver to the Tax Assessor's Office to utilize BIS Consulting, LLC. to perform 2023 tax rate calculations, where BIS was not the lowest quote received. **BECERRA/OKANE**

### Summary:

BIS Consulting provides Truth in Taxation Software that integrates with the website the Appraisal District is charged with hosting and that the Tax Office is required to upload rates and notices to. Using this software will turn a manual process into an automated one.

Annual cost over the lower quote is \$1,051.00. BIS requires a one-time development fee of \$1,250.00.

\*Quote was approved in the FY23 budget.

### Fiscal Impact:

Amount Requested: \$3,500

Line Item Number: 001-619-00.5429

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a waiver to the purchasing policy lowest quote requirement.

G/L Account Validated Y/N?: Yes, Software Maintenance and Licensing

New Revenue Y/N?: N/A

Comments:

---

## Attachments

Quotes

#1

3 Quotes required — .5429

BIS Consulting, LLC  
14802 Venture Dr  
Farmers Branch, TX 75234 US  
accounting@bisconsultants.com  
bisconsultants.com

## Estimate



**bis consultants**

ADDRESS
Hays Tax

ESTIMATE #	DATE
05064153-338	03/15/2022

DESCRIPTION	QTY	RATE	AMOUNT
Truth In Taxation Calculator Yearly Service	1	2,250.00	2,250.00
Development One Time Fee	1	1,250.00	1,250.00

Prices are shown as yearly(See notes below).

**TOTAL**

**\$3,500.00**

Accepted By

Accepted Date

#2

**From:** John M. Balderamas II  
**To:** Jenifer O'Kane  
**Cc:** Thereza "Terry" Perez  
**Subject:** TNT2023 Software  
**Date:** Wednesday, May 31, 2023 9:53:07 AM

---

Good morning,  
Please access the order form through the link below.

Truth-In-Taxation 2023 Order Form

TNT2023 Price Schedule	
TNT Used for:	Cost:
1 Taxing Entity	\$249
2-3 Taxing Entities	\$349
4-9 Taxing Entities	\$699
10 or More Entities	\$1,199

Thank you,

**John M. Balderamas II**  
Administrative Assistant  
Appraisal & Collection Technologies, LLC  
John.Balderamas@lgbs.com  
Main: (210) 403-8600  
<http://www.acttax.com>

**CONFIDENTIALITY STATEMENT**

This email, including any attachments, is confidential. If you are not the intended recipient please notify the sender (only) immediately, and please delete it; you should not copy it or use it for any purpose or disclose its contents to any other person. Appraisal & Collection Technologies, LLC entities reserve the right to monitor all email communications through their networks.

Appraisal & Collection Technologies, LLC is wholly-owned by Linebarger Goggan Blair & Sampson, LLP, Attorneys at Law, but does not itself provide legal services to clients.

#3 - reached out to Harris Grover.  
They partner w/BIS.  
- unable to find a 3rd vendor  
who provides this.



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Vickie Dorsett, Jeff McGill, and Ron Hood

Sponsor:

Judge Becerra

---

### Agenda Item:

Discussion and possible action to execute a Master Lease Agreement with Ricoh USA, Inc. to add a copier for the Budget Office (\$155.01 monthly), IT Department (\$98.51 monthly) and Constable Precinct 4 Office (\$155.01 monthly) and amend the budget accordingly. **BECERRA/DORSETT/MCGILL/HOOD**

### Summary:

The Budget Office, IT Department and the Constable Precinct 4 Office are requesting a printer/copier for their offices utilizing the Ricoh USA, Inc. Buyboard Contract # 616-20.

Budget Office - Color Printer/Copier \$155.01 monthly  
Constable Precinct 4 Office - Color Printer/Copier \$155.01 monthly  
IT Department - Black & White Printer/Copier \$98.51 monthly

### Fiscal Impact:

Amount Requested: FY23 \$310.02 - Budget Office (\$1,860.12 annualized)  
FY23 \$197.02 - IT Department (\$1,182.12 annualized)  
FY23 \$310.02 - Constable 4 (\$1,860.12 annualized)  
Line Item Number: 001-621-00.5473  
001-680-00.5473  
001-638-00.5473

### Budget Office:

Source of Funds: General Fund  
Budget Amendment Required Y/N?: Yes  
Comments: These departments have shared copiers with other offices as needed which is no longer feasible. Recommend funding from county-wide contingencies.  
\$311 - Increase Equipment Lease Budget Office 001-621-00.5473  
\$198 - Increase Equipment Lease IT Department 001-680-00.5473  
\$311 - Increase Equipment Lease Constable 4 Office 001-638-00.5473  
(\$820) - TBD Decrease County-wide Contingencies 001-645-00.5399

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Yes, Buyboard Contract # 616-20  
G/L Account Validated Y/N?: Yes  
New Revenue Y/N?: N/A  
Comments:

---

### Attachments

Pricing - Budget, Constable Pct. 4, IT  
Master Lease Agreement - Budget and Constable Pct. 4  
Master Lease Agreement - IT

Current Needs					Proposed Unit & Pricing				
Department	Color/BW	Average BW Usage	Average Color Usage	Fax	Proposed Unit	Monthly Lease Payment	Pooled Service Plan	RMSSC Service Base	MONTHLY TOTAL
Budget Office	Color/BW	500	100	yes	IMC2510	\$ 137.81	\$ 11.94	\$ 5.26	\$ 155.01
Constable Pct. 4	Color/BW	500	100	yes	IMC2510	\$ 137.81	\$ 11.94	\$ 5.26	\$ 155.01
IT	BW	1,500	0	no	IM2500	\$ 76.60	\$ 16.65	\$ 5.26	\$ 98.51
<b>Total</b>		<b>2500</b>	<b>200</b>						<b>\$ 408.53</b>

**60 Month Lease Per Unit (Buyboard #616-20)**

**Current Usage:**

B/W 0  
Color 0

**\*Weighted Service Cost includes:**

Monthly Service Base Payment - Toner Included

Monthly Base BW Images 2500

Monthly Base COLOR Images 200

**Additional Usage Rates**

B/W additional image rate 0.0055

Color additional image rate 0.046





Ricoh USA, Inc.  
300 Eagleview Blvd  
Suite 200  
Exton, PA 19341

## Product Schedule with Purchase Option

Product Schedule Number:  
Master Lease Agreement Number: 1009769

This Product Schedule with Purchase Option (this "Schedule") is between Ricoh USA, Inc. ("we" or "us") HAYS, COUNTY OF, as customer or lessee ("Customer" or "you"). This Schedule constitutes a "Schedule," "Product Schedule," or "Order Agreement," as applicable, under the \_\_\_\_\_ (together with any amendments, attachments and addenda thereto, the "Lease Agreement") identified above, between you and \_\_\_\_\_. All terms and conditions of the Lease Agreement are incorporated into this Schedule and made a part hereof. If we are not the lessor under the Lease Agreement, then, solely for purposes of this Schedule, we shall be deemed to be the lessor under the Lease Agreement. It is the intent of the parties that this Schedule be separately enforceable as a complete and independent agreement, independent of all other Schedules to the Lease Agreement.

### CUSTOMER INFORMATION

HAYS, COUNTY OF				Stephanie Hunt			
Customer (Bill To)				Billing Contact Name			
712 S STAGECOACH TRL				712 S STAGECOACH TRL STE 1071			
Product Location Address				Billing Address (if different from location address)			
SAN MARCOS		TX	TX	SAN MARCOS		TX	78666-6247
City	County	State	Zip	City	County	State	Zip
Billing Contact Telephone Number (512) 393-2267		Billing Contact Facsimile Number		Billing Contact E-Mail Address stephanie.hunt@co.hays.tx.us			

### PRODUCT DESCRIPTION ("Product")

Qty	Product Description: Make& Model	Street Address/City/State/Zip (complete only if address is different from Equipment/Product Location Address on Agreement)
1	RICOH IMC2510 CONFIGURABLE PTO MODEL	712 S STAGECOACH TRL, SAN MARCOS, TX, 78666-6073, US
1	RICOH IMC2510 CONFIGURABLE PTO MODEL	195 ROGER HANKS PKWY, DRIPPING SPRINGS, TX, 78620-5339, US

### PAYMENT SCHEDULE

<b>Minimum Term</b> (months)	<b>Minimum Payment</b> (Without Tax)	<b>Interest Rate</b>	<b>Minimum Payment Billing Frequency</b>	<b>Advance Payment</b>
60	275.62	8.26 % per annum	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Other: _____	<input type="checkbox"/> 1 <sup>st</sup> Payment <input type="checkbox"/> 1 <sup>st</sup> & Last Payment <input type="checkbox"/> Other: _____

Sales Tax Exempt: ☒ Yes (Attach Exemption Certificate)

Customer Billing Reference Number (P.O.#, etc.)

I.R.C. Section 103 Interest Tax Exempt: ☐ Yes

Addendum Attached: ☐ Yes (Check if yes and indicate total number of pages: )

### TERMS AND CONDITIONS

- The first Payment will be due on the Effective Date. If the Lease Agreement uses the terms "Lease Payment" and "Commencement Date" rather than "Payment" and "Effective Date," then, for purposes of this Schedule, the term "Payment" shall have the same meaning as "Lease Payment," and the term "Effective Date" shall have the same meaning as "Commencement Date."
- You, the undersigned Customer, have applied to us to rent the above-described Product for lawful commercial (non-consumer) purposes. **THIS IS AN UNCONDITIONAL, NON-CANCELABLE AGREEMENT FOR THE MINIMUM TERM INDICATED ABOVE**, except as otherwise provided in any non-appropriation provision of the Lease Agreement, if applicable. If we accept this Schedule, you agree to rent the above Product from us, and we agree to rent such Product to you, on all the terms hereof, including the terms and conditions of the Lease Agreement. **THIS WILL ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE AND THE LEASE AGREEMENT AND HAVE RECEIVED A COPY OF THIS SCHEDULE AND THE LEASE AGREEMENT.**
- Purchase Option:  
(a) Purchase Option Price:

☐ Fair Market Value Purchase Option (plus any applicable tax)



☒ \$1.00 Purchase Option (plus any applicable tax)

(b) Unless the above Purchase Option price is the \$1.00 Purchase Option, Customer agrees that this transaction is a true rental. If the above Purchase Option price is the \$1.00 Purchase Option, then

- (i) notwithstanding anything to the contrary in the Lease Agreement, with respect to this Schedule only: It is the mutual intention of the parties that Customer shall be considered the owner of the Product (excluding all Software, which is owned and licensed to you by the Software Supplier) for various purposes, including federal income tax purposes, as of the Effective Date. You are entitled to all federal income tax benefits afforded to the owner of the Product, but we shall not be liable to you if you fail to secure or obtain such benefits. You will keep the Product free of all liens and encumbrances. You hereby grant to us a security interest in the Product covered by this Schedule (including any replacements, substitutions, additions, attachments and proceeds) as security for the payment of the amounts due or to become due under each Schedule. You are required to file all property tax returns where applicable and promptly pay all property taxes that may be assessed against the Product and, if we are required by the applicable taxing jurisdiction to pay such taxes, you shall promptly reimburse us for such tax payments;
- (ii) in the event of default under the Lease Agreement or this Schedule, we may exercise all rights and remedies of a secured party under applicable law, in addition to any and all rights and remedies we may otherwise have under the Lease Agreement, including, without limitation, the right to repossess the Product free and clear of any of your rights and interests in the Product; and
- (iii) notwithstanding anything to the contrary in the Lease Agreement, if no default has occurred and is continuing under the Lease Agreement or this Schedule and all of your obligations under this Schedule have been satisfied, we will release any security interest that we may have in the Product, you shall have no obligation to provide any end-of-term notice to us, and this Schedule will terminate and not be renewed.

(c) If the above Purchase Option price is the Fair Market Value Purchase Option, then notwithstanding anything to the contrary in the Lease Agreement, if no default has occurred and is continuing under the Lease Agreement or this Schedule, you will have the option at the end of the original term, or any renewal term, of this Schedule to purchase, for the above Purchase Option price, all (but not less than all) of the related Product covered by this Schedule at a purchase price equal to the then-existing fair market value of such Product. You must give us at least thirty (30) days written notice, by certified or registered mail, before the end of the original term of this Schedule, or any renewal term, that you will purchase the related Product or that you will return the related Product to us. In the event that you exercise such option, fair market value of the Product will be defined as the price a willing buyer will pay to a willing seller with no obligation to sell or purchase the Product in an open market. If both parties cannot agree to a price, you may request an independent appraisal by an appraiser approved by us, and both parties agree to the value as determined by the appraiser. All appraisal costs are to be borne by you. You agree to pay all sales tax, use tax and other similar tax payable in connection with the purchase of the Product. If you do not give us such written notice or if you do not purchase or return the related Product in accordance with the terms and conditions of the Lease Agreement and this Schedule, the original term of this Schedule, or any renewal term, will automatically renew in accordance with the terms of Section 14 of the Lease Agreement. This purchase option shall not apply to any Software.

(d) If the above Purchase Option price is the Fair Market Value Purchase Option, then upon receipt by us of payment of the Purchase Option price described in clause (c) of this Paragraph 3, we will transfer our interest in the related Product to you "AS IS, WHERE IS" without any representation or warranty whatsoever, and this Schedule will terminate.

4. WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEGAL, TAX OR ACCOUNTING TREATMENT OF THE LEASE AGREEMENT, THIS SCHEDULE OR THE TRANSACTIONS EVIDENCED THEREBY. YOU ACKNOWLEDGE THAT WE ARE NOT AN AGENT OR A FIDUCIARY OF CUSTOMER. YOU WILL OBTAIN YOUR OWN LEGAL, TAX AND ACCOUNTING ADVICE AND WILL MAKE YOUR OWN DETERMINATION OF THE PROPER TREATMENT OF THE LEASE AGREEMENT AND THIS SCHEDULE.

5. Additional Provisions (if any) are: BUYBOARD CONTRACT 616-20

**THE PERSON SIGNING THIS SCHEDULE ON BEHALF OF THE CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO.**

<b>CUSTOMER</b>	<b>Accepted by: RICOH USA, INC.</b>
By: <b>X</b> _____ Authorized Signer Signature	By: _____ Authorized Signer Signature
Printed Name: _____	Printed Name: _____
Title: _____ Date: _____	Title: _____ Date: _____





## ORDER AGREEMENT

Sales Type: LEASE

ORDER AGREEMENT CONSISTS OF THIS PAGE AND THE TERMS AND CONDITIONS ATTACHED

### EQUIPMENT BILL TO INFORMATION

<b>Customer Legal Name:</b> HAYS, COUNTY OF			<b>Contact:</b> Stephanie Hunt
<b>Address Line 1:</b> 712 S STAGECOACH TRL STE 1071		<b>Phone:</b> (512) 393-2267	
<b>Address Line 2:</b>		<b>E-mail:</b> stephanie.hunt@co.hays.tx.us	
<b>City:</b> SAN MARCOS	<b>County:</b> HAYS		<b>Fax:</b>
<b>ST/Zip:</b> TX/78666-6247			

**Check all that apply:**

- |   |  |
|---|--|
| <input type="checkbox"/> PO Included PO#  | <input type="checkbox"/> PS Service (Subject to and governed by additional Terms and Conditions) |
| <input type="checkbox"/> TS PO# (if applicable)   | <input type="checkbox"/> IT Service (Subject to and governed by additional Terms and Conditions) |
| <input checked="" type="checkbox"/> Sales Tax Exempt (Attach Valid Exemption Certificate) | <input checked="" type="checkbox"/> Fixed Rate Service Term <u>60 Months</u>                     |
| <input type="checkbox"/> Syndication  |  |
| <input type="checkbox"/> Add to Existing Service Contract #                               |  |

### SERVICE INFORMATION

#### SERVICE BILL TO INFORMATION

<b>Customer Legal Name:</b> HAYS, COUNTY OF			
<b>Address Line 1:</b> 712 S STAGECOACH TRL STE 1071		<b>Contact:</b> Stephanie Hunt	
<b>Address Line 2:</b>		<b>Phone:</b> (512) 393-2267	
<b>City:</b> SAN MARCOS		<b>E-mail:</b> stephanie.hunt@co.hays.tx.us	
<b>ST/Zip:</b> TX/78666-6247	<b>County:</b> HAYS	<b>Fax:</b>	
<b>Service Term (Months)</b> 60	<b>Base Billing Frequency</b> MONTHLY	<b>Overage Billing Frequency</b> QUARTERLY	<b>Service Type</b> GOLD

### SHIP TO INFORMATION

Customer Name	Address Line 1 Address Line 2	City ST/Zip County	Contact	Phone E-mail Fax
HAYS COUNTY	712 S STAGECOACH TRL BUDGET OFFICE- Ste 1045	SAN MARCOS TX/78666-6073 HAYS	Stephanie Hunt	(512) 393-2267 stephanie.hunt@co.hays.tx.us

### PRODUCT INFORMATION

Product Description	QTY	Service Level	Total B/W Allowance QUARTERLY	B/W Ovg	Total Color Allowance QUARTERLY	Color Ovg	Service Base MONTHLY
RICOH IMC2510 CONFIGURABLE PTO MODEL	1	GOLD	1500	0.0055	300	0.046	\$11.94

### SHIP TO INFORMATION

Customer Name	Address Line 1	City	Contact	Phone
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	<b>Address Line 2</b>	<b>ST/Zip County</b>		<b>E-mail Fax</b>
HAYS COUNTY	195 ROGER HANKS PKWY CONSTABLE PCT 4- DS	DRIPPING SPRINGS TX/78620-5339 HAYS	Stephanie Hunt	(512) 393-2267 stephanie.hunt@co.hays.tx.us

**PRODUCT INFORMATION**

Product Description	QTY	Service Level	Total B/W Allowance <small>QUARTERLY</small>	B/W Ovg	Total Color Allowance <small>QUARTERLY</small>	Color Ovg	Service Base <small>MONTHLY</small>
RICOH IMC2510 CONFIGURABLE PTO MODEL	1	GOLD	1500	0.0055	300	0.046	\$11.94

**BASIC CONNECTIVITY / PS / IT SERVICES INFORMATION**

BASIC CONNECTIVITY / PS / IT Services Description	Quantity
TS NETWORK & SCAN CONNECT - SEG BC2	1
TS NETWORK & SCAN CONNECT - SEG BC2	1

**ORDER TOTALS**

<b>Service Type Offerings:</b>	<b>Product Total:</b>	
<b>Gold:</b> Includes all supplies and staples. Excludes paper.	<b>BASIC CONNECTIVITY / PS / IT Services :</b>	
<b>Silver:</b> Includes all supplies. Excludes paper and staples.	<b>BuyOut After Promotions:</b>	
<b>Bronze:</b> Parts and labor only. Excludes paper, staples and supplies.	<b>Grand Total:</b>	
<b>Additional Provisions: <i>Insert ANY additional provisions here</i></b>	<b>(Excludes Tax)</b>	
BUYBOARD CONTRACT 616-20		

<b>Accepted by Customer</b>	<b>Accepted: Ricoh USA, Inc.</b>
Authorized Signature:	Authorized Signature:
Printed Name:	Printed Name:
Title:	Title:
Date	Date

**Terms and Conditions for Order Agreement**

These Terms and Conditions for Order Agreement (together with the Order (defined below), the "Agreement") set forth the specific terms and conditions under which Ricoh USA, Inc. ("Ricoh") agrees to sell the specific equipment, software, and/or hardware ("Products") and/or provide the services ("Services")



identified on the order (in the form provided by Ricoh) attached to these Terms and Conditions for Order Agreement (the “Order”) to the “Customer” identified in the Order. To obtain Products and/or Services from Ricoh, Customer will execute the Order.

**Terms applicable to Service transactions only:**

1. **Services.** (a) An Order for Services must identify the specific Services to be performed, including, if applicable, the equipment to be serviced (the “Serviced Products”), the Term (defined in Section 3) of the Service engagement, the location at which Services shall be performed and the applicable Service Charges (defined in Section 4) for such Order. Ricoh will not be responsible to provide Services for Serviced Products in the event the Term and location(s) are not identified on the Order accepted by Ricoh.

(b) For maintenance and repair Services, Ricoh will repair or replace in accordance with the terms and conditions of this Agreement and the manufacturer’s specifications, any part of the Serviced Products that becomes unserviceable due to normal usage (other than consumable supplies). Replacement parts will be furnished on an exchange basis and will be new, reconditioned or used. All parts removed due to replacement will become the property of Ricoh.

(c) The maintenance and repair Services provided by Ricoh under an Order will not include the following: (i) repairs resulting from misuse (including, without limitation, using unauthorized media, improper voltage, or the use of consumable or other supplies or media that do not conform to the manufacturer’s specifications) or the failure to provide, or the failure of, adequate electrical power, air conditioning, humidity control, or other failure to provide a suitable operating environment; (ii) repairs made necessary by service performed by persons other than Ricoh representatives; (iii) unless covered under an extended hour service contract, service calls or work which Customer requests to be performed outside of Normal Business Hours (defined below) and Service calls or work which Customer requests to be performed on Ricoh Holidays (defined below); (iv) repairs or replacements that are materially hindered by Customer’s failure to perform the Customer obligations set forth in this Agreement; (v) repairs or replacement of any removable cassette, copy cabinet, exit trays, or any item not related to the mechanical or electrical operation of the Serviced Products; (vi) consumable supplies such as paper, staples, refillable staple cartridges (even under a staples inclusive Order), or any toner (other than black, cyan, yellow, magenta under a toner inclusive Order), unless expressly provided for in the Order; (vii) repairs, service calls and/or connectivity of attachments not purchased from Ricoh; (viii) any software, system support or related connectivity unless specified in writing by Ricoh; (ix) parts no longer available from the applicable manufacturer; (x) electrical work external to the Serviced Products, including problems resulting from overloaded or improper circuits; (xi) installation or de-installation and/or movement of the Serviced Products from one location to another unless specified in writing by Ricoh; (xii) maintenance or repairs of any Serviced Product that is relocated by someone other than Ricoh or a Ricoh authorized agent until such Serviced Product passes inspection by a Ricoh technician at the new location demonstrating that the Serviced Product was not damaged during the move and functions in accordance with the applicable manufacturer’s specifications, and Customer understands that a minimum one (1) hour labor charge (or longer, depending on the circumstances) at then-prevailing time and materials rates will apply for inspection of the equipment at the new location; (xiii) repairs of damage or increase in service time caused by Force Majeure Conditions; (xiv) reconditioning and similar major overhauls of Serviced Products; (xv) any obligation to remove, delete, preserve, maintain or otherwise safeguard any information, images or content retained by or resident in any Serviced Products, whether through a digital storage device, hard drive or other electronic medium (“Data Management Services”), unless Customer engages Ricoh to perform such Data Management Services at then-prevailing rates pursuant to an Order for such purpose; and (xvi) engineering changes which provide additional capabilities to the Ricoh Equipment (defined in Section 13) covered herein unless made at Customer’s request and paid at Ricoh’s applicable time and material rates then in effect. Damage to Serviced Products or parts arising from causes beyond the control of Ricoh are not covered by this Agreement. Ricoh may terminate its Service obligations under an Order for Serviced Products that have been modified, damaged, altered or serviced by personnel other than those employed by Ricoh.

2. **Service Calls.** Unless otherwise specified in the Order, service calls will be made during 8:00am – 5:00pm local service time, Monday through Friday (“Normal Business Hours”) at the installation address shown on the Order. Service does not include coverage on Ricoh holidays, which include New Year’s Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, the day after Thanksgiving and Christmas Day (collectively, “RicoH Holidays”). Travel and labor-time for the service calls after Normal Business Hours, on weekends and on RicoH Holidays, if and when available and only in the event and to the extent that Ricoh agrees to provide such non-standard coverage, will be charged at overtime rates in effect at the time the service call is made. While at Customer’s site, Ricoh personnel shall comply with Customer’s reasonable policies pertaining to access, security and use of Customer sites and systems, provided that such policies are provided to Ricoh in advance and in writing, do not conflict with the terms and conditions of this Agreement, and do not impose any additional financial or legal burden on Ricoh.

3. **Term; Early Termination.** This Agreement shall become effective on the date that Ricoh accepts the Order and shall continue for the term identified in the Order. At the expiration of the term identified in the Order, it will automatically renew for successive twelve (12) month periods unless notice of termination as specified below is given. The duration of the initial term and any extension or renewal thereto are collectively referred to as the “Term.” Customer may terminate this Agreement for convenience prior to expiration of its Term so long as Customer is not then in default and provides Ricoh at least thirty (30) days prior written notice. Ricoh may terminate this Agreement for convenience prior to expiration of its Term so long as Ricoh is not then in default and provides Customer at least sixty (60) days prior written notice. Should Customer elect to terminate this Agreement for convenience when the Order has a Term of at least thirty-six (36) months, Customer shall pay to Ricoh, as liquidated damages and not as a penalty, an early termination fee in accordance with the following (“Termination Fee”): (i) if the termination occurs in months one (1) through twelve (12) of the Term, an amount equal to twelve (12) times the Monthly Service Charge (as defined below); (ii) if the termination occurs in months thirteen (13) through twenty-four (24) of the Term, an amount equal to nine (9) times the Monthly Service Charge; and (iii) if the termination occurs any time after the twenty-fourth (24<sup>th</sup>) month of the Term, an amount equal to the lesser of six (6) times the Monthly Service Charge or the number of months remaining under the then current Term. For an Order having a Term of less than thirty-six (36) months, the Termination Fee shall be equal to the lesser of six (6) times the Monthly Service Charge or the number of months remaining under the Term of the Order. For the purposes herein, the “Monthly Service Charge” shall equal (i) the base monthly Service Charge set forth in the Order; or (ii) in the event the



Order does not contain a base monthly Service Charge, the average monthly Order charges for the six (6) month period prior to the date of Customer's termination. If such termination date occurs less than six (6) months after the effective date of the Order, the Monthly Service Charge will be equal to the average monthly Order charges for the number of months the Order was in effect.

4. **Service Charges.** (a) Service charges ("Service Charges") will be set forth on the Order. Service Charges will not include any charges for repairs or Service that are otherwise covered by the applicable manufacturer's limited warranty during the period covered by any such warranty, to the extent Ricoh has agreed with such manufacturer not to charge a customer for any such charges. Customer acknowledges and agrees that: (i) alterations, attachments, specification changes, or use by Customer of sub-standard supplies that cause excessive service calls may require an increase in Service Charges; (ii) the transfer of the Serviced Products from the location indicated on the Order may result in an increase of Service Charges or the termination of the Agreement; and (iii) to the extent that Customer requests that Ricoh registers with a third-party vendor prequalification service and Ricoh agrees to register, Customer will be charged for Ricoh's registration and any other related fees for registering with such service and this Agreement shall be the only terms and conditions to govern such registration and service. Customer shall be responsible for any costs related to freight (including fuel surcharges, which may be imposed from time to time), postage/mailling expense (meter rentals) and/or administrative and processing fees and, to the extent Ricoh pays such costs, Customer shall immediately reimburse Ricoh.

(b) Unless otherwise specified in the Order, Service Charges are based on standard 8.5x11 images. Ricoh reserves the right to assess additional images charges for non-standard images, including 11x17 images or other image sizes. Customer acknowledges that pricing is based on the prevailing rates at the time of the Order. Unless otherwise expressly agreed to in writing, if the Term of the Order exceeds twelve (12) months, and (i) the Service Charges or rates expressly set forth in the Order are not fixed for a period longer than twelve (12) months, then the Service Charges and any rate expressly set forth in the Order may be increased by Ricoh up to fifteen percent (15%) of the then-current Service Charges and rates annually for each year beyond the initial twelve (12) month period, and Customer expressly consents to such adjustment without additional notice, or (ii) the Service Charges or any rates expressly set forth in the Order are fixed for a period longer than twelve (12) months, then upon the expiration of the period during which the fixed Service Charges or other rates are fixed, the Service Charges or other rates may be increased by Ricoh in an amount up to fifteen percent (15%) of the then-current Service Charges and rates multiplied by the number of years during which the Service Charges or other rates were fixed, and Customer expressly consents to such adjustment without additional notice.

5. **Use of Recommended Supplies; Meter Readings.** (a) It is not a condition of this Agreement that Customer use only Ricoh-provided supplies. If Customer uses other than manufacturer-recommended supplies, including paper, developer, toner, and fuser oil, and if such supplies are defective or not acceptable for use on the Serviced Products, that do not conform to the manufacturer's specifications, or cause abnormally frequent service calls or service problems, then Ricoh may, at its option, assess a surcharge or terminate the Agreement with respect to such Serviced Products. If so terminated, Customer will be offered Service on a "per call" basis at Ricoh's then-prevailing time and material rates. If Ricoh determines that Customer has used more Ricoh-provided supplies than the manufacturer's recommended specifications, then Customer will pay reasonable charges for those excess supplies and/or Ricoh may refuse Customer additional supply shipments.

(b) Customer is required to provide Ricoh actual and accurate meter readings in accordance with the billing schedule set forth on the Order. Ricoh may, at its discretion and dependent upon Serviced Product capabilities, collect remote meter readings and utilize equipment monitoring services using automatic meter reading solutions ("AMR"). This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Serviced Product failure and may enable firmware upgrades. The meter count and other information collected by AMR ("Data") is sent via the internet to remote servers some of which may be located outside the U.S. **AMR cannot and does not collect Customer document content.** Ricoh uses reasonably available technology to maintain the security of the Data; however, Customer acknowledges that no one can guaranty security of information maintained on computers and on the internet. Ricoh retains full rights to the Data (but not Customer documents or information), which it or its authorized third parties may use to service the Serviced Products. Ricoh may also use the Data for its normal business purposes including product development and marketing research, however, the Data will not be provided to any non-Ricoh third party in a form that personally identifies the Customer. Ricoh may dispose of the Data at any time and without notice. AMR technology is the confidential and proprietary information of Ricoh and/or its licensors protected by copyright, trade secret and other laws and treaties. Ricoh retains full title, ownership and all intellectual property rights in and to AMR.

(c) If Customer fails to provide actual and accurate meter readings to Ricoh in accordance with the billing schedule set forth on the Order, Ricoh may calculate an estimated meter reading from previous meter readings and Customer agrees to pay Service Charges based on such calculated estimate. Appropriate adjustments will be made by Ricoh in a subsequent billing cycle following Customer providing actual and accurate meter readings. If Ricoh contacts Customer to obtain a meter reading, then Ricoh may assess an administrative fee in an amount equal to twenty-five dollars (\$25.00) per meter reading collected per billing period for the time and expense associated with meter collection activity in addition to the Service Charges. If Ricoh visits Customer location to obtain a meter reading, Ricoh may assess a fee according to the hourly service charge rate. Customer shall notify Ricoh within forty-eight (48) hours of any Serviced Product moves, installation/deinstallation, and/or removal of managed and monitored Serviced Products that impact AMR.

6. **Connectivity and Professional Services.** Customer may acquire connectivity, IT and professional services from Ricoh ("Professional Services") by executing and delivering to Ricoh an Order setting forth the specific services to be provided. Ricoh shall provide the Professional Services at Customer's location(s) or on a remote basis as set forth in the Order. Customer shall provide Ricoh with such access to its facilities, networks and systems as may be reasonably necessary for Ricoh to perform the Professional Services. Customer acknowledges that Ricoh's performance of the Professional Services is dependent upon Customer's timely and effective performance of its responsibilities as set forth in the Order. Estimated delivery and/or service schedules contained in the Order are non-binding estimates. Intellectual property rights, if any, arising from the Professional Services provided under the Order shall remain the property of Ricoh. Unless connectivity Services are specifically identified in the Order as part of the Services to be performed by Ricoh, Ricoh shall have no obligation to perform and no responsibility for the connection of any hardware or software to any Customer network or system.



7. **Customer Obligations.** Customer agrees to provide a proper place for the use of the Serviced Products, including but not limited to, electric service, as specified by the manufacturer. Customer will provide adequate facilities (at no charge) for use by Ricoh representatives in connection with the service of the Serviced Products hereunder within a reasonable distance of the Serviced Products. Customer agrees to provide such access to its facilities, networks and systems as may be reasonably necessary for Ricoh to perform its Services, including but not limited to “360 degree” service access to the Serviced Products. Customer will provide a key operator for the Serviced Products and will make operators available for instruction in use and care of the Serviced Products. Unless otherwise agreed upon by Ricoh in writing or designated in the Order, all supplies for use with the Serviced Products will be provided by Customer and will be available “on site” for servicing. Customer agrees that (i) any equipment not serviced by Ricoh which utilizes identical supplies to the Serviced Products must be covered under a separate inclusive non-Ricoh service program; (ii) any Serviced Products under one Ricoh Service Level may not utilize any supplies provided to other Serviced Products with a different Ricoh Service Level (i.e., no sharing of supplies across different Ricoh Service Levels); (iii) all supplies that Ricoh provides as part of the Services are only for use with the Serviced Products and Customer may not resell any supplies; (iv) upon expiration or termination of the applicable Services or change to a service program that does not include supplies, Customer must promptly return to Ricoh all unused supplies provided as part of the Services, otherwise Customer will be billed for and will pay for all such unreturned supplies; and (v) if Customer is participating in Ricoh’s trained customer replaceable units program (“TCRU Program”), then Customer must follow the return requirements of the TCRU Program and, if Customer does not return any units in accordance with the terms of the TCRU Program, then, in addition to any other amounts owed, Customer will pay for the unreturned units. In addition, Customer agrees to use Ricoh’s remote, self-service support tools (which are available at [www.My.Ricoh-USA.com](http://www.My.Ricoh-USA.com), or a successor site, at no additional charge) to resolve common uncomplicated issues quickly and conveniently. If Customer does not use the available self-service support tools, then Ricoh may charge additional fees at the then-prevailing time and materials rates for performing those tasks on Customer’s behalf.

8. **Insurance.** Each party certifies that it maintains, through self-insurance or otherwise, reasonable amounts of general liability, auto and personal property insurance, and workers’ compensation insurance in the amount required by law, and that such insurance will remain in effect during the Term of the Order. Such insurance shall be primary and non-contributory. Limits provided may not be construed to limit liability. General liability insurance shall include the other party as an additional insured and contain no exclusions for cross liability between insureds. Upon request, each party agrees to deliver the other party evidence of such insurance coverage. Failure to maintain adequate insurance does not relieve liability under this Agreement.

9. **Indemnification.** Each party (“Indemnifying Party”) shall indemnify, defend and hold harmless the other (“Indemnified Party”) from all third-party claims incurred by the Indemnified Party arising out of the death or bodily injury of any agent, employee, or business invitee of the Indemnified Party, or the damage, loss, or destruction of any tangible property of the Indemnified Party to the extent proximately caused by the negligent acts or omissions or willful misconduct of the Indemnifying Party, its employees, or agents. Without intending to create any limitation relating to the survival of any other provisions of this Agreement, Ricoh and Customer agree that the terms of this paragraph shall survive the expiration or earlier termination of this Agreement. Each party shall promptly notify the other in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth in this Section may apply.

**Terms applicable to Product sale transactions only:**

10. **Order; Delivery and Acceptance.** An Order for Products must identify the Products, the Product delivery location and the applicable Product charges. Ricoh will not be obligated to sell or deliver Products where such information is not provided in the Order. Customer shall be responsible for all installation, transportation and rigging expenses. Customer agrees to confirm delivery of all Products covered by the Order when the same is delivered by signing a delivery and acceptance certificate or written delivery acknowledgement. Payment for accepted purchased Products will be due and payable in accordance with this Agreement and shall not be contingent on installation of software or performance of Professional Services. The Order shall not be cancelable by Customer following acceptance by Ricoh. Ricoh reserves the right to make Product deliveries in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining installments and remit payments as invoiced by Ricoh. Ricoh reserves the right at any time to revoke any credit extended to Customer because of Customer’s failure to pay for any Products when due or for any other credit reason.

11. **Title; Risk of Loss.** Unless otherwise agreed upon by both parties in writing, Products are deemed delivered and title passes to Customer: (i) upon delivery by Ricoh to common carrier; or (ii) in the case of an arranged delivery by a local Ricoh installation vehicle, upon delivery by such vehicle to Customer shipping point. Upon delivery in either case, Customer assumes all risk of theft, loss or damage to the Products, no matter how occasioned.

12. **Returns; Damaged Products.** No Products may be returned without Ricoh’s prior written consent. Only consumable goods invoiced within sixty (60) days will be considered for return. On authorized returns, Customer agrees to pay a restocking charge equivalent to thirty percent (30%) of the purchase price. Products returned without written authorization from Ricoh may not be accepted by Ricoh and are the sole responsibility of Customer. All nonsaleable merchandise (that has been opened or partially used) will be deducted from any credit due to Customer. All claims for damaged Products or delay in delivery shall be deemed waived unless made in writing and delivered to Ricoh within five (5) days after receipt of Products.

**Terms applicable to all transactions:**

13. **Warranty.** Ricoh agrees to perform its Services: (a) in a good and workmanlike manner; (b) using reasonable care and skill; and (c) according to the description contained in the Order. Ricoh will re-perform any Services not in compliance with this warranty and brought to Ricoh’s attention in writing within a reasonable time, but in no event more than thirty (30) days after such Services are performed, which shall be an exclusive remedy for such non-



compliance. Customer acknowledges that Ricoh's performance of Services is dependent upon Customer's timely and effective performance of its responsibilities. For any Products manufactured by Ricoh ("Ricoch Equipment"), Ricoh further warrants that, at the time of delivery and for a period of ninety (90) days thereafter the Ricoh Equipment will be in good working order and will be free from any defects in material and workmanship. Ricoh's obligations under this warranty are limited solely to the repair or replacement (at Ricoh's option) of parts proven to be defective upon inspection. The foregoing warranty shall not apply if (a) the Ricoh Equipment is installed, wired, modified, altered, moved or serviced by anyone other than Ricoh, (b) the Ricoh Equipment is installed, stored and utilized and/or maintained in a manner not consistent with Ricoh specifications, (c) a defective or improper non-Ricoh accessory or supply or part is attached to or used in the Ricoh Equipment, or (d) the Ricoh Equipment is relocated to any place where Ricoh services are not available. CUSTOMER ACKNOWLEDGES THAT THE LIMITED WARRANTY CONTAINED HEREIN DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE RICOH EQUIPMENT. In connection with any other Product sale, Ricoh shall transfer to Customer any Product warranties made by the applicable Product manufacturer, to the extent transferable and without recourse, and Ricoh makes no additional warranty or guaranty with respect to any such third-party Products. Physical or electronic copies of any applicable Product warranty will be delivered by Ricoh to Customer only upon Customer's specific written request. All Ricoh and/or third-party software provided by Ricoh is licensed, not sold, and is subject to the server, seat, quantity and/or other usage restrictions set forth in each applicable license agreement, license terms, or subscription terms relating to such intangible property or associated services (each such license of grant of rights to access or use, a "Software License"), whether pursuant to written, click-through, shrink-wrap or other agreements for such purpose, with the licensor of the software ("Licensor") and the restrictions set forth in the Order. Ricoh has no right, title or interest in any third-party software (including any open-source software) and Ricoh makes no representations and provides no representations or warranties with respect thereto. Customer is solely responsible for entering into and complying with Software Licenses with the applicable Licensor and acknowledges that its rights and obligations with respect to such software, as well as those of the Licensor, are solely as set forth in such Software Licenses. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN OR IN THE ORDER, RICOH MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INFRINGEMENT OR THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. NO WARRANTIES ARE CREATED BY ANY COURSE OF DEALING BETWEEN THE PARTIES, COURSE OF PERFORMANCE, TRADE USAGE OR INDUSTRY CUSTOM. IN NO EVENT SHALL RICOH BE LIABLE TO CUSTOMER OR A THIRD PARTY FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF SOFTWARE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR DELAY OF DELIVERY OF SERVICES UNDER THIS AGREEMENT. RICOH ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR SIMILAR SOFTWARE, AND THE SCOPE OF SERVICES CONTEMPLATED HEREBY DOES NOT INCLUDE ANY SUCH SERVICES.

14. **Limitations.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREIN AND ANY LIABILITY RESULTING FROM THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 HEREIN, THE AMOUNT OF ANY DIRECT LIABILITY OF A PARTY TO THE OTHER OR ANY THIRD-PARTY, FOR ONE OR MORE CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO RICOH FOR THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT DURING THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

15. **Payment; Taxes.** Payment terms are net ten (10) days. If invoices are unpaid and overdue, Customer agrees to pay Ricoh a late charge of one and one-half percent (1.5%) per month on any unpaid amounts or the maximum allowed by law, whichever is less, and in addition shall pay Ricoh all costs and expenses of collection, or in the enforcement of Ricoh's rights hereunder, including, but not limited to, reasonable internal and external legal costs, whether or not suit is brought. Ricoh has no obligation to use Customer's invoicing or billing portals, processes, methods or invoicing formats specific to Customer billing requirements. All remedies hereunder or at law are cumulative. Except to the extent of any applicable and validated exemption, Customer agrees to pay any applicable taxes that are levied on or payable as a result of the use, sale, possession or ownership of the Products and/or Services covered hereunder, other than income taxes of Ricoh.

16. **Default.** In addition to any other rights or remedies which either party may have under this Agreement or at law or equity, either party shall have the right to cancel the applicable Services specified in the Order immediately: (i) if the other party fails to pay any fees or charges or any other payments required under the Order when due and payable, and such failure continues for a period of ten (10) days after being notified in writing of such failure; or (ii) if the other party fails to perform or observe any other material covenant or condition of this Agreement, and such failure or breach shall continue un-remedied for a period of thirty (30) days after such party is notified in writing of such failure or breach; or (iii) if the other party becomes insolvent, dissolves, or assigns its assets for the benefit of its creditors, or files or has filed against it any bankruptcy or reorganization proceeding. Failure to permit Ricoh to repair or replace the Serviced Products shall constitute a material breach of this Agreement and excuse Ricoh from any and all future performance hereunder. Except as expressly permitted by this Agreement, no refund or credit will be given for any early termination of this Agreement. If Customer defaults in its obligations hereunder, Ricoh may, in addition to any other remedies available at law or equity, require Customer to immediately pay to Ricoh all past due payments under the Agreement, and the Termination Fee.





17. **Non-Solicitation; Independent Contractors.** Customer agrees that during the Term of the Order and for a period of one (1) year after termination or expiration of the Order, it shall not directly or indirectly solicit, hire, or otherwise retain as an employee or independent contractor any employee of Ricoh that is or was involved with or part of the Services. The relationship of the parties is that of independent contractors.

18. **Assignment; Force Majeure.** Customer shall neither assign any right or interest arising under this Agreement nor delegate any obligations hereunder, whether voluntarily or by process of law, without the prior written consent of Ricoh. Any such attempted assignment or delegation shall be void. Ricoh shall not be liable for failure to deliver or delays in delivery of Products or Services occasioned by causes beyond Ricoh's control, including without limitation, natural disasters, extreme weather, floods, transportation suspensions or delays, infrastructure failures, utility outages, demonstrations, pandemics, epidemics, plague, outbreaks of infectious disease, public health crises (including quarantine or other employee restrictions), prohibitions or restrictions on travelling, strikes, lockout, fires, embargoes, war or other outbreak of hostilities, inability to obtain materials or shipping space, receipt of orders in excess of Ricoh's or its supplier's then-scheduled production capacity, machinery breakdowns, delays of carrier or suppliers, governmental acts and regulations (including restrictions on meeting or working in groups), unavailability of Services, personnel or materials or other causes beyond Ricoh's control ("Force Majeure Conditions"). If Force Majeure Conditions arise in a manner that, as determined in Ricoh's reasonable judgement, modify the conditions of Ricoh's performance of one or more Services in a material manner, then Ricoh will use good faith efforts to continue providing the Services; however, in that event, Ricoh may upon thirty (30) days' advance notice to Customer increase the Service Charges and other applicable fees by a reasonable amount related to the Force Majeure Conditions.

19. **Hardware Logs.** Under this Agreement, Customer may order certain hardware Products (or Customer may have independently obtained hardware products outside of this Agreement) that create and store logs concerning its operation that may include information about individual end-users, such as employees' work email addresses, IP addresses of assigned workstations, and other personal information. Ricoh, its corporate parent, and their subsidiaries and affiliates in some cases use device logs to update and upgrade the features of products, authenticate end users, and provide end-user support and other customer service. Additional information about applicable device logging features, including Customer's options for configuring those features, appears in the applicable product documentation, copies of which are available to Customer at no additional charge for Ricoh Products. Except as Customer otherwise instructs Ricoh in writing, Customer: (a) authorizes Ricoh to install and configure the Products ordered under this Agreement using its default device log settings; and (b) instructs Ricoh to process the personal information included in device logs, if any, subject to: (i) Ricoh's confidentiality and privacy obligations to Customer (if any); (ii) solely to perform under this Agreement; and (iii) in accordance with applicable law for the purposes stated above and for no other purpose.

20. **Electronic Signatures.** Each party agrees that electronic signatures of the parties on this Agreement will have the same force and effect as manual signatures.

21. **Governing Law; Entire Agreement.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware without regard to its conflict of laws principles. The parties hereto also agree to submit to the non-exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania to resolve any action under this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement, supersedes all proposals, oral and written, and all other communications between the parties relating to the Products and Services and may not be amended except in writing and signed by an officer or authorized representative of both parties. Customer agrees and acknowledges that it has not relied on any representation, warranty or provision not explicitly contained in this Agreement, whether in writing, electronically communicated or in oral form. Any and all representations, promises, warranties, or statements by any Ricoh agent, employee or representative, including but not limited to, statements or representations made in sales presentations or sales proposals that differ in any way from the terms of this Agreement shall be given no force or effect. In the event of any conflict or inconsistency between the terms and conditions set forth in these Terms and Conditions for Order Agreement and those contained in the Order, the terms and conditions of the Order shall control; provided, however, purchase orders issued to Ricoh for Products and/or Services, even if they do not expressly reference or incorporate this Agreement, shall: (i) be subject to this Agreement; (ii) serve only to identify the Products and/or Services (along with pricing and quantities) ordered; and (iii) not be deemed to alter or otherwise modify the terms and conditions of this Agreement. The delay or failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provision or affect the right of such party thereafter to enforce each and every provision of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable. Ricoh may accept the Order under this Agreement by either its signature or by commencing performance (e.g., Product delivery, initiating Services, etc.). Ricoh may accept or reject any order in the exercise of its discretion and may rely upon each order submitted by Customer as a binding commitment. No local, general or trade custom or usage or course of prior dealings between the parties shall be relevant to supplement or explain any term used herein. Ricoh shall comply with all laws directly applicable to its performance under this Agreement in delivering Products and Services. This Agreement may be executed in one or more counterparts which, taken together, shall constitute one and the same original document. Any notices required under this Agreement should be sent to: Ricoh USA, Inc., 3920 Arkwright Road, Macon, GA 31210.



Initials





Ricoh USA, Inc.  
300 Eagleview Blvd  
Suite 200  
Exton, PA 19341

## Product Schedule with Purchase Option

Product Schedule Number:  
Master Lease Agreement Number: 1009769

This Product Schedule with Purchase Option (this "Schedule") is between Ricoh USA, Inc. ("we" or "us") HAYS, COUNTY OF, as customer or lessee ("Customer" or "you"). This Schedule constitutes a "Schedule," "Product Schedule," or "Order Agreement," as applicable, under the \_\_\_\_\_ (together with any amendments, attachments and addenda thereto, the "Lease Agreement") identified above, between you and \_\_\_\_\_. All terms and conditions of the Lease Agreement are incorporated into this Schedule and made a part hereof. If we are not the lessor under the Lease Agreement, then, solely for purposes of this Schedule, we shall be deemed to be the lessor under the Lease Agreement. It is the intent of the parties that this Schedule be separately enforceable as a complete and independent agreement, independent of all other Schedules to the Lease Agreement.

### CUSTOMER INFORMATION

HAYS, COUNTY OF				Stephanie Hunt					
Customer (Bill To)				Billing Contact Name					
120 STAGECOACH TRL				712 S STAGECOACH TRL STE 1071					
Product Location Address				Billing Address (if different from location address)					
SAN MARCOS		TX	TX	SAN MARCOS		TX	78666-6247		
City		County	State	Zip	City		County	State	Zip
Billing Contact Telephone Number (512) 393-2267			Billing Contact Facsimile Number			Billing Contact E-Mail Address stephanie.hunt@co.hays.tx.us			

### PRODUCT DESCRIPTION ("Product")

Qty	Product Description: Make& Model	Street Address/City/State/Zip (complete only if address is different from Equipment/Product Location Address on Agreement)
1	RICOH IM2500A CONFIGURABLE PTO MODEL	120 STAGECOACH TRL, SAN MARCOS, TX, 78666-5268, US

### PAYMENT SCHEDULE

<b>Minimum Term</b> (months)	<b>Minimum Payment</b> (Without Tax)	<b>Interest Rate</b>	<b>Minimum Payment Billing Frequency</b>	<b>Advance Payment</b>
60	76.6	8.26% per annum	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Other: _____	<input type="checkbox"/> 1 <sup>st</sup> Payment <input type="checkbox"/> 1 <sup>st</sup> & Last Payment <input type="checkbox"/> Other: _____

Sales Tax Exempt: ☒ Yes (Attach Exemption Certificate)

Customer Billing Reference Number (P.O.#, etc.)

I.R.C. Section 103 Interest Tax Exempt: ☐ Yes

Addendum Attached: ☐ Yes (Check if yes and indicate total number of pages: )

### TERMS AND CONDITIONS

- The first Payment will be due on the Effective Date. If the Lease Agreement uses the terms "Lease Payment" and "Commencement Date" rather than "Payment" and "Effective Date," then, for purposes of this Schedule, the term "Payment" shall have the same meaning as "Lease Payment," and the term "Effective Date" shall have the same meaning as "Commencement Date."
- You, the undersigned Customer, have applied to us to rent the above-described Product for lawful commercial (non-consumer) purposes. **THIS IS AN UNCONDITIONAL, NON-CANCELABLE AGREEMENT FOR THE MINIMUM TERM INDICATED ABOVE**, except as otherwise provided in any non-appropriation provision of the Lease Agreement, if applicable. If we accept this Schedule, you agree to rent the above Product from us, and we agree to rent such Product to you, on all the terms hereof, including the terms and conditions of the Lease Agreement. **THIS WILL ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE AND THE LEASE AGREEMENT AND HAVE RECEIVED A COPY OF THIS SCHEDULE AND THE LEASE AGREEMENT.**
- Purchase Option:  
(a) Purchase Option Price:  
☐ Fair Market Value Purchase Option (plus any applicable tax)  
☒ \$1.00 Purchase Option (plus any applicable tax)



- (b) Unless the above Purchase Option price is the \$1.00 Purchase Option, Customer agrees that this transaction is a true rental. If the above Purchase Option price is the \$1.00 Purchase Option, then
- (i) notwithstanding anything to the contrary in the Lease Agreement, with respect to this Schedule only: It is the mutual intention of the parties that Customer shall be considered the owner of the Product (excluding all Software, which is owned and licensed to you by the Software Supplier) for various purposes, including federal income tax purposes, as of the Effective Date. You are entitled to all federal income tax benefits afforded to the owner of the Product, but we shall not be liable to you if you fail to secure or obtain such benefits. You will keep the Product free of all liens and encumbrances. You hereby grant to us a security interest in the Product covered by this Schedule (including any replacements, substitutions, additions, attachments and proceeds) as security for the payment of the amounts due or to become due under each Schedule. You are required to file all property tax returns where applicable and promptly pay all property taxes that may be assessed against the Product and, if we are required by the applicable taxing jurisdiction to pay such taxes, you shall promptly reimburse us for such tax payments;
  - (ii) in the event of default under the Lease Agreement or this Schedule, we may exercise all rights and remedies of a secured party under applicable law, in addition to any and all rights and remedies we may otherwise have under the Lease Agreement, including, without limitation, the right to repossess the Product free and clear of any of your rights and interests in the Product; and
  - (iii) notwithstanding anything to the contrary in the Lease Agreement, if no default has occurred and is continuing under the Lease Agreement or this Schedule and all of your obligations under this Schedule have been satisfied, we will release any security interest that we may have in the Product, you shall have no obligation to provide any end-of-term notice to us, and this Schedule will terminate and not be renewed.
- (c) If the above Purchase Option price is the Fair Market Value Purchase Option, then notwithstanding anything to the contrary in the Lease Agreement, if no default has occurred and is continuing under the Lease Agreement or this Schedule, you will have the option at the end of the original term, or any renewal term, of this Schedule to purchase, for the above Purchase Option price, all (but not less than all) of the related Product covered by this Schedule at a purchase price equal to the then-existing fair market value of such Product. You must give us at least thirty (30) days written notice, by certified or registered mail, before the end of the original term of this Schedule, or any renewal term, that you will purchase the related Product or that you will return the related Product to us. In the event that you exercise such option, fair market value of the Product will be defined as the price a willing buyer will pay to a willing seller with no obligation to sell or purchase the Product in an open market. If both parties cannot agree to a price, you may request an independent appraisal by an appraiser approved by us, and both parties agree to the value as determined by the appraiser. All appraisal costs are to be borne by you. You agree to pay all sales tax, use tax and other similar tax payable in connection with the purchase of the Product. If you do not give us such written notice or if you do not purchase or return the related Product in accordance with the terms and conditions of the Lease Agreement and this Schedule, the original term of this Schedule, or any renewal term, will automatically renew in accordance with the terms of Section 14 of the Lease Agreement. This purchase option shall not apply to any Software.
- (d) If the above Purchase Option price is the Fair Market Value Purchase Option, then upon receipt by us of payment of the Purchase Option price described in clause (c) of this Paragraph 3, we will transfer our interest in the related Product to you "AS IS, WHERE IS" without any representation or warranty whatsoever, and this Schedule will terminate.
4. WE MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEGAL, TAX OR ACCOUNTING TREATMENT OF THE LEASE AGREEMENT, THIS SCHEDULE OR THE TRANSACTIONS EVIDENCED THEREBY. YOU ACKNOWLEDGE THAT WE ARE NOT AN AGENT OR A FIDUCIARY OF CUSTOMER. YOU WILL OBTAIN YOUR OWN LEGAL, TAX AND ACCOUNTING ADVICE AND WILL MAKE YOUR OWN DETERMINATION OF THE PROPER TREATMENT OF THE LEASE AGREEMENT AND THIS SCHEDULE.

5. Additional Provisions (if any) are:

**THE PERSON SIGNING THIS SCHEDULE ON BEHALF OF THE CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO.**

<p><b>CUSTOMER</b></p> <p>By: <b>X</b> _____ Authorized Signer Signature</p> <p>Printed Name: _____</p> <p>Title: _____ Date: _____</p>	<p><b>Accepted by: RICOH USA, INC.</b></p> <p>By: _____ Authorized Signer Signature</p> <p>Printed Name: _____</p> <p>Title: _____ Date: _____</p>
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## ORDER AGREEMENT

Sales Type: LEASE

ORDER AGREEMENT CONSISTS OF THIS PAGE AND THE TERMS AND CONDITIONS ATTACHED

### EQUIPMENT BILL TO INFORMATION

<b>Customer Legal Name:</b> HAYS, COUNTY OF			<b>Contact:</b> Stephanie Hunt
<b>Address Line 1:</b> 712 S STAGECOACH TRL STE 1071		<b>Phone:</b> (512) 393-2267	
<b>Address Line 2:</b>		<b>E-mail:</b> stephanie.hunt@co.hays.tx.us	
<b>City:</b> SAN MARCOS		<b>Fax:</b>	
<b>ST/Zip:</b> TX/78666-6247	<b>County:</b> HAYS		

**Check all that apply:**

- |   |  |
|---|--|
| <input type="checkbox"/> PO Included PO#  | <input type="checkbox"/> PS Service (Subject to and governed by additional Terms and Conditions) |
| <input type="checkbox"/> TS PO# (if applicable)   | <input type="checkbox"/> IT Service (Subject to and governed by additional Terms and Conditions) |
| <input checked="" type="checkbox"/> Sales Tax Exempt (Attach Valid Exemption Certificate) | <input checked="" type="checkbox"/> Fixed Rate Service Term <u>60 Months</u>                     |
| <input type="checkbox"/> Syndication  |  |
| <input type="checkbox"/> Add to Existing Service Contract #                               |  |

### SERVICE INFORMATION

#### SERVICE BILL TO INFORMATION

<b>Customer Legal Name:</b> HAYS, COUNTY OF			
<b>Address Line 1:</b> 712 S STAGECOACH TRL STE 1071		<b>Contact:</b> Stephanie Hunt	
<b>Address Line 2:</b>		<b>Phone:</b> (512) 393-2267	
<b>City:</b> SAN MARCOS		<b>E-mail:</b> stephanie.hunt@co.hays.tx.us	
<b>ST/Zip:</b> TX/78666-6247	<b>County:</b> HAYS	<b>Fax:</b>	
<b>Service Term (Months)</b> 60	<b>Base Billing Frequency</b> MONTHLY	<b>Overage Billing Frequency</b> QUARTERLY	<b>Service Type</b> GOLD

### SHIP TO INFORMATION

Customer Name	Address Line 1 Address Line 2	City ST/Zip County	Contact	Phone E-mail Fax
HAYS COUNTY	120 STAGECOACH TRL IT DEPT	SAN MARCOS TX/78666-5268 CALDWELL	Stephanie Hunt	(512) 393-2267 stephanie.hunt@co.hays.tx.us

### PRODUCT INFORMATION

Product Description	QTY	Service Level	Total B/W Allowance QUARTERLY	B/W Ovg	Total Color Allowance QUARTERLY	Color Ovg	Service Base MONTHLY
RICOH IM2500A CONFIGURABLE PTO MODEL	1	GOLD	4500	0.0055	0	0	\$16.65



BASIC CONNECTIVITY / PS / IT SERVICES INFORMATION	
BASIC CONNECTIVITY / PS / IT Services Description	Quantity
TS NETWORK & SCAN CONNECT - SEG 2	1

ORDER TOTALS		
<b>Service Type Offerings:</b>	<b>Product Total:</b>	
<b>Gold:</b> Includes all supplies and staples. Excludes paper.	<b>BASIC CONNECTIVITY / PS / IT Services :</b>	
<b>Silver:</b> Includes all supplies. Excludes paper and staples.	<b>BuyOut After Promotions:</b>	
<b>Bronze:</b> Parts and labor only. Excludes paper, staples and supplies.	<b>Grand Total:</b>	
<b>Additional Provisions: <i>Insert ANY additional provisions here</i></b>	<b>(Excludes Tax)</b>	
BUYBOARD CONTRACT 616-20		

Accepted by Customer	Accepted: Ricoh USA, Inc.
Authorized Signature:	Authorized Signature:
Printed Name:	Printed Name:
Title:	Title:
Date	Date

#### Terms and Conditions for Order Agreement

These Terms and Conditions for Order Agreement (together with the Order (defined below), the "Agreement") set forth the specific terms and conditions under which Ricoh USA, Inc. ("Rico") agrees to sell the specific equipment, software, and/or hardware ("Products") and/or provide the services ("Services") identified on the order (in the form provided by Ricoh) attached to these Terms and Conditions for Order Agreement (the "Order") to the "Customer" identified in the Order. To obtain Products and/or Services from Ricoh, Customer will execute the Order.

#### **Terms applicable to Service transactions only:**

1. **Services.** (a) An Order for Services must identify the specific Services to be performed, including, if applicable, the equipment to be serviced (the "Serviced Products"), the Term (defined in Section 3) of the Service engagement, the location at which Services shall be performed and the applicable Service Charges (defined in Section 4) for such Order. Ricoh will not be responsible to provide Services for Serviced Products in the event the Term and location(s) are not identified on the Order accepted by Ricoh.

(b) For maintenance and repair Services, Ricoh will repair or replace in accordance with the terms and conditions of this Agreement and the manufacturer's specifications, any part of the Serviced Products that becomes unserviceable due to normal usage (other than consumable supplies). Replacement parts will be furnished on an exchange basis and will be new, reconditioned or used. All parts removed due to replacement will become the property of Ricoh.

(c) The maintenance and repair Services provided by Ricoh under an Order will not include the following: (i) repairs resulting from misuse (including, without limitation, using unauthorized media, improper voltage, or the use of consumable or other supplies or media that do not conform to the manufacturer's specifications) or the failure to provide, or the failure of, adequate electrical power, air conditioning, humidity control, or other failure to provide a suitable operating environment; (ii) repairs made necessary by service performed by persons other than Ricoh representatives; (iii) unless covered under an extended hour service contract, service calls or work which Customer requests to be performed outside of Normal Business Hours (defined below) and Service calls or work which Customer requests to be performed on Ricoh Holidays (defined below); (iv) repairs or replacements that are materially hindered by Customer's



failure to perform the Customer obligations set forth in this Agreement; (v) repairs or replacement of any removable cassette, copy cabinet, exit trays, or any item not related to the mechanical or electrical operation of the Serviced Products; (vi) consumable supplies such as paper, staples, refillable staple cartridges (even under a staples inclusive Order), or any toner (other than black, cyan, yellow, magenta under a toner inclusive Order), unless expressly provided for in the Order; (vii) repairs, service calls and/or connectivity of attachments not purchased from Ricoh; (viii) any software, system support or related connectivity unless specified in writing by Ricoh; (ix) parts no longer available from the applicable manufacturer; (x) electrical work external to the Serviced Products, including problems resulting from overloaded or improper circuits; (xi) installation or de-installation and/or movement of the Serviced Products from one location to another unless specified in writing by Ricoh; (xii) maintenance or repairs of any Serviced Product that is relocated by someone other than Ricoh or a Ricoh authorized agent until such Serviced Product passes inspection by a Ricoh technician at the new location demonstrating that the Serviced Product was not damaged during the move and functions in accordance with the applicable manufacturer's specifications, and Customer understands that a minimum one (1) hour labor charge (or longer, depending on the circumstances) at then-prevailing time and materials rates will apply for inspection of the equipment at the new location; (xiii) repairs of damage or increase in service time caused by Force Majeure Conditions; (xiv) reconditioning and similar major overhauls of Serviced Products; (xv) any obligation to remove, delete, preserve, maintain or otherwise safeguard any information, images or content retained by or resident in any Serviced Products, whether through a digital storage device, hard drive or other electronic medium ("Data Management Services"), unless Customer engages Ricoh to perform such Data Management Services at then-prevailing rates pursuant to an Order for such purpose; and (xvi) engineering changes which provide additional capabilities to the Ricoh Equipment (defined in Section 13) covered herein unless made at Customer's request and paid at Ricoh's applicable time and material rates then in effect. Damage to Serviced Products or parts arising from causes beyond the control of Ricoh are not covered by this Agreement. Ricoh may terminate its Service obligations under an Order for Serviced Products that have been modified, damaged, altered or serviced by personnel other than those employed by Ricoh.

2. **Service Calls.** Unless otherwise specified in the Order, service calls will be made during 8:00am – 5:00pm local service time, Monday through Friday ("Normal Business Hours") at the installation address shown on the Order. Service does not include coverage on Ricoh holidays, which include New Year's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, the day after Thanksgiving and Christmas Day (collectively, "RicoH Holidays"). Travel and labor-time for the service calls after Normal Business Hours, on weekends and on RicoH Holidays, if and when available and only in the event and to the extent that Ricoh agrees to provide such non-standard coverage, will be charged at overtime rates in effect at the time the service call is made. While at Customer's site, Ricoh personnel shall comply with Customer's reasonable policies pertaining to access, security and use of Customer sites and systems, provided that such policies are provided to Ricoh in advance and in writing, do not conflict with the terms and conditions of this Agreement, and do not impose any additional financial or legal burden on Ricoh.

3. **Term; Early Termination.** This Agreement shall become effective on the date that Ricoh accepts the Order and shall continue for the term identified in the Order. At the expiration of the term identified in the Order, it will automatically renew for successive twelve (12) month periods unless notice of termination as specified below is given. The duration of the initial term and any extension or renewal thereto are collectively referred to as the "Term." Customer may terminate this Agreement for convenience prior to expiration of its Term so long as Customer is not then in default and provides Ricoh at least thirty (30) days prior written notice. Ricoh may terminate this Agreement for convenience prior to expiration of its Term so long as Ricoh is not then in default and provides Customer at least sixty (60) days prior written notice. Should Customer elect to terminate this Agreement for convenience when the Order has a Term of at least thirty-six (36) months, Customer shall pay to Ricoh, as liquidated damages and not as a penalty, an early termination fee in accordance with the following ("Termination Fee"): (i) if the termination occurs in months one (1) through twelve (12) of the Term, an amount equal to twelve (12) times the Monthly Service Charge (as defined below); (ii) if the termination occurs in months thirteen (13) through twenty-four (24) of the Term, an amount equal to nine (9) times the Monthly Service Charge; and (iii) if the termination occurs any time after the twenty-fourth (24<sup>th</sup>) month of the Term, an amount equal to the lesser of six (6) times the Monthly Service Charge or the number of months remaining under the then current Term. For an Order having a Term of less than thirty-six (36) months, the Termination Fee shall be equal to the lesser of six (6) times the Monthly Service Charge or the number of months remaining under the Term of the Order. For the purposes herein, the "Monthly Service Charge" shall equal (i) the base monthly Service Charge set forth in the Order; or (ii) in the event the Order does not contain a base monthly Service Charge, the average monthly Order charges for the six (6) month period prior to the date of Customer's termination. If such termination date occurs less than six (6) months after the effective date of the Order, the Monthly Service Charge will be equal to the average monthly Order charges for the number of months the Order was in effect.

4. **Service Charges.** (a) Service charges ("Service Charges") will be set forth on the Order. Service Charges will not include any charges for repairs or Service that are otherwise covered by the applicable manufacturer's limited warranty during the period covered by any such warranty, to the extent Ricoh has agreed with such manufacturer not to charge a customer for any such charges. Customer acknowledges and agrees that: (i) alterations, attachments, specification changes, or use by Customer of sub-standard supplies that cause excessive service calls may require an increase in Service Charges; (ii) the transfer of the Serviced Products from the location indicated on the Order may result in an increase of Service Charges or the termination of the Agreement; and (iii) to the extent that Customer requests that Ricoh registers with a third-party vendor prequalification service and Ricoh agrees to register, Customer will be charged for Ricoh's registration and any other related fees for registering with such service and this Agreement shall be the only terms and conditions to govern such registration and service. Customer shall be responsible for any costs related to freight (including fuel surcharges, which may be imposed from time to time), postage/mailling expense (meter rentals) and/or administrative and processing fees and, to the extent Ricoh pays such costs, Customer shall immediately reimburse Ricoh.

(b) Unless otherwise specified in the Order, Service Charges are based on standard 8.5x11 images. Ricoh reserves the right to assess additional images charges for non-standard images, including 11x17 images or other image sizes. Customer acknowledges that pricing is based on the prevailing rates at the time of the Order. Unless otherwise expressly agreed to in writing, if the Term of the Order exceeds twelve (12) months, and (i) the Service Charges or rates expressly set forth in the Order are not fixed for a period longer than twelve (12) months, then the Service Charges and any rate expressly set forth in the Order may be



increased by Ricoh up to fifteen percent (15%) of the then-current Service Charges and rates annually for each year beyond the initial twelve (12) month period, and Customer expressly consents to such adjustment without additional notice, or (ii) the Service Charges or any rates expressly set forth in the Order are fixed for a period longer than twelve (12) months, then upon the expiration of the period during which the fixed Service Charges or other rates are fixed, the Service Charges or other rates may be increased by Ricoh in an amount up to fifteen percent (15%) of the then-current Service Charges and rates multiplied by the number of years during which the Service Charges or other rates were fixed, and Customer expressly consents to such adjustment without additional notice.

5. **Use of Recommended Supplies; Meter Readings.** (a) It is not a condition of this Agreement that Customer use only Ricoh-provided supplies. If Customer uses other than manufacturer-recommended supplies, including paper, developer, toner, and fuser oil, and if such supplies are defective or not acceptable for use on the Serviced Products, that do not conform to the manufacturer's specifications, or cause abnormally frequent service calls or service problems, then Ricoh may, at its option, assess a surcharge or terminate the Agreement with respect to such Serviced Products. If so terminated, Customer will be offered Service on a "per call" basis at Ricoh's then-prevailing time and material rates. If Ricoh determines that Customer has used more Ricoh-provided supplies than the manufacturer's recommended specifications, then Customer will pay reasonable charges for those excess supplies and/or Ricoh may refuse Customer additional supply shipments.

(b) Customer is required to provide Ricoh actual and accurate meter readings in accordance with the billing schedule set forth on the Order. Ricoh may, at its discretion and dependent upon Serviced Product capabilities, collect remote meter readings and utilize equipment monitoring services using automatic meter reading solutions ("AMR"). This may allow for automated meter reading and submission, automatic placement of low toner alerts, automatic placement of service calls in the event of a critical Serviced Product failure and may enable firmware upgrades. The meter count and other information collected by AMR ("Data") is sent via the internet to remote servers some of which may be located outside the U.S. **AMR cannot and does not collect Customer document content.** Ricoh uses reasonably available technology to maintain the security of the Data; however, Customer acknowledges that no one can guaranty security of information maintained on computers and on the internet. Ricoh retains full rights to the Data (but not Customer documents or information), which it or its authorized third parties may use to service the Serviced Products. Ricoh may also use the Data for its normal business purposes including product development and marketing research, however, the Data will not be provided to any non-Ricoh third party in a form that personally identifies the Customer. Ricoh may dispose of the Data at any time and without notice. AMR technology is the confidential and proprietary information of Ricoh and/or its licensors protected by copyright, trade secret and other laws and treaties. Ricoh retains full title, ownership and all intellectual property rights in and to AMR.

(c) If Customer fails to provide actual and accurate meter readings to Ricoh in accordance with the billing schedule set forth on the Order, Ricoh may calculate an estimated meter reading from previous meter readings and Customer agrees to pay Service Charges based on such calculated estimate. Appropriate adjustments will be made by Ricoh in a subsequent billing cycle following Customer providing actual and accurate meter readings. If Ricoh contacts Customer to obtain a meter reading, then Ricoh may assess an administrative fee in an amount equal to twenty-five dollars (\$25.00) per meter reading collected per billing period for the time and expense associated with meter collection activity in addition to the Service Charges. If Ricoh visits Customer location to obtain a meter reading, Ricoh may assess a fee according to the hourly service charge rate. Customer shall notify Ricoh within forty-eight (48) hours of any Serviced Product moves, installation/deinstallation, and/or removal of managed and monitored Serviced Products that impact AMR.

6. **Connectivity and Professional Services.** Customer may acquire connectivity, IT and professional services from Ricoh ("Professional Services") by executing and delivering to Ricoh an Order setting forth the specific services to be provided. Ricoh shall provide the Professional Services at Customer's location(s) or on a remote basis as set forth in the Order. Customer shall provide Ricoh with such access to its facilities, networks and systems as may be reasonably necessary for Ricoh to perform the Professional Services. Customer acknowledges that Ricoh's performance of the Professional Services is dependent upon Customer's timely and effective performance of its responsibilities as set forth in the Order. Estimated delivery and/or service schedules contained in the Order are non-binding estimates. Intellectual property rights, if any, arising from the Professional Services provided under the Order shall remain the property of Ricoh. Unless connectivity Services are specifically identified in the Order as part of the Services to be performed by Ricoh, Ricoh shall have no obligation to perform and no responsibility for the connection of any hardware or software to any Customer network or system.

7. **Customer Obligations.** Customer agrees to provide a proper place for the use of the Serviced Products, including but not limited to, electric service, as specified by the manufacturer. Customer will provide adequate facilities (at no charge) for use by Ricoh representatives in connection with the service of the Serviced Products hereunder within a reasonable distance of the Serviced Products. Customer agrees to provide such access to its facilities, networks and systems as may be reasonably necessary for Ricoh to perform its Services, including but not limited to "360 degree" service access to the Serviced Products. Customer will provide a key operator for the Serviced Products and will make operators available for instruction in use and care of the Serviced Products. Unless otherwise agreed upon by Ricoh in writing or designated in the Order, all supplies for use with the Serviced Products will be provided by Customer and will be available "on site" for servicing. Customer agrees that (i) any equipment not serviced by Ricoh which utilizes identical supplies to the Serviced Products must be covered under a separate inclusive non-Ricoh service program; (ii) any Serviced Products under one Ricoh Service Level may not utilize any supplies provided to other Serviced Products with a different Ricoh Service Level (i.e., no sharing of supplies across different Ricoh Service Levels); (iii) all supplies that Ricoh provides as part of the Services are only for use with the Serviced Products and Customer may not resell any supplies; (iv) upon expiration or termination of the applicable Services or change to a service program that does not include supplies, Customer must promptly return to Ricoh all unused supplies provided as part of the Services, otherwise Customer will be billed for and will pay for all such unreturned supplies; and (v) if Customer is participating in Ricoh's trained customer replaceable units program ("TCRU Program"), then Customer must follow the return requirements of the TCRU Program and, if Customer does not return any units in accordance with the terms of the TCRU Program, then, in addition to any other amounts owed, Customer will pay for the unreturned units. In addition, Customer agrees to use Ricoh's remote, self-service support tools (which are available at [www.My.Ricoh-USA.com](http://www.My.Ricoh-USA.com), or a successor site, at no additional charge) to resolve common uncomplicated issues quickly and conveniently. If Customer does not use the available self-service support tools, then Ricoh may charge additional fees at the then-prevailing time and materials rates for performing those tasks on Customer's behalf.





8. **Insurance.** Each party certifies that it maintains, through self-insurance or otherwise, reasonable amounts of general liability, auto and personal property insurance, and workers' compensation insurance in the amount required by law, and that such insurance will remain in effect during the Term of the Order. Such insurance shall be primary and non-contributory. Limits provided may not be construed to limit liability. General liability insurance shall include the other party as an additional insured and contain no exclusions for cross liability between insureds. Upon request, each party agrees to deliver the other party evidence of such insurance coverage. Failure to maintain adequate insurance does not relieve liability under this Agreement.

9. **Indemnification.** Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other ("Indemnified Party") from all third-party claims incurred by the Indemnified Party arising out of the death or bodily injury of any agent, employee, or business invitee of the Indemnified Party, or the damage, loss, or destruction of any tangible property of the Indemnified Party to the extent proximately caused by the negligent acts or omissions or willful misconduct of the Indemnifying Party, its employees, or agents. Without intending to create any limitation relating to the survival of any other provisions of this Agreement, Ricoh and Customer agree that the terms of this paragraph shall survive the expiration or earlier termination of this Agreement. Each party shall promptly notify the other in the event of the threat or initiation of any claim, demand, action or proceeding to which the indemnification obligations set forth in this Section may apply.

**Terms applicable to Product sale transactions only:**

10. **Order; Delivery and Acceptance.** An Order for Products must identify the Products, the Product delivery location and the applicable Product charges. Ricoh will not be obligated to sell or deliver Products where such information is not provided in the Order. Customer shall be responsible for all installation, transportation and rigging expenses. Customer agrees to confirm delivery of all Products covered by the Order when the same is delivered by signing a delivery and acceptance certificate or written delivery acknowledgement. Payment for accepted purchased Products will be due and payable in accordance with this Agreement and shall not be contingent on installation of software or performance of Professional Services. The Order shall not be cancelable by Customer following acceptance by Ricoh. Ricoh reserves the right to make Product deliveries in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining installments and remit payments as invoiced by Ricoh. Ricoh reserves the right at any time to revoke any credit extended to Customer because of Customer's failure to pay for any Products when due or for any other credit reason.

11. **Title; Risk of Loss.** Unless otherwise agreed upon by both parties in writing, Products are deemed delivered and title passes to Customer: (i) upon delivery by Ricoh to common carrier; or (ii) in the case of an arranged delivery by a local Ricoh installation vehicle, upon delivery by such vehicle to Customer shipping point. Upon delivery in either case, Customer assumes all risk of theft, loss or damage to the Products, no matter how occasioned.

12. **Returns; Damaged Products.** No Products may be returned without Ricoh's prior written consent. Only consumable goods invoiced within sixty (60) days will be considered for return. On authorized returns, Customer agrees to pay a restocking charge equivalent to thirty percent (30%) of the purchase price. Products returned without written authorization from Ricoh may not be accepted by Ricoh and are the sole responsibility of Customer. All nonsaleable merchandise (that has been opened or partially used) will be deducted from any credit due to Customer. All claims for damaged Products or delay in delivery shall be deemed waived unless made in writing and delivered to Ricoh within five (5) days after receipt of Products.

**Terms applicable to all transactions:**

13. **Warranty.** Ricoh agrees to perform its Services: (a) in a good and workmanlike manner; (b) using reasonable care and skill; and (c) according to the description contained in the Order. Ricoh will re-perform any Services not in compliance with this warranty and brought to Ricoh's attention in writing within a reasonable time, but in no event more than thirty (30) days after such Services are performed, which shall be an exclusive remedy for such non-compliance. Customer acknowledges that Ricoh's performance of Services is dependent upon Customer's timely and effective performance of its responsibilities. For any Products manufactured by Ricoh ("Ricoh Equipment"), Ricoh further warrants that, at the time of delivery and for a period of ninety (90) days thereafter the Ricoh Equipment will be in good working order and will be free from any defects in material and workmanship. Ricoh's obligations under this warranty are limited solely to the repair or replacement (at Ricoh's option) of parts proven to be defective upon inspection. The foregoing warranty shall not apply if (a) the Ricoh Equipment is installed, wired, modified, altered, moved or serviced by anyone other than Ricoh, (b) the Ricoh Equipment is installed, stored and utilized and/or maintained in a manner not consistent with Ricoh specifications, (c) a defective or improper non-Ricoh accessory or supply or part is attached to or used in the Ricoh Equipment, or (d) the Ricoh Equipment is relocated to any place where Ricoh services are not available. CUSTOMER ACKNOWLEDGES THAT THE LIMITED WARRANTY CONTAINED HEREIN DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE RICOH EQUIPMENT. In connection with any other Product sale, Ricoh shall transfer to Customer any Product warranties made by the applicable Product manufacturer, to the extent transferable and without recourse, and Ricoh makes no additional warranty or guaranty with respect to any such third-party Products. Physical or electronic copies of any applicable Product warranty will be delivered by Ricoh to Customer only upon Customer's specific written request. All Ricoh and/or third-party software provided by Ricoh is licensed, not sold, and is subject to the server, seat, quantity and/or other usage restrictions set forth in each applicable license agreement, license terms, or subscription terms relating to such intangible property or associated services (each such license of grant of rights to access or use, a "Software License"), whether pursuant to written, click-through, shrink-wrap or other agreements for such purpose, with the licensor of the software ("Licensor") and the restrictions set forth in the Order. Ricoh has no right, title or interest in any third-party software (including any open-source software) and Ricoh makes no representations and provides no representations or warranties with respect thereto. Customer is solely responsible for entering into and complying with Software Licenses with the applicable Licensor and acknowledges that its rights and obligations with respect to such software, as well as those of the Licensor, are solely as set forth in such Software Licenses. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN OR IN THE



ORDER, RICOH MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INFRINGEMENT OR THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. NO WARRANTIES ARE CREATED BY ANY COURSE OF DEALING BETWEEN THE PARTIES, COURSE OF PERFORMANCE, TRADE USAGE OR INDUSTRY CUSTOM. IN NO EVENT SHALL RICOH BE LIABLE TO CUSTOMER OR A THIRD PARTY FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF SOFTWARE, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR DELAY OF DELIVERY OF SERVICES UNDER THIS AGREEMENT. RICOH ASSUMES NO OBLIGATION TO PROVIDE OR INSTALL ANY ANTI-VIRUS OR SIMILAR SOFTWARE, AND THE SCOPE OF SERVICES CONTEMPLATED HEREBY DOES NOT INCLUDE ANY SUCH SERVICES.

14. **Limitations.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREIN AND ANY LIABILITY RESULTING FROM THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 HEREIN, THE AMOUNT OF ANY DIRECT LIABILITY OF A PARTY TO THE OTHER OR ANY THIRD-PARTY, FOR ONE OR MORE CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO RICOH FOR THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT DURING THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

15. **Payment; Taxes.** Payment terms are net ten (10) days. If invoices are unpaid and overdue, Customer agrees to pay Ricoh a late charge of one and one-half percent (1.5%) per month on any unpaid amounts or the maximum allowed by law, whichever is less, and in addition shall pay Ricoh all costs and expenses of collection, or in the enforcement of Ricoh's rights hereunder, including, but not limited to, reasonable internal and external legal costs, whether or not suit is brought. Ricoh has no obligation to use Customer's invoicing or billing portals, processes, methods or invoicing formats specific to Customer billing requirements. All remedies hereunder or at law are cumulative. Except to the extent of any applicable and validated exemption, Customer agrees to pay any applicable taxes that are levied on or payable as a result of the use, sale, possession or ownership of the Products and/or Services covered hereunder, other than income taxes of Ricoh.

16. **Default.** In addition to any other rights or remedies which either party may have under this Agreement or at law or equity, either party shall have the right to cancel the applicable Services specified in the Order immediately: (i) if the other party fails to pay any fees or charges or any other payments required under the Order when due and payable, and such failure continues for a period of ten (10) days after being notified in writing of such failure; or (ii) if the other party fails to perform or observe any other material covenant or condition of this Agreement, and such failure or breach shall continue un-remedied for a period of thirty (30) days after such party is notified in writing of such failure or breach; or (iii) if the other party becomes insolvent, dissolves, or assigns its assets for the benefit of its creditors, or files or has filed against it any bankruptcy or reorganization proceeding. Failure to permit Ricoh to repair or replace the Serviced Products shall constitute a material breach of this Agreement and excuse Ricoh from any and all future performance hereunder. Except as expressly permitted by this Agreement, no refund or credit will be given for any early termination of this Agreement. If Customer defaults in its obligations hereunder, Ricoh may, in addition to any other remedies available at law or equity, require Customer to immediately pay to Ricoh all past due payments under the Agreement, and the Termination Fee.

17. **Non-Solicitation; Independent Contractors.** Customer agrees that during the Term of the Order and for a period of one (1) year after termination or expiration of the Order, it shall not directly or indirectly solicit, hire, or otherwise retain as an employee or independent contractor any employee of Ricoh that is or was involved with or part of the Services. The relationship of the parties is that of independent contractors.

18. **Assignment; Force Majeure.** Customer shall neither assign any right or interest arising under this Agreement nor delegate any obligations hereunder, whether voluntarily or by process of law, without the prior written consent of Ricoh. Any such attempted assignment or delegation shall be void. Ricoh shall not be liable for failure to deliver or delays in delivery of Products or Services occasioned by causes beyond Ricoh's control, including without limitation, natural disasters, extreme weather, floods, transportation suspensions or delays, infrastructure failures, utility outages, demonstrations, pandemics, epidemics, plague, outbreaks of infectious disease, public health crises (including quarantine or other employee restrictions), prohibitions or restrictions on travelling, strikes, lockout, fires, embargoes, war or other outbreak of hostilities, inability to obtain materials or shipping space, receipt of orders in excess of Ricoh's or its supplier's then-scheduled production capacity, machinery breakdowns, delays of carrier or suppliers, governmental acts and regulations (including restrictions on meeting or working in groups), unavailability of Services, personnel or materials or other causes beyond Ricoh's control ("Force Majeure Conditions"). If Force Majeure Conditions arise in a manner that, as determined in Ricoh's reasonable judgement, modify the conditions of Ricoh's performance of one or more Services in a material manner, then Ricoh will use good faith efforts to continue providing the Services; however, in that event, Ricoh may upon thirty (30) days' advance notice to Customer increase the Service Charges and other applicable fees by a reasonable amount related to the Force Majeure Conditions.

19. **Hardware Logs.** Under this Agreement, Customer may order certain hardware Products (or Customer may have independently obtained hardware products outside of this Agreement) that create and store logs concerning its operation that may include information about individual end-users, such as employees' work email addresses, IP addresses of assigned workstations, and other personal information. Ricoh, its corporate parent, and their subsidiaries and



affiliates in some cases use device logs to update and upgrade the features of products, authenticate end users, and provide end-user support and other customer service. Additional information about applicable device logging features, including Customer's options for configuring those features, appears in the applicable product documentation, copies of which are available to Customer at no additional charge for Ricoh Products. Except as Customer otherwise instructs Ricoh in writing, Customer: (a) authorizes Ricoh to install and configure the Products ordered under this Agreement using its default device log settings; and (b) instructs Ricoh to process the personal information included in device logs, if any, subject to: (i) Ricoh's confidentiality and privacy obligations to Customer (if any); (ii) solely to perform under this Agreement; and (iii) in accordance with applicable law for the purposes stated above and for no other purpose.

20. **Electronic Signatures.** Each party agrees that electronic signatures of the parties on this Agreement will have the same force and effect as manual signatures.

21. **Governing Law; Entire Agreement.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware without regard to its conflict of laws principles. The parties hereto also agree to submit to the non-exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania to resolve any action under this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement, supersedes all proposals, oral and written, and all other communications between the parties relating to the Products and Services and may not be amended except in writing and signed by an officer or authorized representative of both parties. Customer agrees and acknowledges that it has not relied on any representation, warranty or provision not explicitly contained in this Agreement, whether in writing, electronically communicated or in oral form. Any and all representations, promises, warranties, or statements by any Ricoh agent, employee or representative, including but not limited to, statements or representations made in sales presentations or sales proposals that differ in any way from the terms of this Agreement shall be given no force or effect. In the event of any conflict or inconsistency between the terms and conditions set forth in these Terms and Conditions for Order Agreement and those contained in the Order, the terms and conditions of the Order shall control; provided, however, purchase orders issued to Ricoh for Products and/or Services, even if they do not expressly reference or incorporate this Agreement, shall: (i) be subject to this Agreement; (ii) serve only to identify the Products and/or Services (along with pricing and quantities) ordered; and (iii) not be deemed to alter or otherwise modify the terms and conditions of this Agreement. The delay or failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provision or affect the right of such party thereafter to enforce each and every provision of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable. Ricoh may accept the Order under this Agreement by either its signature or by commencing performance (e.g., Product delivery, initiating Services, etc.). Ricoh may accept or reject any order in the exercise of its discretion and may rely upon each order submitted by Customer as a binding commitment. No local, general or trade custom or usage or course of prior dealings between the parties shall be relevant to supplement or explain any term used herein. Ricoh shall comply with all laws directly applicable to its performance under this Agreement in delivering Products and Services. This Agreement may be executed in one or more counterparts which, taken together, shall constitute one and the same original document. Any notices required under this Agreement should be sent to: Ricoh USA, Inc., 3920 Arkwright Road, Macon, GA 31210.

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Initials





## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Mike Jones

Sponsor:

Commissioner Ingalsbe

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### Agenda Item:

Discussion and possible action to accept a proposal from Water & Earth Technologies (WET) in the amount of \$5,413.83 related to the repair/replacement of the damaged York Creek Road Flasher 1; authorize a discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(7)(D) and amend the budget accordingly. **INGALSBE/MIKE JONES**

### Summary:

The York Creek Road Flasher 1 was shoved by a farm trailer in April 2023. The breakaway base, and aluminum pole were damaged during the accident. Water & Earth Technologies, Inc. (WET) removed the damaged flasher and tested all equipment to determine what needed to be replaced. WET will replace the damaged parts and re-install the flasher pole. WET will also construct a new concrete foundation farther from the road to help prevent future accidents.

### Fiscal Impact:

Amount Requested: \$5,413.83

Line Item Number: 001-656-00.5719\_700

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: Possible funding source County-wide Contingencies.

\$5,414 - Increase Misc. Equipment\_Capital 001-656-00.5719\_400

(\$5,414) - Decrease County-wide Contingencies 001-645-00.5399

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a discretionary exemption pursuant to Texas Local Government Code Chpt. 262.024 (a)(7)(D) for captive replacement parts or components for equipment.

G/L Account Validated Y/N?: Yes, Miscellaneous Equipment Capital Outlay

New Revenue Y/N?: N/A

Comments:

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### Attachments

York Creek Flasher 1



07/05/2023

Quotation XPHC051

**Prepared for:**

Hays County - Office of Emergency Services  
Attn: Mike Jones  
810 South Stagecoach Trail  
San Marcos, TX 78666

**Federal Tax Identification No.**

84-1440328

**Quote Valid Thru**

09/03/2023

**Prepared by:**

**Water & Earth Technologies, Inc.**

40504 Weld County Road 17  
Severance, CO 80524  
Phone (970) 225-6080  
email: RNiedenis@wetec.us

**Quote Title: York Creek Road Flasher 1 Repair**

**Quote Information**

The York Creek Road Flasher 1 was shoved by a farm trailer in April 2023. The break away base, and aluminum pole were damaged during the accident. Water & Earth Technologies, Inc. (WET) removed the damaged flasher and tested all equipment to determine what needed to be replaced. WET will replaced the damaged parts and re-install the flasher pole. WET will also construct a new concrete foundation farther from the road to help prevent future accidents.

Item Description	Model No.	Unit Price	Qty	Amount
Aluminum AASHTO Aproved Base	7332	\$ 201.48	1	\$ 201.48
Plastic Base Cover	3227	\$ 7.35	1	\$ 7.35
17' x 4" diameter aluminum traffice pole	7537	\$ 575.00	1	\$ 575.00
1 Day Bobcat Rental		\$ 600.00	1	\$ 600.00
New Concrete Foundation		\$ 300.00	1	\$ 300.00
<b>Items Total</b>				<b>\$ 1,683.83</b>

Labor Description	ENG I Hours	Field Tech II Hours	Amount
Removing Pole from Location	1	1	\$ 280.00
Testing Equipment for Damage	0	1	\$ 130.00
Move Equipment to new Pole	0	4	\$ 520.00
Construct New Flasher Foundation	6	6	\$ 1,680.00
Installing Repaired Flasher Pole	3	3	\$ 840.00
Testing Station	1	1	\$ 280.00
<b>Labor Total</b>			<b>\$ 3,730.00</b>

**Total Cost \$ 5,413.83**

**Thank you for your consideration!**



## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Mike Jones

Sponsor:

Commissioner Shell

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### Agenda Item:

Discussion and possible action to accept a proposal from Water & Earth Technologies (WET) in the amount of \$10,241.15 related to the repairs of the damaged flasher at Jacobs Well and Cypress Creek and authorize a discretionary exemption pursuant to Texas Local Government Code Chpt. 262.024 (a)(7)(D). **SHELL/MIKE JONES**

### Summary:

The flasher # 1 pole at Jacobs Well at Cypress Creek was damaged during a vehicular accident. The vehicle broke the pole base causing the pole to fall over. Everything within the enclosure along with the lights, solar panel and cabling need to be replaced before the station can be re-installed.

### Fiscal Impact:

Amount Requested: \$10,241.15

Line Item Number: 001-656-00.5719\_700

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: Possible funding source County-wide Contingencies.

\$10,242 - Increase Misc. Equipment\_Capital 001-656-00.5719\_400

(\$10,242) - Decrease County-wide Contingencies 001-645-00.5399

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: Requires a discretionary exemption pursuant to Texas Local Government Code Chpt. 262.024 (a)(7)(D) for captive replacement parts or components for equipment.

G/L Account Validated Y/N?: Yes, Miscellaneous Equipment Capital Outlay

New Revenue Y/N?: N/A

Comments:

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### Attachments

Jacobs Well



# WATER & EARTH TECHNOLOGIES

06/09/2023

Quotation XPHC049

**Prepared for:**

Hays County - Office of Emergency Services  
Attn: Mike Jones  
810 South Stagecoach Trail  
San Marcos, TX 78666

Federal Tax Identification No.

Quote Valid Thru

84-1440328

08/08/2023

**Prepared by:**

Water & Earth Technologies, Inc.  
40504 Weld County Road 17  
Severance, CO 80524  
Phone (970) 225-6080  
email: RNiedenzu@wetec.us

*Emergency*  
*Precinct*  
*3*

50028 - Jacobs Well (CR220) at Cypress Creek Flasher 1 Repair

**Quote Information**

The flasher #1 pole at 50028 Jacobs Well (CR220) at Cypress Creek was damaged during a vehicular accident on February 25, 2023. The vehicle broke the pole base, causing the pole to fall over. Everything within the enclosure along with the lights, solar panel, and cabling need to be replaced before the station can be re-installed.

Item No.	Item Description	Model No.	Unit Price	Qty	Amount
1	Aluminum AASHTO Approved Base	7332	\$ 219.75	1	\$ 219.75
2	2 Battery Electronics Cabinet	026433	\$ 625.00	1	\$ 625.00
3	Interstate 100Ah Battery	DCM0100	\$ 225.00	2	\$ 450.00
4	LED Lights and Mounts	7534	\$ 158.20	2	\$ 316.40
5	90 Watt Solar Panel	SLP090-12U	\$ 210.00	1	\$ 210.00
6	Solar Panel Mount	UNI-SP/01A	\$ 125.00	1	\$ 125.00
7	15 Amp Solar Charge Controller	PS-15M	\$ 155.00	1	\$ 155.00
8	900 Mhz Polyphaser w/antenna	AL6-NFNFBW	\$ 80.00	1	\$ 80.00
9	50386 Board Panel w/900Mhz Radio	50386-Panel	\$ 4,620.00	1	\$ 4,620.00
10	Flasher Relay	6112	\$ 90.00	1	\$ 90.00
11	Miscellaneous cabling	WET-Cabling	\$ 200.00	1	\$ 200.00
Items Total					\$ 7,091.15

Item No.	Labor Description	Hours		Amount
		Eng I \$130/hr	Eng II \$150/hr	
12	Test Equipment for Damage	3.0	0.0	\$ 390.00
13	Rebuild Pole	6.0	2.0	\$ 1,080.00
14	Installing New Flasher Pole	4.0	4.0	\$ 1,120.00
15	Testing Station	2.0	2.0	\$ 560.00
Labor Total				\$ 3,150.00

**Total Cost \$ 10,241.15**

Thank you for your consideration!

**Hays County Commissioners Court**

Date: 07/11/2023

**Requested By:**

Marcus Pacheco, Development Services Director

**Sponsor:**Commissioner Smith

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**Agenda Item:**

Discussion and possible action to authorize the Development & Community Services Director to convert the GIS Specialist slot 0232-001 to a GIS Analyst position effective immediately. **SMITH/PACHECO**

**Summary:**

Due to a recent vacancy, the Development Services Director would like to restructure the GIS division. The position is requested to be downgraded from a GIS Specialist position grade 123 to a GIS Analyst grade 121.

**Fiscal Impact:**

Amount Requested: None

Line Item Number: 001-657-00]

**Budget Office:**

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

	Analyst	Specialist	
	<u>Grade 121</u>	<u>Grade 123</u>	<u>Savings</u>
Base Salary	56,373	62,151	(5,778)
Fringe	12,086	13,325	(1,239)
Total	68,459	75,476	(7,017)

**Auditor's Office:**

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes, Salaries and Benefits

New Revenue Y/N?: N/A

Comments:

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## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Judge Joanne Prado

Sponsor:

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### Agenda Item:

Discussion and possible action to authorize the part-time Justice Clerk slot 0855-005 to work full-time for the period of July 18 through July 26, 2023 for the Justice of the Peace Pct. 1-1 Office and amend the budget accordingly. **INGALSBE/PRADO**

### Summary:

The JP 1-1 Office would like to bring in the part-time Justice Clerk full-time for a 7-day period, July 18-26 to assist while two full-time clerks will be out on planned vacation. This will be needed in order to assist with the court duties as well as public service window duties. The part-time clerk currently works 4 hours per day and will be working 8 hours daily during this period.

### Fiscal Impact:

Amount Requested: \$655.00

Line Item Number: 001-625-00]

### Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: Possible funding source County-wide salary adjustments.

\$539 - Increase Staff Salaries 001-625-00.5021

\$33 - Increase FICA 001-625-00.5101\_100

\$9 - Increase Medicare 001-625-00.5101\_200

\$74 - Increase Retirement 001-625-00.5101\_300

(\$655) - TBD Decrease County-Wide Salary Adjustments 001-645-00.5091

### Auditor's Office:

Purchasing Guidelines Followed Y/N?: N/A

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

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AGENDA ITEM REQUEST FORM: **K. 18.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Judge Becerra

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### Agenda Item

Discussion and possible action to approve a Scope of Work for a 10-year historical review and forensic audit to include the dates to review from January 1, 2012 through December 30, 2022. **BECERRA**

### Summary

Proposed Scope of Work to be submitted at Commissioners Court.

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AGENDA ITEM REQUEST FORM: **L. 1.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Judge Becerra

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### Agenda Item

Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of real property associated with Parks and Open Space Projects being considered by Hays County. Possible discussion and/or action may follow in open court.

**BECERRA**

### Summary

Additional information will be provided during Executive Session.

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AGENDA ITEM REQUEST FORM: L. 2.

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor: Commissioner Ingalsbe

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### Agenda Item

Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation to consider a resolution determining the necessity and authorizing the use of the County's power of eminent domain to acquire fee simple interest in 0.7495 acre, owned by ADBF, LLC, a Texas limited liability company and Studio Estates, LLC, a Texas limited liability company, and which is required for the construction of the proposed FM 2001 roadway improvements, and take other appropriate action (Parcels 56). Possible discussion and/or action may follow in open court. **INGALSBE**

### Summary

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AGENDA ITEM REQUEST FORM: L. 3.

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor: Commissioner Ingalsbe

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### Agenda Item

Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange, lease and/or value of Right of Way located at or near FM 110 in Pct. 1. Possible discussion and/or action may follow in open court. **INGALSBE**

### Summary

To be provided in Executive Session.

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AGENDA ITEM REQUEST FORM: **L. 4.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Judge Becerra

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### Agenda Item

Executive Session pursuant to Sections 551.071 and 551.087 of the Texas Government Code: consultation with counsel and deliberation regarding economic development negotiations associated with Project Lion King. Possible discussion and/or action may follow in open Court. **BECERRA**

### Summary

Additional information will be provided in Executive Session.

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AGENDA ITEM REQUEST FORM: **L. 5.**

## Hays County Commissioners Court

Date: 07/11/2023

Requested By:

Sponsor:

Judge Becerra

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### Agenda Item

Executive Session pursuant to Sections 551.071 and 551.076 of the Texas Government Code: consultation with counsel and deliberation regarding the deployment of security device(s) located at the Hays County Government Center, 712 S. Stagecoach Trail, San Marcos. Possible discussion and/or action may follow in open court. **BECERRA**

### Summary

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