

**Commissioners Court -- JANUARY 30, 2024
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 **JANUARY 30, 2024**, 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. Adopt a Proclamation recognizing January 29-February 2, 2024 as National Job Corps Groundhog Week. **BECERRA**
2. Adopt a Proclamation recognizing February 2024 as Spay/Neuter Awareness Month. **BECERRA**
3. Presentation of Hays County Employee Service and Retirement Awards. **_BECERRA/MILLER**

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 January 16, 2024. **BECERRA/CARDENAS**
5. Approve the payment of the January 31, 2024 payroll disbursements in an amount not to exceed \$5,025,000.00 effective January 31, 2024 and post totals for wages, withholdings, disbursements and benefits on the Hays County website once finalized. **BECERRA/DORSETT**
6. Approve and confirm the appointment of Andrew L. Upton as a regular full-time Deputy Constable in the Hays County Constable Precinct 2 Office. **COHEN/ELLER**

7. Authorize the execution of quotes with Axon Enterprise, Inc. related to the Fleet in-car camera system and Body Worn camera program for the Constable Pct. 3 Office and amend the budget accordingly. **SHELL/MONTAGUE**
8. Approve the nomination of County Judge Becerra to serve on the Texas Conference of Urban Counties' Policy Committee for the 2024-2026 biennium. **BECERRA**
9. Authorize an amendment to the Health Department PHIG Grant budget for operating supplies as needed for the remainder of the fiscal year 2024. **INGALSBE/T.CRUMLEY**
10. Authorize an amendment in the Sheriff Drug Forfeiture Fund of \$10,000.00 for a capital improvement project. **INGALSBE/CUTLER**
11. Accept the resignation, effective immediately, of Commissioner Walt Smith as member on the Central Texas Clean Air Coalition (CAC) of the Capital Area Council of Governments (CAPCOG) and approve the appointment of Commissioner Michelle Cohen to serve as member for a term ending December 31, 2025. **SMITH**
12. Approve out-of-state travel using Sheriff Drug Forfeiture Funds to send Lieutenant Ryan Hayden, Sergeant Mark Opiela, Sergeant David Marshall, Corporal Eric Zediker, Corporal Brian Wahlert, and Deputy Wesley Lowe to National Police Week on May 11-16, 2024, in Washington, D.C. **INGALSBE/CUTLER**
13. Approve out-of-state travel, utilizing the CECC Continuing Education Funds, for CECC Director Stephanie Robinson to attend the Navigator Conference on April 14 - 18, 2024 in National Harbor, Maryland. **INGALSBE/ROBINSON**
14. Authorize the Office of Emergency Services to accept a \$700.00 donation from the San Marcos Lions Club for the Fire Marshal Division and amend the budget accordingly. **INGALSBE/MIKE JONES**
15. Approve the appointment of Krista Pepau to the Emergency Services District (ESD) No. 9 Board of Emergency Services Commissioners, to fill the position formerly held by Chris Baker, for a term ending December 31, 2025. **SHELL**
16. Authorize the submission of a grant application to the Texas Comptroller, Rural Law Enforcement Grant - Sheriff's Office in the amount of \$500,000.00. **INGALSBE/T.CRUMLEY/CUTLER**
17. Authorize the acceptance of a continuation grant award from the Texas Indigent Defense Commission (TIDC), FY24 Improvement Grant program in the amount of \$8,631.00. **SHELL/T.CRUMLEY**
18. Authorize the submission of a grant application to the Office of the Governor, State Homeland Security Program - Regular Projects in the amount of \$14,470.00. **BECERRA/T.CRUMLEY/JONES**
19. Authorize the submission of a grant application to the Office of the Governor, First Responder Mental Health program in the amount of \$10,035.00. **INGALSBE/T.CRUMLEY/CUTLER**
20. Authorize the submission of a grant application to the FY24 Texas Parks and Wildlife Department, Recreational Trails Grant Program in the amount of \$300,000.00. **SHELL/T.CRUMLEY**
21. Authorize Commissioner, Precinct 3 to execute a letter of support for a grant application from Texas State University to the Texas Parks and Wildlife Recreational Trails Grant Program. **SHELL/T.CRUMLEY**
22. Authorize the submission of a grant application to the Office of the Governor, Criminal Justice Grant Program in the amount of \$142,183.71. **INGALSBE/T.CRUMLEY/HIGGINS**
23. Authorize the submission of a renewal grant application to the Department of State Health Services (DSHS), Public Health Emergency Preparedness (CPS/PHEP) Grant program in the amount of \$126,721.00. **INGALSBE/T.CRUMLEY**
24. Approve specifications for IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting and Pavement Markings and authorize Purchasing to solicit for bids and advertise. **SHELL/BORCHERDING**

25. Approve Utility Permits **SHELL/INGALSBE/BORCHERDING**
26. Approve an increase of \$150.00 to the change fund for the Justice of the Peace Precinct 5 Office as recommended by the County Auditor pursuant to Texas Local Government Code Chapter 130.902 (d). **COHEN/SMITH/VILLARREAL-ALONZO**
27. Authorize payment to San Marcos Daily Record of \$2,721.00 for the Elections Administration Office related to publishing the Public Notice for the Election for the November Constitutional Amendment election where a purchase order was not obtained prior to services rendered as required per the Hays County Purchasing Policy. **BECERRA/DOINOFF**
28. Authorize the County Judge to execute a Contract Amendment with AMG Printing related to Election Form Printing Services pursuant to RFP 2020-P08. **BECERRA/DOINOFF**
29. Authorize the County Judge to execute a Contract Amendment with Texas Disposal Systems related to Hauling Solid Waste pursuant to IFB 2020-B02, increasing the monthly weight report fee for each location to \$50.00. **SMITH/SHELL/T.CRUMLEY**
30. Authorize the County Judge to execute a Memorandum of Understanding with the Texas Commission on Law Enforcement for the ability of the Sheriff's Office Training Academy to instruct a School Marshal and Recertification Class. **INGALSBE/CUTLER**
31. Accept donations totaling \$78,900.00 on behalf of the Hays County Child Protective Board and amend the budget accordingly. **INGALSBE**
32. Authorize the County Judge to execute quotes with Tyler Technology related to the Jury Module for the creation of the Justice of the Peace, Pct. 2 Place 2 Court and make changes to the Jury Summons template and amend the budget accordingly. **BECERRA/A. ANDERSON**
33. Authorize the Information Technology Department to purchase a DocuSign Envelope Package to allow electronic signatures for County documents. **INGALSBE/McGILL**
34. Authorize the County Judge to execute an Investment Summary Proposal with Tyler Technologies, Inc. for PACE training days for the Combined Emergency Communications Center (CECC) using credited funds received by Hays County and amend the budget accordingly. **SHELL/INGALSBE/ROBINSON**
35. Authorize payment to Bobby A. Caine, Veteran's Treatment Court (VTC) defense attorney for hotel, flight and conference registration reimbursement to attend the National Association of Drug Court Professionals (NADCP) Conference and amend the budget accordingly. **INGALSBE/JOHNSON**
36. Authorize the execution of an updated Interlocal Cooperation Agreement between Hays Consolidated Independent School District (HCISD) and Hays County related to school resource officers. **COHEN/SMITH/CUTLER**
37. Authorize the execution of an updated Interlocal Cooperation Agreement between Dripping Springs Independent School District (DSISD) and Hays County related to school resource officers (SRO); establishing one additional SRO position effective December 1, 2023 and amend the budget accordingly. **SMITH/CUTLER**

H.

ACTION ITEMS

I.

ROADS

1. Discussion and possible action to authorize the Court to execute a Professional Services Agreement between Hays County and Cobb, Fendley & Associates, Inc. to provide engineering services on the Fitzhugh Road Corridor Study project in Precinct 4. **SMITH/BORCHERDING**
2. Discussion and possible action to authorize the Court to execute Change Order No. 4 amending the billing rates in the Professional Services Agreement between Hays County and BGE, Inc. for the RM 12 Safety Improvements near the intersection of Mountain Crest and Skyline Drive project in Precinct 3. This is a zero cost Change Order. **SHELL/BORCHERDING**

3. Discussion and possible action to authorize the Court to execute Contract Amendment No. 6 to increase the contract compensation cap by \$20,000.00 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**
4. Discussion and possible action to authorize the Court to execute Contract Amendment No. 1 amending the Exhibit D billing rates in the Professional Services Agreement between Hays County and WSB & Associates, Inc. dba WSB Engineers and Surveyors, Inc. for the East Side Corridor project in Precincts 1 and 2. There is no cost increase associated with this contract document. **INGALSBE/COHEN/BORCHERDING**
5. Discussion and possible action to approve the selection of HDR, Inc for the purpose of performing an intersection warrant study at the FM110/Yarrington Road eastern intersection and authorize staff to negotiate a contract after receiving scope and fee documents. **INGALSBE/BORCHERDING**
6. Discussion and possible action to consider the acceptance of road construction & surface drainage improvements, release the subdivision bond #9426154 in the amount of \$2,576,049.56, and acceptance of the 2-year maintenance bond #341693Q in the amount of \$140,202.02 for Waterstone Unit A. **INGALSBE/BORCHERDING**
7. Discussion and possible action to consider the acceptance of road construction & surface drainage improvements, release the Letter of Credit #FTFC-23233 in the amount of \$2,252,601.83, acceptance of the 2-year maintenance bond #355371J in the amount of \$103,974.35, and accept the 1-year revegetation bond #355373G in the amount of \$4,709.55 for Waterstone Unit C. **INGALSBE/BORCHERDING**

J.

SUBDIVISIONS

1. PLN-2413-PC; Call for a Public Hearing on February 27th, 2024, followed by discussion and possible action regarding The Cliffs of Onion Creek, Lot 1, Replat. **SHELL/PACHECO**
2. PLN-2401-PC; Hold a Public Hearing, followed by discussion and possible action regarding the Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A. **INGALSBE/PACHECO**
3. PLN-2208-PC; Discussion and possible action regarding Carol Oaks, Lot 6, Replat. **SMITH/PACHECO**

K.

MISCELLANEOUS

1. Discussion and possible action to accept a Proposal from Water & Earth Technologies (WET) related to the replacement of the live feed camera station at National Resources Conservation Service (NRCS) Dam # 5; authorize a discretionary exemption pursuant to Texas Local Government Code 262.024 (a)(7)(D) and amend the budget accordingly. **BECERRA/SHELL/MIKE JONES**
2. Discussion and possible action to approve one new Data Program Specialist position with equipment in the Hays County Health Department effective February 1, 2024, and amend the budget accordingly. **SHELL/T.CRUMLEY**
3. Discussion and possible action to approve a new Behavioral Health Coordinator position with equipment in the Hays County Health Department effective February 1, 2024, and amend the budget accordingly. **COHEN/SHELL/T.CRUMLEY**
4. Discussion and possible action to authorize the purchase of consumables for employee training hosted by Human Resources. **INGALSBE/MILLER**
5. Discussion and possible action to authorize the County Judge to execute a contract with Evoke Wellness related to substance-use treatment for participants in the Judicial Services Department and amend the budget accordingly. **INGALSBE**
6. Discussion and possible action to award a contract for IFB 2024-B02 Lawn and Landscape Services to Olympia Landscape Development Inc. **BECERRA/T.CRUMLEY**

7. Discussion and possible action to allow the Hays County Clerk's Office to Double Fill Deputy Clerk II Position, Slot 0454-003, for a Period Not to Exceed 12 Weeks. **BECERRA/CARDENAS**
8. Discussion and possible action to award a contract for RFP 2024-P06 HVAC - Preventative Maintenance and Repair Services, Countywide to SI Mechanical, LLC. and authorize staff and the District Attorney, Civil Division to negotiate a contract. **BECERRA/T.CRUMLEY**
9. Discussion and possible action to re-organize the Compensation Committee. **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 regarding the purchase, exchange, lease and/or value of Right of Way located at or near Cotton Gin Road in Precinct 1. 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 Hillside Terrace in Precinct 1. Possible discussion and/or action may follow in open court. **COHEN**
4. Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding employment, performance and duties of the Chief Juvenile Probation Officer, Director of Information Technology, Director of Transportation, Juvenile Facility Director, Chief Budget Officer, Elections Administrator, Director of Human Resources, Director of Emergency Services, Director of County Wide Operations, Director of Development Services, Combined Emergency Communications Director, Veterans Services Officer, County Auditor and Extension Agents. **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. 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**
6. Updates on measurable advancement of Judicial Services to include the areas of staffing, equipment, training, operations and policy, by Director of Judicial Services Randy Focken. **BECERRA**

N. **ADJOURNMENT**

**Posted by 5:00 o'clock P.M. on the 26th day of January, 2024
COMMISSIONERS COURT, HAYS COUNTY, TEXAS**

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: 01/30/2024

Requested By:

Sponsor:

Judge Becerra

Agenda Item

Adopt a Proclamation recognizing January 29-February 2, 2024 as National Job Corps Groundhog Week. **BECERRA**

Summary

Proclamation attached.

Attachments

Gary Job Corps Groundhog Week



**PROCLAMATION RECOGNIZING JANUARY 29 – FEBRUARY 2, 2024
AS NATIONAL JOB CORPS GROUNDHOG WEEK**

STATE OF TEXAS §
 §
COUNTY OF HAYS §

WHEREAS; The Gary Job Corps Center in San Marcos has made a positive and lasting difference in the lives of countless young Texans, and during the week of January 29-February 2, 2024, proud staff, students, and supporters are gathering to mark a shared history of important work and worthwhile accomplishment; and

WHEREAS; While the no-cost career education and technical training center administered by the U.S. Department of Labor opened in March 1965, its beginnings originated in a public announcement President Lyndon B. Johnson made at his alma mater in November 1964; with that commitment, the deactivated Gary Army Air Field was transformed into what is today the largest of 125 Job Corps centers in the nation, with more than 900 male and female students living and learning on a 775-acre campus; and

WHEREAS, Through 19 programs at the center, Gary Job Corps provides people ages 16 to 24 with opportunities to acquire skills that enable them to become more employable and independent; Gary students can earn high school equivalency credentials or certified high school diplomas, receive vocational instruction in 19 occupations in such fields as health, office administration, security, construction, and manufacturing, and qualify for financial assistance to pursue higher education; and

WHEREAS, The Gary Job Corps Center, now one of four in Texas, has seen much change over the course of the last five decades, but it has kept focus on its original mission: boosting productivity, civic engagement, and prosperity by giving a hand up to young people in need;

NOW, THEREFORE, BE IT RESOLVED, that the Hays County Commissioners Court does hereby declare January 29-February 2 as:

NATIONAL JOB CORPS GROUNDHOG WEEK

And that the Gary Job Corps Center be commemorated and that all those associated with this admirable organization be extended sincere best wishes for a meaningful and memorable event.

ADOPTED THIS THE 30 DAY OF JANUARY 2024

Ruben Becerra
Hays County Judge

Debbie Gonzales Ingalsbe
Commissioner, Pct. 1

Dr. Michelle Cohen
Commissioner, Pct. 2

Lon A. Shell
Commissioner, Pct. 3

Walt Smith
Commissioner, Pct. 4

ATTEST:

Elaine H. Cárdenas, MBA, PhD
Hays County Clerk



AGENDA ITEM REQUEST FORM: F. 2.

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Agenda Item

Adopt a Proclamation recognizing February 2024 as Spay/Neuter Awareness Month. **BECERRA**

Summary

Attachments

Spay/Neuter Proclamation



WHEREAS; as of 2023, 66% of U.S. households (86.9 million homes) own a pet; and

WHEREAS, about 378,000 dogs and cats were killed in our nation’s shelters just because they didn’t have safe places to call home; and

WHEREAS, 579,567 companion animals entered Texas animal shelters and 68,945 dogs and cats were killed in animal shelters across Texas in 2022; and

WHEREAS, the regional animal shelter reported that there were 3,053 live dogs and cats impounded in FY 2023, of which 36%, 1,109 animals, were from Hays County; and

WHEREAS, Spay & Neuter of pets and Trap-Neuter-Vaccinate-Return of unowned community cats are integral components of the No-Kill Equation.

ADOPTED THIS THE 30 DAY OF JANUARY 2024

Elaine H. Cárdenas, MBA, PhD
Hays County Clerk



AGENDA ITEM REQUEST FORM: F. 3.

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Miller

Sponsor:

Judge Becerra

Agenda Item

Presentation of Hays County Employee Service and Retirement Awards._BECERRA/MILLER

Summary

Presentation of Hays County Employee Service and Retirement Awards

Attachments

January 2024 Service and Retirement Awards

January 2024 Service Awards

Name	Department	Position	Years
STEEL, GARY L.	District Courts	District Court Judge	25
ROBERTS, RICHARD Jr.	District Courts	District Court Reporter	25
SMITH, BETH	Justice of the Peace Pct 2, 1	Justice of the Peace Pct 2, 1	25
MALLOW, MICHAEL	Sheriff's Office	Lieutenant	25
HOOD, RONALD	Constable Pct 4 Office	Constable Pct 4	15
BARRY, SARAH	District Attorney's Office	Legal Assistant	10
ROBINSON, STEPHANIE	Combined Emergency Communication	CECC Director	5
SMITH, WALTER Jr.	Commissioner Pct 4 Office	Commissioner Pct 4	5
POZUC, JOHN	Constable Pct 4 Office	Deputy Constable Pct 4	5
CARDENAS, ELAINE	County Clerk's Office	County Clerk	5
BECERRA, RUBEN	County Judge's Office	County Judge	5
COLLINS, ANITA	County Judge's Office	Executive Assistant	5
BLANKENSHIP, DAVID	District Courts	Magistrate Court Administrator	5
BURNS, JOHN	Justice of the Peace Pct 4 Ofc	Justice of the Peace Pct 4	5
HEINTZ, JOHN	Juvenile Probation	Juvenile Probation Officer	5
KING, LARRY Jr.	Sheriff's Office	Corrections Specialist	5
PERKINS, CLAIRE	Treasurer's Office	Treasury Associate	5
COHEN, MICHELLE	Commissioner Pct 2 Office	Commissioner Pct 2	1
YANEZ, ANNETTE	Commissioner Pct 2 Office	Executive Assistant Pct 2	1
HRNCIR, STEVE	Constable Pct 1 Office	Deputy Constable Pct 1	1
HALL, JIMMY	County Court at Law 1	County Court at Law Judge	1
BROWN, ELAINE	County Court at Law 2	County Court at Law Judge	1
RICE LOBELLO, KIMBERLY	County Court at Law 2	County Court Reporter	1
HIGGINS, KELLY	District Attorney's Office	District Attorney	1
COX, GREGG	District Attorney's Office	First Assistant District Attorney	1
ENGLISH, JONATHAN P	District Attorney's Office	Attorney	1
PRUITT, JAMIE T	District Attorney's Office	Attorney	1
RANC, RICHARD	District Attorney's Office	Attorney	1
FELLOWS, ADAM	District Attorney's Office	Attorney	1
GUEBERT, PHILLIP	District Attorney's Office	Attorney	1
ANDERSON, AVREY Sr.	District Clerk's Office	District Clerk	1
VASQUEZ, JUAN	District Clerk's Office	Chief Deputy Clerk	1
AGUILAR, MIRANDA	District Clerk's Office	Deputy Clerk	1
BETTS, ASHLEIGH	District Clerk's Office	Deputy Clerk	1
LUCIO-GONZALEZ, JESUS	District Clerk's Office	Deputy Clerk	1
POOL, JOE Jr.	District Courts	District Judge	1
WRIGHT RENEAU, TRACIE	District Courts	District Judge	1
DEMOSS, BRENNNA	District Courts	District Court Reporter	1
BRYANT, SANDRA K	Justice of the Peace Pct 5 Ofc	Justice of the Peace Pct 5	1
RUIZ, CORYE	Juvenile Detention Center	Juvenile Supervision Officer	1
DIERS, MICHAEL D	Sheriff's Office	Corrections Officer	1
PEREZ, ALYSSA MICHELLE	Sheriff's Office	Deputy	1
TENORIO, DAPHNE	Treasurer's Office	Treasurer	1
OSORIO, ELIZABETH R	Treasurer's Office	Assistant Treasurer	1

HOLCOMB, RORY K.	Sheriff's Office	Facility Maintenance	Retirement
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AGENDA ITEM REQUEST FORM: **G. 4.**

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Elaine H. Cardenas

Sponsor:

Judge Becerra

Agenda Item

Approve Commissioners Court Minutes of January 16, 2024. **BECERRA/CARDENAS**

Summary

Attachments

1/16/2024 Minutes

HAYS COUNTY COMMISSIONERS COURT MINUTES



JANUARY 16, 2024

STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 16th DAY OF JANUARY A.D., 2024, 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:

Judge Becerra called the meeting to order and led the court in the Pledge of Allegiance to the United States and Texas flags.

PUBLIC COMMENTS

Dan Lyon made a public comment concerning assistance for the homeless during cold weather. Rodrigo Amaya made a public comment regarding various concerns including issues with the meeting agenda, work on the courthouse, and low water crossings.

39864 Adopt a Proclamation declaring January 2024 as National Crime Stoppers Month.

Sergeant Jeffrey Jordan, Executive Director of the Hays County Crime Stoppers, updated the court on the number of arrests the organization has assisted with and shared success stories. The court thanked Sergeant Jordan, the volunteers, and the board for their service.

A motion was made by Commissioner Cohen, seconded by Commissioner Shell to adopt a Proclamation declaring January 2024 as National Crime Stoppers Month.

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

5 - 0 Passed - Unanimously

39865 Adopt a Proclamation declaring January 2024 as National Blood Donor Month.

Matthew Gonzales, Hays County Local Health Department Manager, stated this is part of the Health Department's effort to increase citizens' participation in health-related activities throughout the year. Commissioner Cohen spoke about upcoming blood drives around the county.

A motion was made by Commissioner Cohen, seconded by Commissioner Ingalsbe to adopt a Proclamation declaring January 2024 as National Blood Donor Month.

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

5 - 0 Passed - Unanimously

Clerk's Note Agenda Item #F-3 RE: Recognition of the County Clerk's Office for receiving The Five-Star Award From The Texas Department Of State Health Services - Vital Statistics Section. - WAS PULLED.

39866 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

39867 Approve the payment of Juror checks.

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

39868 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

39869 Approve Commissioners Court Minutes of January 2, 2024.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve Commissioners Court Minutes of January 2, 2024.

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

5 - 0 Passed - Unanimously

39870 Approve the payment of the January 31, 2024 payroll disbursements in an amount not to exceed \$5,000,000.00 effective January 31, 2024 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 January 31, 2024 payroll disbursements in an amount not to exceed \$5,000,000.00 effective January 31, 2024 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

39871 Approve and confirm the appointment of Dustin Slaughter as a regular full-time Deputy Constable in the Hays County Constable's Precinct 1 Office.

Rodrigo Amaya made a public comment against appointing new deputies. David Peterson, Constable Precinct 1, introduced Deputy Slaughter and spoke about his experience. Judge Becerra noted more deputies have been appointed in Precinct 1 due to the Constable Precinct 1 Office taking over Government Center security. Deputy Slaughter thanked the court and spoke about his commitment to the community.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve and confirm the appointment of Dustin Slaughter as a regular full-time Deputy Constable in the Hays County Constable's Precinct 1 Office.

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

5 - 0 Passed - Unanimously

39872 Approve and confirm the appointment of Courtney Gamble as a regular full-time Deputy Constable in the Hays County Constable Precinct 5 Office.

Rodrigo Amaya made a public comment against appointing new deputies.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve and confirm the appointment of Courtney Gamble as a regular full-time Deputy Constable in the Hays County Constable Precinct 5 Office.



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

5 - 0 Passed - Unanimously

39873 Authorize the Hays County Health Department to accept change order #1 with Gerling and Associates for an upgrade to the pharmaceutical refrigerator in the mobile vaccine van and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the Hays County Health Department to accept change order #1 with Gerling and Associates for an upgrade to the pharmaceutical refrigerator in the mobile vaccine van and amend the budget accordingly.

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

5 - 0 Passed - Unanimously

39874 Approve out-of-state travel for K-9 Deputy John Hoffman and K-9 Deputy Scott Whetstone to attend the National Narcotics Dog Detector Association Conference on March 4-8, 2024, in Warner Robins, Georgia.

Rodrigo Amaya made a public comment questioning the need for K-9 deputies.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve out-of-state travel for K-9 Deputy John Hoffman and K-9 Deputy Scott Whetstone to attend the National Narcotics Dog Detector Association Conference on March 4-8, 2024, in Warner Robins, Georgia.

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

5 - 0 Passed - Unanimously

39875 Authorize the Hays County Sheriff's Office to send a letter of termination, effective June 30, 2024, to Texas State Sports Properties, LLC regarding Hays County's employment recruiting efforts at Texas State athletic events.

Rodrigo Amaya made a public comment against the item.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the Hays County Sheriff's Office to send a letter of termination, effective June 30, 2024, to Texas State Sports Properties, LLC regarding Hays County's employment recruiting efforts at Texas State athletic events.

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

5 - 0 Passed - Unanimously

39876 Approve the cancelation of Commissioners Court on July 9, 23 and 30, August 27, September 10 and 24, October 8, 22 and 29, November 12 and 26, December 10, 24 and 31, 2024.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the cancelation of Commissioners Court on July 9, 23 and 30, August 27, September 10 and 24, October 8, 22 and 29, November 12 and 26, December 10, 24 and 31, 2024.

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

5 - 0 Passed - Unanimously

39877 Authorize the execution of Amendment No 3 to the DSHS IDCU/COVID-19 Grant Contract.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the execution of Amendment No 3 to the DSHS IDCU/COVID-19 Grant Contract.

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

5 - 0 Passed - Unanimously



39878 Authorize payment to Pathmark Traffic Equipment, LLC in the amount of \$691.00 for the Transportation Department related to the purchase of traffic signs where no purchase order was issued as required per the Hays County purchasing policy.

Rodrigo Amaya made a public comment against the item. Judge Becerra explained this section of the purchasing policy and spoke about the ongoing efforts to review and possibly update it.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize payment to Pathmark Traffic Equipment, LLC in the amount of \$691.00 for the Transportation Department related to the purchase of traffic signs where no purchase order was issued as required per the Hays County purchasing policy.

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

5 - 0 Passed - Unanimously

39879 Approve the execution of an Assignment Agreement between Hays County, ECM International, Inc. and Johnson, Mirmiran & Thompson, Inc., assigning the terms and conditions of all agreements between Hays County and ECM International, Inc to Johnson, Mirmiran & Thompson, Inc.

Commissioner Shell stated he will abstain from this vote because his wife is employed by ECM International, Inc.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the execution of an Assignment Agreement between Hays County, ECM International, Inc. and Johnson, Mirmiran & Thompson, Inc., assigning the terms and conditions of all agreements between Hays County and ECM International, Inc to Johnson, Mirmiran & Thompson, Inc.

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

4 - 0 Passed - Unanimously

39880 Approve renewal of IFB 2022-B06 Road Building Materials - Limestone Rock Asphalt, Cold Mix with Vulcan Construction Materials, LLC. for one (1) additional year.

Rodrigo Amaya made a public comment asking why many of the same companies are chosen to do work for the county.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve renewal of IFB 2022-B06 Road Building Materials - Limestone Rock Asphalt, Cold Mix with Vulcan Construction Materials, LLC. for one (1) additional year.

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

5 - 0 Passed - Unanimously

39881 Approve renewal of IFB 2022-B07 Road Building Materials - Hot Mix Overlay with Colorado Materials, Ltd. and Asphalt Inc. LLC, dba Lone Star Paving Company for one (1) additional year.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve renewal of IFB 2022-B07 Road Building Materials - Hot Mix Overlay with Colorado Materials, Ltd. and Asphalt Inc. LLC, dba Lone Star Paving Company for one (1) additional year.

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

5 - 0 Passed - Unanimously

39882 Approve renewal of IFB 2020-B04 Concrete with Brauntex Materials and Lauren Concrete for one (1) additional year with the proposed price increases.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve renewal of IFB 2020-B04 Concrete with Brauntex Materials and Lauren Concrete for one (1) additional year with the proposed price increases.

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

5 - 0 Passed - Unanimously



39883 Approve renewal of IFB 2023-B10 Culverts with Contech Engineered Solutions, LLC. for one (1) additional year.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve renewal of IFB 2023-B10 Culverts with Contech Engineered Solutions, LLC. for one (1) additional year.

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

5 - 0 Passed - Unanimously

39884 Approve renewal of IFB 2022-B05 Countywide Portable Toilets and Handwashing Station Rental Services with United Site Services of Texas, Inc. for one (1) additional year.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve renewal of IFB 2022-B05 Countywide Portable Toilets and Handwashing Station Rental Services with United Site Services of Texas, Inc. for one (1) additional year.

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

5 - 0 Passed - Unanimously

39885 Authorize the submission of a grant application to the Department of State Health Services, Tuberculosis Program in the amount of \$55,308.00.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the submission of a grant application to the Department of State Health Services, Tuberculosis Program in the amount of \$55,308.00.

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

5 - 0 Passed - Unanimously

39886 Authorize Building Maintenance to install new plumbing equipment in the amount of \$22,345.49 in three juvenile detention cells located at the Government Center and amend the budget accordingly.

Rodrigo Amaya made a public comment concerning the need for additional repairs and equipment. Tammy Crumley, Director of Countywide Operations, explained there are currently no adequate facilities for juvenile detention at the Government Center.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize Building Maintenance to install new plumbing equipment in the amount of \$22,345.49 in three juvenile detention cells located at the Government Center and amend the budget accordingly.

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

5 - 0 Passed - Unanimously

39887 Approve a change fund of \$300.00 for the Justice of the Peace Precinct 2, Place 2 Office as approved by the County Auditor pursuant to Texas Local Government Code Chapter 130.902 (a).

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve a change fund of \$300.00 for the Justice of the Peace Precinct 2, Place 2 Office as approved by the County Auditor pursuant to Texas Local Government Code Chapter 130.902 (a).

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

5 - 0 Passed - Unanimously

39888 Authorize the County Clerk's Office to order one (1) replacement U-Desk with Hutch valued at \$1,547.95 for the Chief Deputy Clerk, Courts Division and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the County Clerk's Office to order one (1) replacement U-Desk with Hutch valued at \$1,547.95 for the Chief Deputy Clerk, Courts Division and amend the budget accordingly.



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

5 - 0 Passed - Unanimously

39889 Approve the purchase of a replacement fuel transfer tank from Grainger, Inc. in the amount of \$727.36 for the Transportation Department and amend the budget accordingly.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the purchase of a replacement fuel transfer tank from Grainger, Inc. in the amount of \$727.36 for the Transportation Department and amend the budget accordingly.

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

5 - 0 Passed - Unanimously

39890 Accept delivery of the Auditor's Office Quarterly Internal Examination Reports.

Rodrigo Amaya made a public comment concerning the County Auditor.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to accept delivery of the Auditor's Office Quarterly Internal Examination Reports.

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

5 - 0 Passed - Unanimously

39891 Approve specifications for RFP 2024-P05 Delinquent District and County Court Fines and Fees Collection Services and authorize Purchasing to solicit for bids and advertise.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve specifications for RFP 2024-P05 Delinquent District and County Court Fines and Fees Collection Services and authorize Purchasing to solicit for bids and advertise.

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

5 - 0 Passed - Unanimously

39892 Approve specifications for IFB 2024-B07 Cemetery Maintenance and authorize Purchasing to solicit for bids and advertise.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve specifications for IFB 2024-B07 Cemetery Maintenance and authorize Purchasing to solicit for bids and advertise.

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

5 - 0 Passed - Unanimously

39893 Approve Utility Permits.

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

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

5 - 0 Passed - Unanimously

39894 Approve the appointment of Judge Ruben Becerra to replace Commissioner Lon Shell on the Hays County Criminal Justice Coordinating Commission.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the appointment of Judge Ruben Becerra to replace Commissioner Lon Shell on the Hays County Criminal Justice Coordinating Commission.

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

5 - 0 Passed - Unanimously

39895 Authorize out-of-state travel for two felony prosecutors and one victim assistance coordinator in the Hays County Criminal District Attorney's Office, in an amount not to exceed \$5,000, for purposes of felony jury trial preparation and amend the budget accordingly.



A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize out-of-state travel for two felony prosecutors and one victim assistance coordinator in the Hays County Criminal District Attorney's Office, in an amount not to exceed \$5,000, for purposes of felony jury trial preparation and amend the budget accordingly.

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

5 - 0 Passed - Unanimously

39896 Accept donations totaling \$13,915.00 on behalf of the Hays County Child Protective Board and amend the budget accordingly.

Commissioner Smith thanked the donors.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to accept donations totaling \$13,915.00 on behalf of the Hays County Child Protective Board and amend the budget accordingly.

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

5 - 0 Passed - Unanimously

39897 Authorize the County Clerk to utilize Kofile Technologies for the preservation services of historical records.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the County Clerk to utilize Kofile Technologies for the preservation services of historical records.

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

5 - 0 Passed - Unanimously

39898 Replace the Hays County Auditor with the Hays County Purchasing Agent as the authorized agent to execute Vendor Credit Account Applications and all documents related to Hays County Owned Vehicles.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to replace the Hays County Auditor with the Hays County Purchasing Agent as the authorized agent to execute Vendor Credit Account Applications and all documents related to Hays County Owned Vehicles.

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

5 - 0 Passed - Unanimously

39899 Ratify the submission of the SB 22 Grant Application to the Texas Comptroller's Office for the Criminal District Attorney's Office related to additional funding for Assistant District Attorney's, Victim Assistant Coordinators and Investigators.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to ratify the submission of the SB 22 Grant Application to the Texas Comptroller's Office for the Criminal District Attorney's Office related to additional funding for Assistant District Attorney's, Victim Assistant Coordinators and Investigators.

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

5 - 0 Passed - Unanimously

39900 Discussion and possible action to authorize the execution of a Professional Services Agreement between Hays County and Cobb, Fendley & Associates, Inc. to provide utility coordination services for the RM 2325 Sidewalk project in Precinct 3 and amend the budget accordingly.

Commissioner Shell stated the county received grant funding for this project.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the execution of a Professional Services Agreement between Hays County and Cobb, Fendley & Associates, Inc. to provide utility coordination services for the RM 2325 Sidewalk project in Precinct 3 and amend the budget accordingly.



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

5 - 0 Passed - Unanimously

39901 Discussion and possible action to accept the Performance Bond No. K41798208 in the amount of \$1,062,578.49 for road pavement improvements in the Trails at Windy Hill Subdivision, Phase 9.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to accept the Performance Bond No. K41798208 in the amount of \$1,062,578.49 for road pavement improvements in the Trails at Windy Hill Subdivision, Phase 9.

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

5 - 0 Passed - Unanimously

39902 Discussion and possible action to accept the Performance Bond No. K4179821A in the amount of \$1,211,516.17 for road pavement improvements in the Trails at Windy Hill Subdivision, Phase 10.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to accept the Performance Bond No. K4179821A in the amount of \$1,211,516.17 for road pavement improvements in the Trails at Windy Hill Subdivision, Phase 10.

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

5 - 0 Passed - Unanimously

39903 Discussion and possible action to consider the release of Performance Bond #800147965 in the amount of \$644,362.78 for Caliterra Phase 5, Section 14.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to release the Performance Bond #800147965 in the amount of \$644,362.78 for Caliterra Phase 5, Section 14.

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

5 - 0 Passed - Unanimously

39904 PLN-2272-PC; Discussion and possible action regarding 3-G Ranch, Sec 1, Lot 1-A, Vacate and Replat.

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

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve 3-G Ranch, Sec 1, Lot 1-A, Vacate and Replat (PLN-2272-PC).

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

5 - 0 Passed - Unanimously

39905 PLN-2401-PC; Call for a Public Hearing on January 30th, 2024, followed by discussion and possible action regarding the Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to call for a Public Hearing on January 30th, 2024, followed by discussion and possible action regarding the Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A (PLN-2401-PC).

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

5 - 0 Passed - Unanimously

39906 Discussion and possible action to re-grade and re-title the Health Education Specialist position in the Health Department effective January 16, 2024.

Shari Miller, Director of Human Resources, explained this position has never been filled and was inaccurately graded after the salary study. The position is being re-titled as the Disease Intervention Specialist and re-graded to 116.



A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to re-grade and re-title the Health Education Specialist position in the Health Department effective January 16, 2024.

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

5 - 0 Passed - Unanimously

39907 Discussion and possible action to execute a Professional Services Agreement between Hays County and AA Forensic Services for Postmortem Toxicology Services and Analysis utilized by the Justice of the Peace Offices; and authorize a purchasing waiver to the Purchasing Policy to obtain additional quotes.

Stephanie Hunt, Hays County Purchasing Agent, explained this will allow the Justices of the Peace to call for these services when needed. The waiver is needed because this is the only company in the area that provides these toxicology services.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to execute a Professional Services Agreement between Hays County and AA Forensic Services for Postmortem Toxicology Services and Analysis utilized by the Justice of the Peace Offices; and authorize a purchasing waiver to the Purchasing Policy to obtain additional quotes.

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

5 - 0 Passed - Unanimously

39908 Discussion and possible action to authorize the County Judge to execute a contract between Hays County and Sage Capital Bank for Bank Depository Services, pursuant to RFP 2023-P02, effective January 1, 2024.

A motion was made by Commissioner Cohen, seconded by Commissioner Shell to authorize the County Judge to execute a contract between Hays County and Sage Capital Bank for Bank Depository Services, pursuant to RFP 2023-P02, effective January 1, 2024.

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

5 - 0 Passed - Unanimously

39909 Discussion and possible action to authorize the execution of the Financial Renewal and Terms Amendment between Hays County and United Healthcare Insurance Company.

Shari Miller, Director of Human Resources, explained this is the final year of the United Healthcare contract, and this documents all rates and guarantees for 2024.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the execution of the Financial Renewal and Terms Amendment between Hays County and United Healthcare Insurance Company.

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

5 - 0 Passed - Unanimously

39910 Discussion and possible action to authorize addition of general and law enforcement liability coverage on two newly purchased unmanned aircraft. Additional premium through November 15, 2024 of \$2,165.00.

A motion was made by Commissioner Cohen, seconded by Commissioner Shell to authorize addition of general and law enforcement liability coverage on two newly purchased unmanned aircraft, additional premium through November 15, 2024 of \$2,165.00.

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

5 - 0 Passed - Unanimously

39911 Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement between Hays County and Dorinda Martin, RPh, Pharm. D, FACA, FASAP to provide consultant pharmacist services to the Hays County Health Department.



Tammy Crumley, Director of Countywide Operations, explained the Hays County Health Department is a Class D Pharmacy which requires a consultant pharmacist. This is the replacement for the former pharmacist.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Smith to authorize the County Judge to execute a Professional Services Agreement between Hays County and Dorinda Martin, RPh, Pharm. D, FACA, FASAP to provide consultant pharmacist services to the Hays County Health Department.

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

5 - 0 Passed - Unanimously

39912 Discussion and possible action authorizing the execution of an Order Agreement, Product Schedule, and Equipment removal/Buyout Authorization with Ricoh USA, Inc. to replace the copier in the Tax Office in Dripping Springs (\$56.67 monthly), and a copier in the Tax Office in San Marcos (\$173.98 monthly).

A motion was made by Commissioner Smith, seconded by Commissioner Shell to authorize the execution of an Order Agreement, Product Schedule, and Equipment removal/Buyout Authorization with Ricoh USA, Inc. to replace the copier in the Tax Office in Dripping Springs (\$56.67 monthly), and a copier in the Tax Office in San Marcos (\$173.98 monthly).

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

5 - 0 Passed - Unanimously

39913 Discussion and possible action to award a contract for IFB 2023-B15 Regulatory Road Signs to Dobbie Supply, LLC., Lightle Enterprises of Ohio, LLC., Pathmark Traffic Equipment, LLC., Rampant Media, LLC., Vulcan Inc., dba Vulcan Signs and Your Signs World, LLC. pursuant to the IFB 2023-B15 Bid Tabulation.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to award a contract for IFB 2023-B15 Regulatory Road Signs to Dobbie Supply, LLC., Lightle Enterprises of Ohio, LLC., Pathmark Traffic Equipment, LLC., Rampant Media, LLC., Vulcan Inc., dba Vulcan Signs and Your Signs World, LLC. pursuant to the IFB 2023-B15 Bid Tabulation.

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

5 - 0 Passed - Unanimously

39914 Discussion and possible action to award a contract for IFB 2024-B04 TXCDBG - Cedar Oaks Mesa WSC - Water Improvements to M&C Fonseca Construction Co., Inc., total amount of \$240,960.00.

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to award a contract for IFB 2024-B04 TXCDBG - Cedar Oaks Mesa WSC - Water Improvements to M&C Fonseca Construction Co., Inc., total amount of \$240,960.00.

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

5 - 0 Passed - Unanimously

39915 Discussion and possible action to consider granting a variance to Section 10.W.1 of the Hays County Rules for On-Site Sewage Facilities and allow issuance of an On-Site Sewage System permit to the owner of the property located at 700 Wayside Dr., Wimberley, TX. 78676.

Marcus Pacheco, Director of Development Services, explained that the owner is working with staff to relocate their septic system after dividing their land.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to grant a variance to Section 10.W.1 of the Hays County Rules for On-Site Sewage Facilities and allow issuance of an On-Site Sewage System permit to the owner of the property located at 700 Wayside Dr., Wimberley, TX. 78676.

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

5 - 0 Passed - Unanimously

39916 Discussion and possible action to authorize the County Judge to execute a Participating Addendum with Indigov Corporation to utilize their citizen engagement platform and amend the budget accordingly.



Commissioner Smith explained that constituent interaction management was identified by the American Rescue Plan Act (ARPA) as a needed improvement, and he would like to use his ARPA fund allocation to test this software in his office before possibly implementing it countywide. Jeff McGill, Director of Information Technology, spoke about this software's uses and capabilities. The court discussed the cost and usefulness of the software. Commissioner Smith and McGill spoke about the data and analytics this software can hold and how it can be implemented to benefit each department. Judge Becerra asked for a presentation to the court on the implementation and use of the product once progress has been made.

A motion was made by Commissioner Smith, seconded by Commissioner Shell to authorize the County Judge to execute a Participating Addendum with Indigov Corporation to utilize their citizen engagement platform and amend the budget accordingly.

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

5 - 0 Passed - Unanimously

39917 Discussion and possible action authorizing the execution of a Professional Services Agreement between Hays County and Buzz Mayfield Cattle Company related to impoundment of estrays and authorize a purchasing waiver to the Purchasing Policy to obtain additional quotes.

Stephanie Hunt, Hays County Purchasing Agent, explained the waiver is needed because this is the only company in the area that provides this service.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize the execution of a Professional Services Agreement between Hays County and Buzz Mayfield Cattle Company related to impoundment of estrays and authorize a purchasing waiver to the Purchasing Policy to obtain additional quotes.

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

5 - 0 Passed - Unanimously

39918 Discussion and possible action to amend the Human Resources Policy.

Shari Miller, Director of Human Resources, explained the change to the promotion policy. When an employee is promoted, they will be paid at their current salary step in the higher grade up to a three grade increase. For promotions greater than three grades, the new salary step will be the next higher step to a 15% increase. The court discussed demotion situations, and Miller noted that the re-grade policy will need to be re-examined soon.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to amend the Human Resources Policy.

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

5 - 0 Passed - Unanimously

Clerk's Note Agenda Item #K-14 RE: *Discussion and possible action to consider salary increases for the County Court at Law Court Reporters and amend the budget accordingly.*
- WAS PULLED.

Clerk's Note: Executive Session began at 12:49 p.m. and resumed back into open court at 2:00 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.**

39919 Executive Session pursuant to Section 551.071 of the Texas Government Code: consultation with counsel regarding pending and/or contemplated litigation involving Hays County. Possible action may follow in open court.



Those present in Executive Session were the Commissioners Court, Jordan Powell, First Assistant Criminal District Attorney - Civil Division, Chase Young, Assistant Criminal District Attorney - Civil Division, Janice Jones, Legal Support Services Specialist, Vickie Dorsett, Hays County Budget Officer, Shari Miller, Director of Human Resources, Daphne Tenorio, Hays County Treasurer, Tucker Furlow, Assistant Criminal District Attorney - Civil Division, and Marisol Villarreal-Alonzo, Hays County Auditor.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to authorize payment from Countywide Contingencies to District and County Custodial Accounts in an amount of \$3,156.62 to reimburse interest earnings related to funds moved from Texpool to Texas Class, as discussed in Executive Session.

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

5 - 0 Passed - Unanimously

39920 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 Windy Hill Road in Precinct 1. Possible discussion and/or action may follow in open court.

Those present in Executive Session were the Commissioners Court, Jordan Powell, First Assistant Criminal District Attorney - Civil Division, Chase Young, Assistant Criminal District Attorney - Civil Division, Tucker Furlow, Assistant Criminal District Attorney - Civil Division, Vickie Dorsett, Hays County Budget Officer, Shari Miller, Director of Human Resources, and Marisol Villarreal-Alonzo, Hays County Auditor.

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Cohen to approve the submittal of a counteroffer in relation to Parcel 21, associated with the Windy Hill right of way project, located in Precinct 1 of Hays County, as discussed in Executive Session.

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

5 - 0 Passed - Unanimously

Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding employment, performance and duties of the Chief Juvenile Probation Officer, Director of Information Technology, Director of Transportation, Juvenile Facility Director, Chief Budget Officer, Elections Administrator, Director of Human Resources, Director of Emergency Management, Director of County Wide Operations, Director of Development Services, Combined Emergency Communications Director and Extension Agents.

Those present in Executive Session were the Commissioners Court, Jordan Powell, First Assistant Criminal District Attorney - Civil Division, Chase Young, Assistant Criminal District Attorney - Civil Division, Tucker Furlow, Assistant Criminal District Attorney - Civil Division, Vickie Dorsett, Hays County Budget Officer, and Shari Miller, Director of Human Resources. No action taken.

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

Clerk's Note Agenda Item #M-2 RE: *Discussion related to the Hays County inmate population, to include current population counts and costs. - WAS PULLED.*

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: *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-6 RE: *Updates on measurable advancement of Judicial Services to include the areas of staffing, equipment, training, operations and policy, by Director of Judicial Services Randy Focken.* - WAS PULLED.

ADJOURNMENT

A motion was made by Commissioner Shell, seconded by Judge Becerra to adjourn court at 2:01 p.m.

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 JANUARY 16, 2024.





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



Date	Res Number	Motion	Ingalsbe	Cohen	Shell	Smith	Becerra
1/16/2024	39864	Adopt a Proclamation declaring January 2024 as National Crime Stoppers Month.	Y	Y	Y	Y	Y
1/16/2024	39865	Adopt a Proclamation declaring January 2024 as National Blood Donor Month.	Y	Y	Y	Y	Y
1/16/2024	39866	Approve payments of County invoices.	Y	Y	Y	Y	Y
1/16/2024	39867	Approve the payment of Juror checks.	Y	Y	Y	Y	Y
1/16/2024	39868	Approve the payment of United Healthcare claims.	Y	Y	Y	Y	Y
1/16/2024	39869	Approve Commissioners Court Minutes of January 2, 2024.	Y	Y	Y	Y	Y
1/16/2024	39870	Approve the payment of the January 31, 2024 payroll disbursements in an amount not to exceed \$5,000,000.00 effective January 31, 2024 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized.	Y	Y	Y	Y	Y
1/16/2024	39871	Approve and confirm the appointment of Dustin Slaughter as a regular full-time Deputy Constable in the Hays County Constable's Precinct 1 Office.	Y	Y	Y	Y	Y
1/16/2024	39872	Approve and confirm the appointment of Courtney Gamble as a regular full-time Deputy Constable in the Hays County Constable Precinct 5 Office.	Y	Y	Y	Y	Y
1/16/2024	39873	Authorize the Hays County Health Department to accept change order #1 with Gerling and Associates for an upgrade to the pharmaceutical refrigerator in the mobile vaccine van and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39874	Approve out-of-state travel for K-9 Deputy John Hoffman and K-9 Deputy Scott Whetstone to attend the National Narcotics Dog Detector Association Conference on March 4-8, 2024, in Warner Robins, Georgia.	Y	Y	Y	Y	Y
1/16/2024	39875	Authorize the Hays County Sheriff's Office to send a letter of termination, effective June 30, 2024, to Texas State Sports Properties, LLC regarding Hays County's employment recruiting efforts at Texas State athletic events.	Y	Y	Y	Y	Y
1/16/2024	39876	Approve the cancellation of Commissioners Court on July 9, 23 and 30, August 27, September 10 and 24, October 8, 22 and 29, November 12 and 26, December 10, 24 and 31, 2024.	Y	Y	Y	Y	Y
1/16/2024	39877	Authorize the execution of Amendment No 3 to the DSHS IDCU/COVID-19 Grant Contract.	Y	Y	Y	Y	Y
1/16/2024	39878	Authorize payment to Pathmark Traffic Equipment, LLC in the amount of \$691.00 for the Transportation Department related to the purchase of traffic signs where no purchase order was issued as required per the Hays County purchasing policy.	Y	Y	Y	Y	Y
1/16/2024	39879	Approve the execution of an Assignment Agreement between Hays County, ECM International, Inc. and Johnson, Mirmiran & Thompson, Inc., assigning the terms and conditions of all agreements between Hays County and ECM International, Inc to Johnson, Mirmiran & Thompson, Inc.	Y	Y	ABSTAIN	Y	Y
1/16/2024	39880	Approve renewal of IFB 2022-806 Road Building Materials - Limestone Rock Asphalt, Cold Mix with Vulcan Construction Materials, LLC. for one (1) additional year.	Y	Y	Y	Y	Y
1/16/2024	39881	Approve renewal of IFB 2022-807 Road Building Materials - Hot Mix Overlay with Colorado Materials, Ltd. and Asphalt Inc. LLC, dba Lone Star Paving Company for one (1) additional year.	Y	Y	Y	Y	Y
1/16/2024	39882	Approve renewal of IFB 2020-804 Concrete with Brauntex Materials and Lauren Concrete for one (1) additional year with the proposed price increases.	Y	Y	Y	Y	Y
1/16/2024	39883	Approve renewal of IFB 2023-810 Culverts with Contech Engineered Solutions, LLC. for one (1) additional year.	Y	Y	Y	Y	Y
1/16/2024	39884	Approve renewal of IFB 2022-805 Countywide Portable Toilets and Handwashing Station Rental Services with United Site Services of Texas, Inc. for one (1) additional year.	Y	Y	Y	Y	Y
1/16/2024	39885	Authorize the submission of a grant application to the Department of State Health Services, Tuberculosis Program in the amount of \$55,308.00.	Y	Y	Y	Y	Y
1/16/2024	39886	Authorize Building Maintenance to install new plumbing equipment in the amount of \$22,345.49 in three juvenile detention cells located at the Government Center and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39887	Approve a change fund of \$300.00 for the Justice of the Peace Precinct 2, Place 2 Office as approved by the County Auditor pursuant to Texas Local Government Code Chapter 130.902 (a).	Y	Y	Y	Y	Y
1/16/2024	39888	Authorize the County Clerk's Office to order one (1) replacement U-Desk with Hutch valued at \$1,547.95 for the Chief Deputy Clerk, Courts Division and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39889	Approve the purchase of a replacement fuel transfer tank from Grainger, Inc. in the amount of \$727.36 for the Transportation Department and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39890	Accept delivery of the Auditor's Office Quarterly Internal Examination Reports.	Y	Y	Y	Y	Y
1/16/2024	39891	Approve specifications for RFP 2024-P05 Delinquent District and County Court Fines and Fees Collection Services and authorize Purchasing to solicit for bids and advertise.	Y	Y	Y	Y	Y
1/16/2024	39892	Approve specifications for IFB 2024-807 Cemetery Maintenance and authorize Purchasing to solicit for bids and advertise.	Y	Y	Y	Y	Y
1/16/2024	39893	Approve Utility Permits.	Y	Y	Y	Y	Y
1/16/2024	39894	Approve the appointment of Judge Ruben Becerra to replace Commissioner Lon Shell on the Hays County Criminal Justice Coordinating Commission.	Y	Y	Y	Y	Y
1/16/2024	39895	Authorize out-of-state travel for two felony prosecutors and one victim assistance coordinator in the Hays County Criminal District Attorney's Office, in an amount not to exceed \$5,000, for purposes of felony jury trial preparation and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39896	Accept donations totaling \$13,915.00 on behalf of the Hays County Child Protective Board and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39897	Authorize the County Clerk to utilize Kofile Technologies for the preservation services of historical records.	Y	Y	Y	Y	Y
1/16/2024	39898	Replace the Hays County Auditor with the Hays County Purchasing Agent as the authorized agent to execute Vendor Credit Account Applications and all documents related to Hays County Owned Vehicles.	Y	Y	Y	Y	Y
1/16/2024	39899	Ratify the submission of the SB 22 Grant Application to the Texas Comptroller's Office for the Criminal District Attorney's Office related to additional funding for Assistant District Attorney's, Victim Assistant Coordinators and Investigators.	Y	Y	Y	Y	Y
1/16/2024	39900	Authorize the execution of a Professional Services Agreement between Hays County and Cobb, Fendley & Associates, Inc. to provide utility coordination services for the RM 2325 Sidewalk project in Precinct 3 and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39901	Accept the Performance Bond No. K41798208 in the amount of \$1,062,578.49 for road pavement improvements in the Trails at Windy Hill Subdivision, Phase 9.	Y	Y	Y	Y	Y
1/16/2024	39902	Accept the Performance Bond No. K4179821A in the amount of \$1,211,516.17 for road pavement improvements in the Trails at Windy Hill Subdivision, Phase 10.	Y	Y	Y	Y	Y
1/16/2024	39903	Release the Performance Bond #800147965 in the amount of \$644,362.78 for Caliterra Phase 5, Section 14.	Y	Y	Y	Y	Y
1/16/2024	39904	Approve 3-G Ranch, Sec 1, Lot 1-A, Vacate and Replat (PLN-2272-PC).	Y	Y	Y	Y	Y
1/16/2024	39905	Call for a Public Hearing on January 30th, 2024, followed by discussion and possible action regarding the Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A (PLN-2401-PC).	Y	Y	Y	Y	Y
1/16/2024	39906	Re-grade and re-title the Health Education Specialist position in the Health Department effective January 16, 2024.	Y	Y	Y	Y	Y
1/16/2024	39907	Execute a Professional Services Agreement between Hays County and AA Forensic Services for Postmortem Toxicology Services and Analysis utilized by the Justice of the Peace Offices; and authorize a purchasing waiver to the Purchasing Policy to obtain additional quotes.	Y	Y	Y	Y	Y
1/16/2024	39908	Authorize the County Judge to execute a contract between Hays County and Sage Capital Bank for Bank Depository Services, pursuant to RFP 2023-P02, effective January 1, 2024.	Y	Y	Y	Y	Y
1/16/2024	39909	Authorize the execution of the Financial Renewal and Terms Amendment between Hays County and United Healthcare Insurance Company.	Y	Y	Y	Y	Y
1/16/2024	39910	Authorize addition of general and law enforcement liability coverage on two newly purchased unmanned aircraft, additional premium through November 15, 2024 of \$2,165.00.	Y	Y	Y	Y	Y
1/16/2024	39911	Authorize the County Judge to execute a Professional Services Agreement between Hays County and Dorinda Martin, RPh, Pharm. D, FACA, FASAP to provide consultant pharmacist services to the Hays County Health Department.	Y	Y	Y	Y	Y
1/16/2024	39912	Authorize the execution of an Order Agreement, Product Schedule, and Equipment removal/Buyout Authorization with Ricoh USA, Inc. to replace the copier in the Tax Office in Dripping Springs (\$56.67 monthly), and a copier in the Tax Office in San Marcos (\$173.98 monthly).	Y	Y	Y	Y	Y
1/16/2024	39913	Award a contract for IFB 2023-815 Regulatory Road Signs to Dobbie Supply, LLC., Lightle Enterprises of Ohio, LLC., Pathmark Traffic Equipment, LLC., Rampant Media, LLC., Vulcan Inc., dba Vulcan Signs and Your Signs World, LLC. pursuant to the IFB 2023-815 Bid Tabulation.	Y	Y	Y	Y	Y
1/16/2024	39914	Award a contract for IFB 2024-B04 TXCDBG - Cedar Oaks Mesa WSC - Water Improvements to M&C Fonseca Construction Co., Inc., total amount of \$240,960.00.	Y	Y	Y	Y	Y
1/16/2024	39915	Grant a variance to Section 10.W.1 of the Hays County Rules for On-Site Sewage Facilities and allow issuance of an On-Site Sewage System permit to the owner of the property located at 700 Wayside Dr., Wimberley, TX. 78676.	Y	Y	Y	Y	Y
1/16/2024	39916	Authorize the County Judge to execute a Participating Addendum with Indigov Corporation to utilize their citizen engagement platform and amend the budget accordingly.	Y	Y	Y	Y	Y
1/16/2024	39917	Authorize the execution of a Professional Services Agreement between Hays County and Buzz Mayfield Cattle Company related to impoundment of estrays and authorize a purchasing waiver to the Purchasing Policy to obtain additional quotes.	Y	Y	Y	Y	Y
1/16/2024	39918	Amend the Human Resources Policy.	Y	Y	Y	Y	Y
1/16/2024	39919	Authorize payment from Countywide Contingencies to District and County Custodial Accounts in an amount of \$3,156.62 to reimburse interest earnings related to funds moved from Texpool to Texas Class, as discussed in Executive Session.	Y	Y	Y	Y	Y
1/16/2024	39920	Approve the submittal of a counteroffer in relation to Parcel 21, associated with the Windy Hill right of way project, located in Precinct 1 of Hays County, as discussed in Executive Session.	Y	Y	Y	Y	Y



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

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Vickie Dorsett, Budget Officer

Sponsor:

Judge Becerra

Agenda Item

Approve the payment of the January 31, 2024 payroll disbursements in an amount not to exceed \$5,025,000.00 effective January 31, 2024 and post totals for wages, withholdings, disbursements and benefits on the Hays County website once finalized. **BECERRA/DORSETT**

Summary



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Constable Eller

Sponsor:

Commissioner Cohen

Agenda Item

Approve and confirm the appointment of Andrew L. Upton as a regular full-time Deputy Constable in the Hays County Constable Precinct 2 Office. **COHEN/ELLER**

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 commissioners 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 security. 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 commissioners court.
- (e) An offense under Subsection (d) is punishable by a fine of not less than \$50 or more than \$1,000.

Attachments

Bio of Andrew Upton

Bio for Andrew L. Upton

We welcome Andrew Upton to Constable, Pct. 2. Andrew is a graduate from UT Austin and has been a Hays County resident since 2021.

He graduated from the University of Texas at Austin and worked for the Austin Police Department for over 9 years. After a break from law enforcement, he decided to get back into it. He received certification in many areas. Some are, Law Enforcement Driving and Field Sobriety Administration. He was used to teach new and old officer's skills in emergency driving and DWI enforcement.

His official start date will be February 1, 2024. We are happy to have him as a member of our team.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Don Montague, Constable Pct. 3

Sponsor:

Commissioner Shell

Agenda Item:

Authorize the execution of quotes with Axon Enterprise, Inc. related to the Fleet in-car camera system and Body Worn camera program for the Constable Pct. 3 Office and amend the budget accordingly. **SHELL/MONTAGUE**

Summary:

The Constable's Office was approved to purchase the Fleet & Body cameras with the Officer Safety Plan and Evidence.com during the annual budget process for the two new officers. Axon requires all quotes be executed and termed with our master lease agreement pursuant to Sourcewell Contract #010720-AXN.

Fiscal Impact:

Amount Requested: \$9,447.90 - total

\$6,326.70 - FY24

Line Item Number: 001-637-00.5429/5717_400

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: Move funds within the operating budget to properly record equipment.

\$3,120 - Increase Law Enforcement Equipment_Operating 001-637-00.5717_400 (fleet camera)

\$1,672 - Increase Law Enforcement Equipment_Operating 001-637-00.5717_400 (body camera/taser)

(\$4,792) - Decrease Vehicle Lease 001-637-00.5475

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Sourcewell Contract #010720-AXN

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

Attachments

Axon Fleet Quote

Axon Body Camera/Taser Quote



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-535308-45317.674BJ

Issued: 01/26/2024

Quote Expiration: 02/29/2024

Estimated Contract Start Date: 03/01/2024

Account Number: 463456

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Hays County Pct 3 200 Stillwater Ste 106 Wimberley, TX 78676-5340 USA	Hays County Constable Pct. 3 712 S Stagecoach Trl Ste 1071 San Marcos TX 78666-6247 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Brandon Jones Phone: (480) 569-7841 Email: brjones@axon.com Fax:	Donny Torres Phone: (512) 618-9420 Email: donny.torres@co.hays.tx.us Fax:

Quote Summary

Program Length	11 Months
TOTAL COST	\$4,308.00
ESTIMATED TOTAL W/ TAX	\$4,308.00

Discount Summary

Average Savings Per Year	\$0.00
TOTAL SAVINGS	\$0.00

Payment Summary

Date	Subtotal	Tax	Total
Jan 2024	\$4,308.00	\$0.00	\$4,308.00
Total	\$4,308.00	\$0.00	\$4,308.00

Quote Unbundled Price:	\$4,308.00
Quote List Price:	\$4,308.00
Quote Subtotal:	\$4,308.00

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
A la Carte Hardware									
71088	AXON FLEET 2 - KIT	2			\$1,560.00	\$1,560.00	\$3,120.00	\$0.00	\$3,120.00
A la Carte Software									
80400	AXON EVIDENCE - FLEET VEHICLE LICENSE	2	11		\$20.00	\$20.00	\$440.00	\$0.00	\$440.00
80214	AXON EVIDENCE - STORAGE - FLEET	2	11		\$34.00	\$34.00	\$748.00	\$0.00	\$748.00
Total							\$4,308.00	\$0.00	\$4,308.00

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
A la Carte	71088	AXON FLEET 2 - KIT	2	01/01/2024

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
A la Carte	80214	AXON EVIDENCE - STORAGE - FLEET	2	03/01/2024	01/31/2025
A la Carte	80400	AXON EVIDENCE - FLEET VEHICLE LICENSE	2	03/01/2024	01/31/2025

Payment Details

Jan 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	71088	AXON FLEET 2 - KIT	2	\$3,120.00	\$0.00	\$3,120.00
Year 1	80214	AXON EVIDENCE - STORAGE - FLEET	2	\$748.00	\$0.00	\$748.00
Year 1	80400	AXON EVIDENCE - FLEET VEHICLE LICENSE	2	\$440.00	\$0.00	\$440.00
Total				\$4,308.00	\$0.00	\$4,308.00

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

1/26/2024





Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-540485-45303.954BJ

Issued: 01/12/2024

Quote Expiration: 02/29/2024

Estimated Contract Start Date: 03/01/2024

Account Number: 463456

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Hays County Pct 3 200 Stillwater Ste 106 Wimberley, TX 78676-5340 USA	Hays County Constable Pct. 3 712 S Stagecoach Trl Ste 1071 San Marcos TX 78666-6247 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Ryan Sabo Phone: (480) 716-3516 Email: rsabo@axon.com Fax:	Phone: Email: Fax:

Quote Summary

Program Length	20 Months
TOTAL COST	\$5,139.90
ESTIMATED TOTAL W/ TAX	\$5,139.90

Discount Summary

Average Savings Per Year	\$87.12
TOTAL SAVINGS	\$145.20

Payment Summary

Date	Subtotal	Tax	Total
Feb 2024	\$2,018.70	\$0.00	\$2,018.70
Oct 2024	\$1,560.60	\$0.00	\$1,560.60
Oct 2025	\$1,560.60	\$0.00	\$1,560.60
Total	\$5,139.90	\$0.00	\$5,139.90

Quote Unbundled Price:	\$5,285.10
Quote List Price:	\$3,201.90
Quote Subtotal:	\$5,139.90

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
20245	TRUE UP - TASER 7 CERTIFICATION PLAN TRUE UP	1	2		\$51.00	\$1,020.00	\$2,040.00	\$0.00	\$2,040.00
C00008	BUNDLE - TASER 7 CERTIFICATION	1	20	\$175.56	\$71.40	\$71.40	\$1,428.00	\$0.00	\$1,428.00
A la Carte Hardware									
74020	AXON BODY - MOUNT - MAGNET FLEXIBLE RAPIDLOCK	3			\$31.30	\$31.30	\$93.90	\$0.00	\$93.90
73202	AXON BODY 3 - CAMERA - NA10 US BLK RAPIDLOCK	2			\$789.00	\$789.00	\$1,578.00	\$0.00	\$1,578.00
Total							\$5,139.90	\$0.00	\$5,139.90

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
BUNDLE - TASER 7 CERTIFICATION	20008	AXON TASER 7 - HANDLE - HIGH VIS GRN LASER CLASS 3R YLW	1	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	20018	AXON TASER - BATTERY PACK - TACTICAL	1	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	20160	AXON TASER 7 - HOLSTER - SAFARILAND RH+CARD CARRIER	1	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22175	AXON TASER 7 - CARTRIDGE - LIVE STANDOFF (3.5-DEGREE) NS	3	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22175	AXON TASER 7 - CARTRIDGE - LIVE STANDOFF (3.5-DEGREE) NS	2	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22176	AXON TASER 7 - CARTRIDGE - LIVE CLOSE QUART (12-DEGREE) NS	3	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22176	AXON TASER 7 - CARTRIDGE - LIVE CLOSE QUART (12-DEGREE) NS	2	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22177	AXON TASER 7 - CARTRIDGE - HALT STANDOFF NS	2	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22178	AXON TASER 7 - CARTRIDGE - HALT CLOSE QUART NS	2	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22179	AXON TASER 7 - CARTRIDGE - INERT STANDOFF (3.5-DEGREE) NS	1	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22181	AXON TASER 7 - CARTRIDGE - INERT CLOSE QUART (12-DEGREE) NS	1	02/01/2024
A la Carte	73202	AXON BODY 3 - CAMERA - NA10 US BLK RAPIDLOCK	2	02/01/2024
A la Carte	74020	AXON BODY - MOUNT - MAGNET FLEXIBLE RAPIDLOCK	3	02/01/2024
BUNDLE - TASER 7 CERTIFICATION	22175	AXON TASER 7 - CARTRIDGE - LIVE STANDOFF (3.5-DEGREE) NS	2	02/01/2025
BUNDLE - TASER 7 CERTIFICATION	22176	AXON TASER 7 - CARTRIDGE - LIVE CLOSE QUART (12-DEGREE) NS	2	02/01/2025

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - TASER 7 CERTIFICATION	20248	AXON TASER - EVIDENCE.COM LICENSE	1	03/01/2024	10/31/2025
BUNDLE - TASER 7 CERTIFICATION	20248	AXON TASER - EVIDENCE.COM LICENSE	1	03/01/2024	10/31/2025

Services

Bundle	Item	Description	QTY
BUNDLE - TASER 7 CERTIFICATION	101193	AXON TASER - ON DEMAND CERTIFICATION	1
BUNDLE - TASER 7 CERTIFICATION	20246	AXON TASER 7 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - TASER 7 CERTIFICATION	80374	AXON TASER 7 - EXT WARRANTY - BATTERY PACK	1	02/01/2025	10/31/2025
BUNDLE - TASER 7 CERTIFICATION	80395	AXON TASER 7 - EXT WARRANTY - HANDLE	1	02/01/2025	10/31/2025

Payment Details

Feb 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Hardware	73202	AXON BODY 3 - CAMERA - NA10 US BLK RAPIDLOCK	2	\$1,578.00	\$0.00	\$1,578.00
Hardware	74020	AXON BODY - MOUNT - MAGNET FLEXIBLE RAPIDLOCK	3	\$93.90	\$0.00	\$93.90
Year 1A	20245	TRUE UP - TASER 7 CERTIFICATION PLAN TRUE UP	1	\$204.01	\$0.00	\$204.01
Year 1A	C00008	BUNDLE - TASER 7 CERTIFICATION	1	\$142.79	\$0.00	\$142.79
Total				\$2,018.70	\$0.00	\$2,018.70

Oct 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1B	20245	TRUE UP - TASER 7 CERTIFICATION PLAN TRUE UP	1	\$918.03	\$0.00	\$918.03
Year 1B	C00008	BUNDLE - TASER 7 CERTIFICATION	1	\$642.57	\$0.00	\$642.57
Total				\$1,560.60	\$0.00	\$1,560.60

Oct 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	20245	TRUE UP - TASER 7 CERTIFICATION PLAN TRUE UP	1	\$918.03	\$0.00	\$918.03
Year 2	C00008	BUNDLE - TASER 7 CERTIFICATION	1	\$642.57	\$0.00	\$642.57
Total				\$1,560.60	\$0.00	\$1,560.60

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

1/12/2024





AGENDA ITEM REQUEST FORM: **G. 8.**

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Judge Becerra

Agenda Item

Approve the nomination of County Judge Becerra to serve on the Texas Conference of Urban Counties' Policy Committee for the 2024-2026 biennium. **BECERRA**

Summary

Judge Becerra has held an interim seat for the last year. The CUC Policy committee will hold their elections in February at their annual conference in Dallas.

Attachments

Resolution



RESOLUTION OF HAYS COUNTY, TEXAS COMMISSIONERS COURT

The Commissioners Court of Hays County, Texas meeting in regular session on the 30th day of January 2024 considered the following resolution:

WHEREAS, The Texas Conference of Urban Counties was established in 1975 to represent the interests of the urban counties in Texas and is reliant on member participation to continue to be effective in impacting state policy decisions; and

WHEREAS, Hays County has found participation in the Urban Counties to be of great benefit to Hays County and to urban counties in general; and

WHEREAS, the Texas Conference of Urban Counties membership has recognized the value of including county commissioners’ courts in the nominating process for the Policy Committee; and

WHEREAS, Hays County wishes to ensure that the Urban Counties Policy Committee has members who have the full support of their respective commissioners’ courts; and

WHEREAS, Ruben Becerra has expressed an interest in serving on the Policy Committee to represent the interest of Hays County in the policy development process of the Texas Conference of Urban Counties.

NOW, THEREFORE be it resolved, that the Commissioners Court of Hays County hereby nominates Ruben Becerra to serve on the Policy Committee for the 2024-2026 biennium.

RESOLVED, this 30th day of January 2024, by the Hays County Commissioners Court.

Ruben Becerra
Hays County Judge

Debbie Gonzales Ingalsbe
Commissioner, Pct. 1

Michelle Gutierrez Cohen
Commissioner, Pct. 2

Lon A. Shell
Commissioner, Pct. 3

Walt Smith
Commissioner, Pct. 4

ATTEST:

Elaine H. Cárdenas, MBA, PhD
Hays County Clerk



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize an amendment to the Health Department PHIG Grant budget for operating supplies as needed for the remainder of the fiscal year 2024. **INGALSBE/T.CRUMLEY**

Summary:

Funds that are part of the DSHS PHIG grant are needed to cover operating supplies for the remainder of the 2024 fiscal year.

Fiscal Impact:

Amount Requested: None

Line Item Number: 120-675-99-185]

Budget Office:

Source of Funds: Department of State Health Services (DSHS) Grant Funds

Budget Amendment Required Y/N?: Yes

Comments: Move funds to the correct operating line item.

\$541 - Increase Office Supplies 120-675-99-185.5211

\$1,000 - Increase Medical Supplies 120-675-99-185.5231

\$200 - Increase Printing 120-675-99-185.5461

\$400 - Increase Uniforms 120-675-99-185.5474

\$250 - Increase Software Licenses 120-675-99-185.5429

\$600 - Increase Telephone 120-675-99-185.5489

\$500 - Increase Continuing Education 120-675-99-185.5551

(\$3,491) - Decrease Staff Salaries 120-675-99-185.5021

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD to purchase supplies

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize an amendment in the Sheriff Drug Forfeiture Fund of \$10,000.00 for a capital improvement project.

INGALSBE/CUTLER

Summary:

Currently, the Training Academy does not have a break room/lunchroom for students and cadets to eat lunch or to take a break. This project includes the purchase of supplies and materials to add and build an outdoor awning with tables to serve this purpose. A second awning will be constructed to cover existing equipment left out in the elements. Labor fees do not apply to this project because the current maintenance staff will build it. The total amount requested for this project is \$10k, with the most expensive items being sheet metal.

Fiscal Impact:

Amount Requested: \$10,000

Line Item Number: 053-618-00.5741

Budget Office:

Source of Funds: Sheriff Drug Forfeiture Funds

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$10,000 - Increase Misc. Capital Improvements 053-618-00.5741

(\$10,000) - Decrease Law Enforcement Supplies 053-618-00.5206

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD on the construction and procurement of supplies

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Commissioner Smith

Agenda Item

Accept the resignation, effective immediately, of Commissioner Walt Smith as member on the Central Texas Clean Air Coalition (CAC) of the Capital Area Council of Governments (CAPCOG) and approve the appointment of Commissioner Michelle Cohen to serve as member for a term ending December 31, 2025. **SMITH**

Summary

CAC is a committee with CAPCOG, Capital Area Council of Governments.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Approve out-of-state travel using Sheriff Drug Forfeiture Funds to send Lieutenant Ryan Hayden, Sergeant Mark Opiela, Sergeant David Marshall, Corporal Eric Zediker, Corporal Brian Wahlert, and Deputy Wesley Lowe to National Police Week on May 11-16, 2024, in Washington, D.C. **INGALSBE/CUTLER**

Summary:

National Police Week occurs in May of every year. At this time, the Sheriff requests out-of-state travel approval for officers to honor the lives of fallen officers and their families. Funding for airfare, hotel, per diem, and miscellaneous travel expenses are budgeted in the Sheriff Drug Forfeiture Funds Travel general ledger and will not exceed \$10,000.

Fiscal Impact:

Amount Requested: Not to exceed \$10,000

Line Item Number: 053-618-00.5501

Budget Office:

Source of Funds: Sheriff Drug Forfeiture Funds

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments:

Auditor's Office

G/L Account Validated Y/N?: Yes, Travel Expense

New Revenue Y/N?: N/A

Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

CECC Director Stephanie Robinson

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Approve out-of-state travel, utilizing the CECC Continuing Education Funds, for CECC Director Stephanie Robinson to attend the Navigator Conference on April 14 - 18, 2024 in National Harbor, Maryland. **INGALSBE/ROBINSON**

Summary:

Out-of-state travel is needed to send Combined Emergency Communications Center Director Stephanie Robinson to attend the Navigator Conference on April 14-18, 2024, in National Harbor, Maryland.

Navigator is the leading conference for Emergency Medical Dispatch, Emergency Fire Dispatch, and Emergency Police Dispatch protocols. The Sheriff's Office Communications division is certified in and utilizes two of the three protocols. This conference allows agencies from around the world to come together and learn new advancements in combined communications, software, training, hiring, and team building, just among a few topics.

Funding for registration and travel expenses, including airfare and hotel, will be paid for by the International Academies of Dispatch (IAED). Per diem fees will be paid for by the CECC Continuing Education Fund.

Fiscal Impact:

Amount Requested: \$131

Line Item Number: 001-615-00.5551

Budget Office:

Source of Funds: General Fund (per diems only)

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Auditor's Office

G/L Account Validated Y/N?: Yes, Continuing Education Expense

New Revenue Y/N?: N/A

Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Mike Jones

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize the Office of Emergency Services to accept a \$700.00 donation from the San Marcos Lions Club for the Fire Marshal Division and amend the budget accordingly. **INGALSBE/MIKE JONES**

Summary:

The Fire Marshal's Office received a donation from the San Marcos Lion's Club to be used towards the purchase of 5 Body Worn Cameras and Memory Cards.

Fiscal Impact:

Amount Requested: None

Line Item Number: 001-656-00.4610/.5206_003

Budget Office:

Source of Funds: Donated Funds

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$700) - Increase Contributions 001-656-00.4610

\$700 - Increase LE Supplies Fire Investigations 001-656-00.5206_003

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments:

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$700 in Contributions

Comments:

Attachments

San Marcos Lions Club Application



San Marcos Lions Club

Grant Request Form

Date: 8-24-23

Organization Name: HAYS CO. FIRE MARSHAL

Address: 810 S. STAGECOACH TRL. #1200

EIN/TID Number: 74-6002241

Contact Name: MARK WOBUS

Contact Phone: 512-393-5536

Contact email: mark.wobus@co.hays.tx.us

Is your organization located in San Marcos?

☒ Yes

or

No

AND HAYS COUNTY

Are you a member of the Lions Club?

Yes

or

☒ No

Amount Requested: \$ 700.00

What Lions Club Focus Area would your request address? (Check all that apply)

☐ Pediatric Cancer

☐ Diabetes

☐ Environment

☐ Vision

☐ Hunger

☐ Youth Support

☒ Other: PUBLIC SAFETY

Have you received a grant from the San Marcos Lions Club? Yes or

No

If Yes, what were the funds used for?

If awarded a grant this year, what would funds be used for?

THE PURCHASE OF 5 BODY WORN CAMERAS FOR ALL
OF OUR FULLTIME STAFF + SEVERAL OF OUR PART-
TIME STAFF.

EACH CAMERA W/ A MEMORY CARD IS \$190⁰⁰.

Please provide any additional information you feel pertinent to your request.

THE HAYS CO. FIRE MARSHAL OFFICE IS COMMITTED TO
FIRE PREVENTION + LIFE SAFETY TO ALL CITIZENS + VISITORS.
THIS ADDITIONAL EQUIPMENT WILL IMPROVE STAFF
SAFETY AS WELL AS PROVIDING FOR ACCURATE +
MORE COMPLETE DOCUMENTATION FOR FIRE
INVESTIGATIONS.

Please return document to:

Cody Dailey, Finance Committee Chair

cody.dailey@edwardjones.com

Fax: 866-462-7591



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Commissioner Shell

Agenda Item

Approve the appointment of Krista Pepau to the Emergency Services District (ESD) No. 9 Board of Emergency Services Commissioners, to fill the position formerly held by Chris Baker, for a term ending December 31, 2025. **SHELL**

Summary

Krista Pepau is a long-time resident of Hays County.

Her family moved here when she was very young after her Father accepted a 30 year career with Austin EMS.

She has owned and operated businesses in the local area since 1993.

Her more recent venture being owner of Songbird Landscape & Fencing and co-owner of DK Generators.

She enjoys philanthropy and the opportunity it gives her to interact with her community.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY/CUTLER

Sponsor:

Commissioner Ingalsbe

Agenda Item

Authorize the submission of a grant application to the Texas Comptroller, Rural Law Enforcement Grant - Sherriff's Office in the amount of \$500,000.00. **INGALSBE/T.CRUMLEY/CUTLER**

Summary

Senate Bill (SB) 22 establishes a grant program through the Texas Comptrollers Office that will provide financial assistance to sheriff's departments, constable's offices and district and county attorney's offices in eligible counties. Hays County is submitting an application for the Sherriff's Office. Because the population of Hays County is between 50,000 and 300,000, the county is eligible to receive \$500,000. Per SB 22, grant funds must first be used to bring the salary for the Sheriff, deputies, and correctional officers up to a required minimum of \$75,000, \$45,000, and \$40,000 respectively. Because Hays County already exceeds the minimum for each category, funds may be used to hire additional staff, increase salaries, or purchase vehicles, firearms and safety equipment for the sheriff's office.

There is no match required and funds must be used in Fiscal Year 2024

Attachments

Application

<https://comptroller.texas.gov>

Glenn Hegar

Texas Comptroller of Public
Accounts

Rural Law Enforcement Grants

Help



Sheriff FY-2024 Grant Application

Sheriff FY-2024 Grant Application

* (Required) Select the County Applying for the Grant

Hays

Selected County

Hays

Grant Amount

\$ 500,000.00

County Population

241067

* (Required) County Fiscal Year End Date

September 30



Next

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(<https://comptroller.texas.gov>)

Glenn Hegar

Texas Comptroller of Public
Accounts

Rural Law Enforcement Grants

Help



Acknowledgment

Acknowledgment

FirstName

Ruben

LastName

Becerra

Phone

(512) 393-2205

Email

judge.becerra@co.hays.tx.us

TIN Number

17460022145

Mailing State

Texas

Mailing Address

712 S. Stagecoach Trail

Mailing County

Hays



Contact Share/Comments Policies Careers

zipcode

78666

**Signature:**

I certify that the county has not and will not reduce the amount of funds provided to the Sheriff's office because of grant funds provided by SB 22.

* (Required) ☒

I agree that by entering my name and title below, I certify under penalty of perjury that I am authorized to do so on behalf of the applicant and that the statements and information contained herein are true, complete, and accurate to the best of my knowledge. I agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties under state or federal law.

* (Required) ☒

The information below must be for the authorized user previously provided to the Comptroller's Office SB22 Team.

* (Required) Name

Ruben Becerra

* (Required) Title

County Judge

* (Required) Phone

(512) 393-2205

* (Required) Email

judge.becerra@co.hays.tx.us

The authorized user will receive an email from DocuSign with grant agreement and must be signed prior to receiving funds.



Submit

Contact Share/Comments Policies Careers



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY

Sponsor:

Commissioner Shell

Agenda Item:

Authorize the acceptance of a continuation grant award from the Texas Indigent Defense Commission (TIDC), FY24 Improvement Grant program in the amount of \$8,631.00. **SHELL/T.CRUMLEY**

Summary:

This Improvement Grant award covers the final three months of a four-year grant award from TIDC to support the Indigent Defense Coordinator position for Hays County. This award will cover costs that were incurred by Hays County from 10/1/2023 through 12/31/2023. This multi-year funding was first accepted in 2021.

This contract is separate from the new FY24 Improvement grant award that was accepted in Commissioners Court on August 15, 2023.

Contract number: 212-24-C09

Contract Period: 10/1/2023 - 12/31/2023

Fiscal Impact:

Amount Requested: \$33,445

Line Item Number: 001-899-99-125]

Budget Office:

Source of Funds: TIDC Grant Funds & General Fund for county match

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: N/A

Comments:

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?:

Comments:

Attachments

FY24 Improvement SOGA



January 22, 2024

CHAIR:
The Honorable Sharon Keller
Presiding Judge
Court of Criminal Appeals

EX OFFICIO MEMBERS:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Brandon Creighton
Honorable Joe Moody
Honorable Reggie Smith
Honorable Sherry Radaack
Honorable Vivian Torres

MEMBERS APPOINTED BY GOVERNOR:
Mr. Alex Bunin
Honorable Richard Evans
Mr. Jay Cohen
Honorable Missy Medary
Honorable Valerie Covey

EXECUTIVE DIRECTOR:
Scott Ehlers

The Honorable Ruben Becerra
Hays County Judge
Via E-mail: judge.becerra@co.hays.tx.us

RE: FY2024 Statement of Improvement Grant Award – Grant #212-24-C09

Dear Judge Becerra:

I am pleased to inform you that the Texas Indigent Defense Commission has awarded Hays County a **FY2024 Continued Multi-Year Improvement Grant** in the amount of **\$8,361** for the **Indigent Defense Coordinator (IDC) program**. This award covers the final three months of TIDC's four years of grant support for the original IDC position. Please note that this grant is separate from a second, new award, grant #212-24-N03, which has been provided to Hays County to add a second IDC position to the program beginning in FY2024.

Your Statement of Grant Award for fiscal year 2024 is attached. Please sign, scan, and return via e-mail the Statement of Grant Award to grants@tidc.texas.gov to accept the award and become eligible for payments. You do not need to mail a copy.

Congratulations to Hays County on taking the lead in Texas by developing and continuing this new indigent defense program. If you have any questions or need clarification of the information contained in this letter or the attached Statement of Grant Award, please contact me at (512) 463-2508.

Sincerely,

Edwin Colfax
Director of Grant Funding

Copy: Marisol Alonzo, Hays County Auditor, marisol.alonzo@co.hays.tx.us
Steve Thomas, steve.thomas@co.hays.tx.us

Texas Indigent Defense Commission
209 West 14th Street, Room 202 • Austin, Texas 78701
www.tidc.texas.gov
Phone: 512.936.6994 • Fax: 512.463.5724



Statement of Grant Award FY2024 Improvement Grant

Grant Number: 212-24-C09
Grantee Name: Hays County
Program Title: Indigent Defense Coordinator Program
Grant Period: 10/1/2023-12/31/2023
Grant Award: **\$8,361**

The Texas Indigent Defense Commission (herein, the Commission) has awarded the above-referenced grant to Hays County (herein, the County) for indigent defense services. The authorized official named on the grant application must sign this Statement of Grant Award and return it to the Commission. The grantee will not receive any grant funds until this notice is executed and returned to the Commission. Funding is provided as listed in the categories in the table below:

Direct Costs – FINAL 3 MONTHS	
1) Salaries (Total Number of FTEs: 2)	\$28,492
2) Fringe Benefits	\$12,114
3) Travel and Training	\$425
4) Equipment	
5) Supplies	\$775
6) Contract Services	
7) Indirect Costs	
Total Proposed Costs	\$41,806
Less Cash from Other Sources- County Match	\$33,445
Total Amount Funded by Commission	\$8,361

Standard Grant Conditions:

- The authorized official for the grantee must accept the grant award by signing below.
- The authorized official, financial officer, and program director, referred to below as grant officials, must comply with the terms of the grant as written in the Request for Applications issued in January 2023, including the rules and documents adopted by reference in the Commission's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Commission placing a temporary hold on grant funds, permanently de-obligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- The grant officials agree to follow the grant terms contained in the "Terms and Conditions" contained in Attachment A, which includes the final grant application.
- Any indigent defense plan documents submitted to the Commission must continue to meet all grant eligibility requirements.
- The judges hearing criminal and juvenile matters must amend the Indigent Defense Plan for their respective courts to include the program funded under this award if necessary and submit it to the Commission by November 1, 2023.

The authorized official for this grant program has read the preceding and indicates agreement by signing the Statement of Grant Award included below.

Signature of Authorized Official

Name & Title (please print)

Date

Attachment A

Terms and Conditions

In addition to the program requirements stated in the Request for Applications (RFA) these specific program requirements apply to this funded program.

- The budget appearing in this Statement of Grant Award is based on costs for one year. The intended funding plan is to provide reimbursement of 80 percent of eligible program costs in the first year, 60 percent in the second year, 40 percent in the third year, and 20 percent in the fourth and final year of Commission support. If the County has a delayed start, the County may request that the grant term or future year awards be adjusted to fulfill the 48 months of the funding plan described above. The county must submit a continuing grant renewal request for each fiscal year as described in the annual Improvement Grant Request for Applications.
- Indigent Defense Coordinators (IDCs) are dedicated to improving the appointment process and providing documentation that a county is in compliance with the Fair Defense Act. IDCs have reduced administrative time that judges must devote to indigent defense activities. They can also enhance processes for fair, neutral and non-discriminatory appointment practices. A clear and objective standard of indigence with a timely appeal process to the courts in case of denial by the IDC ensures success of these programs. **IDCs are not to be confused with court administrators, secretaries, or court docket managers.**
- This grant requires quarterly progress reports to provide information on the operation of the program. The Commission grant manager will create an online progress report to document the work performed in this program. The County may request modifications to the online report when the report items do not accurately reflect the work performed. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.
- The County will submit quarterly expenditure reports to obtain reimbursement of the scheduled percentage of expended funds based on actual expenditures. The reimbursements will be proportional to the county's required match. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.
- The County or its designee must provide to TIDC staff the minimum job requirements and a full job description of the FTE positions specified under this project before positions are publicly posted.
- Requests to revise the scope, target, or focus of the project, or substantively alter project activities require advance written approval from TIDC.
- Budget adjustments consisting of reallocations of funds among or within budget categories in excess of \$10,000 or ten percent of the original approved budget, whichever is less, are considered budget adjustments and are allowable only with prior approval of the executive director of the Commission.
- Equipment costs listed in the first-year start-up budget will not be carried forward into subsequent years of funding.
- The County must develop and submit to the Commission a process for handling complaints about attorneys. This should include collection and review of complaints by the Indigent Defense Coordinator as well as communication of the complaints with the judges. The process must be **submitted with the first progress report after the coordinator is hired.**

Grant Application Follows

Indigent Defense Coordinator Program**FY2020 Hays County Menu Option Discretionary Grant**

Application Submitted by Lindsay McClune at 8/7/2019 10:45:22 AM

The Discretionary Grant Application Confirmation Number is D202010520190807.

[Official Requests for Applications \(RFA\) Notice on Texas Indigent Defense Commission website](#)

(If a conflict exists between this webpage and the RFA, the RFA prevails.)

This form is completed using the information currently available to the Commission. Please review and make any corrections necessary.

Confirmation Number **D202010520190807**State Payee Identification number **Official County Mailing Address**Address (line 1) Address (line 2 if needed) City State ZIP **Program Title: Hays County County Indigent Defense Coordinator Program****Allowable Uses:**

Hays County agrees to implement the Indigent Defense Coordinator program to improve the county's appointment process and to provide documentation that a county is in compliance with the Fair Defense Act. IDCs reduce administrative time of judges spent on appointments. [County] County agrees to use the IDC to enhance processes to ensure that appointment practices are fair, neutral and non-discriminatory. A clear and objective standard of indigence with a timely appeal process to the courts in case of denial by the IDC ensures success of these programs.

Required Program Elements:

Hays County Agrees to the Following Required Program Elements (You must agree to all by checking each of the required program elements to receive an award.)

- ☒ Must perform all appointments (in and out of court) as the designee of the judge or judges
- ☒ Must maintain the rotation default system on assigned counsel systems and monitor the frequency and reasons of exception for off list appointments
- ☒ Must report summary of appointment data to judges at least monthly
- ☒ Must manage the graduated list of court appointed attorneys for judges and receive applications for advancements or adjustments as higher qualifications are met by attorneys
- ☒ Must monitor appointment list and attorneys' completion of continuing legal education (CLE) to meet minimum requirements of local plan and Commission rules
- ☒ Must review invoices submitted by attorneys and compare to appointment schedule prior to judicial approval
- ☒ Perform training for law enforcement, magistrates, local bar, and other stakeholders on indigent defense plan(s) adopted by courts
- ☒ Report directly to the judges (rural) or board of judges (mid-size or urban)
- ☒ Develop procedures to track attorney contact with client, which includes tracking, investigating and reporting allegations of attorneys not meeting their clients within statutory or plan requirements
- ☒ Must involve all courts in the jurisdiction (rural and mid-sized) or all of the judges of a type of court (urban)



County Judge Ruben Becerra
DIRECTOR

August 18, 2021

Texas Indigent Defense Commission
209 West 14th St.
Room 202
Austin, TX 78701

To Whom It May Concern:

Hays County is requesting additional funds to support an assistant Indigent Defense Coordinator, to help fulfill the purpose of the Hays County Indigent Defense Office to improve the delivery of indigent defense services to the citizens of Hays County, by providing attorney appointments and high-quality representation to each indigent person.

The Indigent Defense Coordinator is utilized to enhance processes to ensure that appointment practices are fair, neutral, and non-discriminatory. A clear and objective standard of indigence with a timely appeal process to the courts in case of denial by the IDC ensures success of these programs. Hays County hired the first Indignant Defense Coordinator on February 4, 2020.

Within the first month of hiring the Indigent Defense Coordinator, 406 individuals were screened for indigence. In the first quarter of 2021, the IDC screened a total of 1,288 individuals for indigence, of those individuals who were screened, 863 individuals were determined indigent. On average, the IDC screens a total of 1,011 individuals each quarter for indigent status. Of those who are screen, on average 641 are determined indigent. The IDC has also made, on average, 91 appointments in court per quarter and 155 appointments out of court per quarter. Due to the high inquiry and demands of this role, a second Indigent Defense Coordinator is needed to assist with the activities and responsibilities.

While much of the Indigent Defense Coordinator's time is dedicated to screening individuals, that is not their only duty. In addition to screening, the IDC regularly runs a weekly jail census report – which is a two to three day process -to determine the number of inmates held by Hays County that do not have attorneys, coordinating with other counties that house inmates from hays County, monitoring the number of inmates being held without indictment, and coordinates with the District Court and County Courts at Law to substitute attorneys in on cases by creating the order of substitution and appointing the attorney. They additionally email information to attorneys requesting up to date CLE or email applications to attorneys who are requesting to be on the appointment wheel. The IDC must then take the completed application to the appropriate court to finalize it. The IDC must enter all new attorneys in Odyssey when

approved by judge and set up a file with the application and CLE, create and print contact cards for each attorney. These tasks all happen weekly.

On a monthly basis, the IDC must send a report to TIDC with the statistics from the month. The IDC must also send a similar monthly report to all judges including information on magistration numbers and any changes. On a day-to-day basis the IDC must check email and voicemail and handling applications from in-person court appearances.

Due to the high demand of the tasks, the IDC is currently unable to take a full day off (excluding weekends) and often takes all equipment with them when taking a vacation or sick day. The tasks performed by the IDC are extremely import to Hays County and having only one person who is able to perform the tasks is inefficient. An additional staff member would not only allow operations to run smoothly when one IDC must be out but will also help processes run faster by allowing work to be divvied up rather than relying on one person. The tasks required of an IDC are often time sensitive and cannot be put on hold. Hays County believes the work done by the Indigent Defense Office is extremely important strongly believes an additional staff member would be key to helping the office serve the citizens of the county in the most efficient and effective way.

Respectfully,



Ruben Becerra
Hays County Judge

Revised Budget Beginning FY22

TIDC Indigent Defense Coordinator

FY24 grant reimbursement is 20% for final three months of eligibility.

<u>Budget Sub-Category</u>	<u>Current</u>	<u>Requested FY22</u>
1) Personnel (Total Number of FTEs: 2)	\$ 49,913	\$ 113,966
2) Fringe Benefits	\$ 22,279	\$ 48,457
3) Travel and Training	\$ 2,000	\$ 1,700
4) Equipment	\$ 7,016	\$ 10,120
5) Supplies	\$ 3,100	\$ 3,100
6) Contract Services	\$ -	\$ -
7) Indirect Costs	\$ -	\$ -
Total Proposed Cost	\$ 84,308	\$ 177,343
Less County Match (60%)	\$ (16,862)	\$ (106,406)
Total Amount Requested from Commission	\$ 67,446	\$ 70,937

Indigent Defense Coordinator FY2022

		<u>County 60%</u>	<u>Grant 40%</u>
<u>Personnel:</u>			
Current Staff	\$ 63,055		
Additional Coordinator	\$ 50,911		
	\$ 113,966		
<u>Fringe:</u>			
Social Security	\$ 7,066		
Medicare	\$ 1,653		
Retirement	\$ 16,138		
Medical	\$ 22,665		
Dental	\$ 810		
Life	\$ 126		
	\$ 48,457		
Salary + Fringe Total	\$ 162,423	\$ 97,454	\$ 64,969
<u>Operating:</u>			
Travel/Training	\$ 1,700		
Equipment	\$ 10,120		
Supplies	\$ 3,100		
Operating Total	\$ 14,920	\$ 8,952	\$ 5,968
Total Budget	\$ 177,343	\$ 106,406	\$ 70,937
Operating budget details:			
Desk	\$ 1,800		
Office Chair	\$ 250		
Monitorsx2	\$ 490		
Laptop with Docking Station	\$ 1,509		
Speakers	\$ 25		
Scanner (Fujitsu FI-7180)	\$ 1,642		
Copier Lease	\$ 3,200		
Office Phone (Landline)	\$ 864		
Adobe Pro License	\$ 340		
General Office Supplies	\$ 3,100		
Travel/Training	\$ 1,700		
Total	\$ 14,920		

Timeline for Reporting and Fund Distribution

Reports will be submitted via the TIDC Grant and Plan Management website at <https://tidc.tamu.edu>.

Reporting Period	Type Report Due	Date Report Due	Fund Distribution Date
October 2023 through December 2023	Grant Expenditure Report Progress report	January 31, 2024	February 2023



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY/JONES

Sponsor:

Judge Becerra

Agenda Item

Authorize the submission of a grant application to the Office of the Governor, State Homeland Security Program - Regular Projects in the amount of \$14,470.00. **BECERRA/T.CRUMLEY/JONES**

Summary

This funding is applied for each year to cover the costs of maintenance for the Hays County HazMat Team HazMat monitor equipment. This includes 4 RAE AreaRAE Pro, 3RAE systems MultiRAE Lite, 1 RAE MultiRAE Lite, 1 Rigaku CQL, annual calibration of 11 Thermo Scientific RadEye-G, and annual calibration of 10 Level A Suits. This funding was first awarded in FY17. No match is required.

Grant number 3529707

Contract period: 10/1/2024 - 9/30/2025

Attachments

Application

Resolution

[Print This Page](#)**Agency Name:** Hays County**Grant/App:** 3529707 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** HazMat Team Monitor Maintenance**Status:** Application Pending Submission

Narrative Information

Overview

The purpose of the Homeland Security Grant Program (HSGP) is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal (the Goal) of a secure and resilient Nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. HSGP supports core capabilities across the five mission areas of Prevention, Protection, Mitigation, Response, and Recovery based on allowable costs.

Primary Mission and Purpose

State Homeland Security Program (SHSP): Supports state, Tribal and local preparedness activities that address high-priority preparedness gaps across all core capabilities where a nexus to terrorism exists. All investments must be consistent with capability targets set during the Threat and Hazard Identification and Risk Assessment (THIRA) process, and gaps identified in the State Preparedness Report (SPR).

Many activities which support the achievement of target capabilities related to terrorism preparedness may simultaneously support enhanced preparedness for other hazards unrelated to acts of terrorism. However, **all SHSP projects must assist grantees in achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism.**

Eligibility Requirements

Cybersecurity Training Requirement

Local units of governments must comply with the Cybersecurity Training requirements described in Section 772.012 and Section 2054.5191 of the Texas Government Code. Local governments determined to not be in compliance with the cybersecurity requirements required by Section 2054.5191 of the Texas Government Code are ineligible for OOG grant funds until the second anniversary of the date the local government is determined ineligible. Government entities must annually certify their compliance with the training requirements using the [Cybersecurity Training Certification for State and Local Government](#). A copy of the Training Certification must be uploaded to your eGrants application. For more information or to access available training programs, visit the [Texas Department of Information Resources Statewide Cybersecurity Awareness Training](#) page.

Criminal History Reporting

Entities receiving funds from PSO must be located in a county that has an average of 90% or above on both adult and juvenile dispositions entered into the computerized criminal history database maintained by the Texas Department of Public Safety (DPS) as directed in the *Texas Code of Criminal Procedure, Chapter 66*. The disposition completeness percentage is defined as the percentage of arrest charges a county reports to DPS for which a disposition has been subsequently reported and entered into the computerized criminal history system.

Counties applying for grant awards from the Office of the Governor must commit that the county will report at least 90% of convictions within five business days to the Criminal Justice Information System at the Department of Public Safety.

Uniform Crime Reporting (UCR)

Eligible applicants operating a law enforcement agency must be current on reporting complete UCR data and the Texas specific reporting mandated by 411.042 TGC, to the Texas Department of Public Safety (DPS) for inclusion in the annual Crime in Texas (CIT) publication. To be considered eligible for funding, applicants must have submitted a full twelve months of accurate data to DPS for the most recent calendar year by the deadline(s) established by DPS. Due to the importance of timely reporting, applicants are required to submit complete and accurate UCR data, as well as the Texas-mandated reporting, on a no less than monthly basis and respond promptly to requests from DPS related to the data submitted.

Entities That Collect Sexual Assault/Sex Offense Evidence or Investigate/Prosecute Sexual Assault or Other Sex Offenses

In accordance with Texas Government Code, Section 420.034, any facility or entity that collects evidence for sexual assault or other sex offenses or investigates or prosecutes a sexual assault or other sex offense for which evidence has been collected, must participate in the statewide electronic tracking system developed and implemented by the Texas Department of Public Safety. Visit DPS's [Sexual Assault Evidence Tracking Program](#) website for more information or to set up an account to begin participating. Additionally, per Section 420.042 "A law enforcement agency that receives evidence of a sexual assault or other sex offense...shall submit that evidence to a public accredited crime laboratory for analysis no later than the 30th day after the date on which that evidence was received." A law enforcement agency in possession of a significant number of Sexual Assault Evidence Kits (SAEK) where the 30-day window has passed may be considered noncompliant.

National Incident Management System (NIMS) Implementation

Grantees are required to implement NIMS. The NIMS uses a systematic approach to integrate the best existing processes and methods into a unified national framework for incident management across all homeland security activities including prevention, protection, response, mitigation, and recovery. Grantees must use standardized resource management concepts for resource typing, credentialing, and an inventory to facilitate the effective identification, dispatch, deployment, tracking and recovery of resources.

Emergency Management Plans (Intermediate Level)

Cities and counties must have a current emergency management plan or be a legally established member of an inter-jurisdictional emergency management program with a plan on file with the Texas Division of Emergency Management (TDEM). Plans must be maintained throughout the entire grant performance period. If you have questions concerning your Emergency Management Plan (preparedness) level, contact your Emergency Management Coordinator (EMC) or your regional Council of Governments (COG). For questions concerning plan deficiencies, contact TDEM at tdem.plans@tdem.texas.gov.

Program Income

Applicant agrees to comply with all federal and state rules and regulations for program income and agrees to report all program income that is generated as a result of the project's activities. Applicant agrees to report program income through a formal grant adjustment and to secure PSO approval prior to use of the program income. Applicant agrees to use program income for allowable costs and agrees to expend program income immediately after PSO's approval of a grant adjustment and prior to requesting reimbursement of funds.

Deduction Method - Program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless PSO authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the PSO award and grantee match rather than to increase the funds committed to the project.

Asset Seizures and Forfeitures - Program income from asset seizures and forfeitures is considered earned when the property has been adjudicated to the benefit of the plaintiff (e.g., law enforcement entity).

Program Requirements**Building and Sustaining Core Capabilities**

1. All capabilities being built or sustained must have a clear link to one or more Core Capabilities in the National Preparedness Goal.
2. Many capabilities which support terrorism preparedness simultaneously support preparedness for other hazards. Grantees must demonstrate this dual-use quality for any activities implemented under this program that are not explicitly focused on terrorism preparedness. Activities implemented under SHSP must support terrorism preparedness by building or sustaining capabilities that relate to the prevention of, protection from, mitigation of, response to, and recovery from terrorism.
3. Funding should be used to sustain core capabilities. New capabilities should not be built at the expense of maintaining current and critically needed core capabilities. New capabilities must be aligned with capability targets and gaps identified through the THIRA/SPR process.

Mission Areas

The National Preparedness Goal organizes the core capabilities into the five mission areas:

- **Prevention.** Prevent, avoid or stop an imminent, threatened or actual act of terrorism.
- **Protection.** Protect our citizens, residents, visitors, and assets against the greatest threats and hazards in a manner that allows our interests, aspirations, and way of life to thrive.
- **Mitigation.** Reduce the loss of life and property by lessening the impact of future disasters.
- **Response.** Respond quickly to save lives, protect property and the environment, and meet basic human needs in the aftermath of a catastrophic incident.
- **Recovery.** Recover through a focus on the timely restoration, strengthening and revitalization of infrastructure, housing and a sustainable economy, as well as the health, social, cultural, historic and environmental fabric of communities affected by a catastrophic incident.

Nationwide Cyber Security Review

Grantees will be required to complete the Nationwide Cybersecurity Review (NCSR), enabling agencies to benchmark and measure progress of improving their cybersecurity posture. The Chief Information Officer (CIO), Chief Information Security Officer (CISO), or equivalent for each recipient agency should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment. The NCSR is available at no cost to the user and takes approximately 2-3 hours to complete. For more information about the NCSR, visit: <https://www.cisecurity.org/ms-isac/services/ncsr/>.

Overall Certification

Each applicant agency must certify to the specific requirements detailed above as well as to comply with all requirements within the PSO Funding Announcement, the *Guide to Grants*, the *Grantee Conditions and Responsibilities*, any authorizing or applicable state and federal statutes and regulations to be eligible for this program.

_ I certify to all of the application content and requirements.

Project Summary :

Briefly summarize the project, including proposed activities and intended impact.

The Hays County HazMat Team is requesting a continuation of funding for the maintenance of the monitoring equipment utilized to respond and detect chemical, biological, radiological, nuclear or explosive weapons (CBRNE) in the event of a terrorist attack. The CBRNE monitors enhance the capability of the HazMat Team to provide data to the Incident Commander in order to determine the scope of the terrorist attack and the level hazardous materials, as well as identify the immediate threat to public health and safety.

Problem Statement :

Provide a detailed account of the issues, threats or hazards that your project will target. For federal Homeland Security Grants, include specific references to the regional or state *Threat and Hazard Identification and Risk Assessment (THIRA)*, as applicable.

The maintenance of the monitors utilized by the HazMat Team to sustain the capabilities to identify, detect, or locate CBRNE threats/hazards through active surveillance and aligns with the Threat and Hazard Identification and Risk Assessment core capability of Screening, Search, and Detection on page 24 of the THIRA. The actual monitor capabilities would align with the Environmental Response / Health and Safety core capability on page 35 in the THIRA.

Existing Capability Levels :

Describe the existing capability levels, including resources that are currently in place to support this project prior to the use of grant funds.

Three standardized teams have been established to respond region wide. The three teams utilize the same training, search and screening protocols, and function in sync to regionally disperse responsibility areas. Maintenance of the monitoring equipment increases the capability of the HazMat team to identify, discover, or locate any CBRNE agents and respond appropriately to any threats to the region.

Capability Gaps:

Describe the capability gaps which will be addressed by the project. For federal Homeland Security

Grants, include specific references to the regional or statewide State Preparedness Report (SPR). The upkeep and maintenance of the specific monitoring equipment will allow our HazMat team to sustain equipment that is vital to detecting hazardous materials and fills the capability gap in the State Preparedness Report of Environmental Response/Health and Safety on page 39. This project would help fulfill this gap by maintaining the availability of specialized equipment for regional specialized teams.

Impact Statement :

Describe the project goals/objectives and how this project will maintain capabilities or reduce capability gaps.

The maintenance of our HazMat Team monitors will increase the life of the specialized equipment and allow the team to respond regionally to or prevent a terrorist attack with sustained equipment. The HazMat Team has been deployed on average of 110 times per year since 2017. It one of three regional hazmat response teams in the CAPCOG region, therefore it is vital the HazMat team is equipped with monitors that are functioning properly by route maintenance.

Homeland Security Priority Actions:

Identify the Texas Homeland Security Priority Action most closely aligned with this project. Each Priority Action is linked with an *Objective from the Texas Homeland Security Strategic Plan (HSSP)*. List the Priority Action by number and text (e.g. *1.2.3 Expand and enhance the network of human sources that can provide detailed and relevant information on known or suspected terrorist and criminal enterprises.*)

2.2.1 strengthen statewide capability to detect, confirm, analyze, and assess chemical, biological, radiological, and nuclear incidents.

Target Group :

Identify the target group and population expected to benefit from this project.

The Hays County HazMat Team will directly benefit from this project. However, there will also be a regional benefit as the Hays County HazMat Team may respond to regional HazMat calls as well.

Long-Term Approach:

Describe how the applicant agency will maintain the capabilities supported by this project without additional federal or state funds. If sustainment is dependent upon federal or state grants, describe the ongoing need for future grants, as applicable.

Training on equipment will be the responsibility of the applicant. Additional funding may be sought for upgrades to the equipment or continuing funding for the maintenance.

You are logged in as User Name: scorprew

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Agency Name: Hays County
Grant/App: 3529707 **Start Date:** 10/1/2024 **End Date:** 9/30/2025

Project Title: HazMat Team Monitor Maintenance
Status: Application Pending Submission

Project Activities Information

HSGP Instructions for Project Activity Selection

Homeland Security Grant Program (HSGP) applicants should only select one project activity. The eGrants system will allow multiple selections, but each HSGP subrecipient project must fit into one and only one of the Investment Categories that are listed as project activities under the "Activity List".

Selected Project Activities:

ACTIVITY	PERCENTAGE:	DESCRIPTION
Support of First Responder Capabilities	100.00	Funds will be utilized to provide maintenance to the Hays County HazMat Team monitor equipment which will allow for proper detection and identification of any chemical, biological, radiological, nuclear, or explosive weapon that could be utilized in a terrorist attack.

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Agency Name: Hays County
Grant/App: 3529707 **Start Date:** 10/1/2024 **End Date:** 9/30/2025

Project Title: HazMat Team Monitor Maintenance
Status: Application Pending Submission

Measures Information

Objective Output Measures

OUTPUT MEASURE	TARGET LEVEL
Number of exercises conducted.	
Number of individuals participating in exercises.	14
Number of people trained.	
Number of Special Response Team personnel provided with new or updated equipment.	
Number of Special Response Teams created, maintained or enhanced.	1
Number of trainings conducted.	1

Objective Outcome Measures

OUTCOME MEASURE	TARGET LEVEL
-----------------	--------------

Custom Output Measures

CUSTOM OUTPUT MEASURE	TARGET LEVEL
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Custom Outcome Measures

CUSTOM OUTCOME MEASURE	TARGET LEVEL
------------------------	--------------

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Agency Name: Hays County
Grant/App: 3529707 Start Date: 10/1/2024 End Date: 9/30/2025

Project Title: HazMat Team Monitor Maintenance
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Budget Details Information
Budget Information by Budget Line Item:

CATEGORY	SUB CATEGORY	DESCRIPTION	OOG	CASH MATCH	IN-KIND MATCH	GPI	TOTAL	UNIT/%
Contractual and Professional Services	21GN-00-MAIN Maintenance	Maintenance cost for Hazmat Monitoring equipment. Includes 4 RAE AreaRAE Pro, 3RAE systems MutiRAE Lite, 1 RAE MultiRAE Lite, 1 Rigaku CQL, annual calibration of 11 Thermo Scientific RadEye-G, and annual calibration of 10 Level A Suits	\$14,470.00	\$0.00	\$0.00	\$0.00	\$14,470.00	0

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[Print This Page](#)**Agency Name:** Hays County**Grant/App:** 3529707 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** HazMat Team Monitor Maintenance**Status:** Application Pending Submission

Homeland Security Information

FUND SOURCE INFORMATION AND REQUIREMENTS

DHS Project Type: Enhance capabilities to respond to CBRNE events

Capabilities

Core Capability: Screening, Search, and Detection**Identify if this investment focuses on building new capabilities or sustaining existing capabilities.**

: Existing Capabilities (Sustain)

Are the assets or activities Deployable or Shareable: Deployable☐ Check if this Investment requires new construction or renovation, retrofitting, or modification of existing structures☒ Check if these funds will support a project that was previously funded with HSGP funding

Project Management Step Involved:

Check the step that most closely resembles the phase of the project activities to be completed during the grant period.

Step:

Description:

Process:

Milestones

Milestone: Select vendor to provide maintenance to monitors; **Completion Date:** 10-31-2024**Milestone:** Enter into contract with vendor to begin receiving maintenance to existing monitors;**Completion Date:** 12-01-2024**Milestone:** Close out contract and finalize payment to vendor; **Completion Date:** 09-30-2025

NIMS Resources

☐ Check if this project supports a NIMS typed resource**Enter the name of the typed resources from the Resource Type Library Tool:** Hazardous Materials Response Team**Enter the ID of the typed resources from the Resource Type Library Tool:** 4-508-1248

You are logged in as **User Name:** scorprew



Resolution

STATE OF TEXAS §
§
COUNTY OF HAYS §

WHEREAS, The Hays County Commissioners' Court finds it in the best interest of the citizens of Hays County, that the Hays County HazMat Monitor Maintenance project be operated in the 2025 year; and

WHEREAS, The Hays County Commissioners' Court agrees to provide applicable matching funds for the said project as required by the Office of the Governor, Homeland Security Grant Program – State Homeland Security Program grant application; and

WHEREAS, The Hays County Commissioners' Court agrees in the event of loss or misuse of the Office of the Governor funds, the Hays County Commissioner's Court assures that the funds will be returned to the Office of the Governor in full.

WHEREAS, The Hays County Commissioners' Court designates Ruben Becerra, Hays County Judge as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court approves the submission of the grant application for the Hays County HazMat Monitor Maintenance to the Office of the Governor.

ADOPTED THIS THE 30TH DAY of JANUARY, 2024

Ruben Becerra
Hays County Judge

Grant Number: 3529707

ATTEST:

Elaine Cardenas
Hays County Clerk



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY/CUTLER

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize the submission of a grant application to the Office of the Governor, First Responder Mental Health program in the amount of \$10,035.00. **INGALSBE/T.CRUMLEY/CUTLER**

Summary:

This grant will fund costs associated with the Hays County Sheriffs Office Peer Support Group as well as contractual counseling services for officers and dispatchers. These counseling services were previously covered under insurance but were considered ineligible costs for coverage beginning in January of 2022. The Sheriffs Office contracts with Tania Glenn & Associates, PA for counseling services. Dr. Glenn specializes in cases associated with first responders and veterans. This grant was first awarded in FY23. This year a 20% match is required. Hays County's match will be \$2,508.75.

Grant number 4464103

Grant period 10/1/2024 - 9/30/2025

Fiscal Impact:

Amount Requested: \$2,508.75

Line Item Number: 001-618-99-174]

Budget Office:

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

Budget Amendment Required Y/N?: No

Comments: If awarded, grant funds and cash match will be budgeted during the annual budget process.

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Contract with Tania Glenn & Associates, PA for counseling services

Auditor's Office

G/L Account Validated Y/N?: TBD if Awarded

New Revenue Y/N?: TBD if Awarded

Comments:

Attachments

Application
resolution

[Print This Page](#)**Agency Name:** Hays County**Grant/App:** 4464103 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** Hays County First Responder Peer Support and Mental Health**Status:** Application Pending Submission

Narrative Information

Introduction

The purpose of this program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

- responding to the emotional and physical needs of crime victims;
- assisting victims in stabilizing their lives after a victimization;
- assisting victims to understand and participate in the criminal justice system; and
- providing victims with safety and security.

Program-Specific Questions

Culturally Competent Victim Restoration

Victim service providers must have the ability to blend cultural knowledge and sensitivity with victim restoration skills for a more effective and culturally appropriate recovery process. Cultural competency occurs when: (1) cultural knowledge, awareness and sensitivity are integrated into action and policy; (2) the service is relevant to the needs of the community and provided by trained staff, board members, and management; and (3) an advocate or organization recognizes each client is different with different needs, feelings, ideas and barriers.

Provide information in this section regarding how your organization is culturally competent when providing services to victims.

Hays County contracts with a licensed therapist who specializes in working with first responders, veterans and their families. By working with a contractor who has this specific knowledge, Hays County is able to ensure that services are tailored to the needs of the law enforcement/dispatch population that is being served. Tania Glenn and Associates has been serving law enforcement officers for over three decades.

Culturally Specific and Underserved Populations

Following are relevant definitions needed to answer this question.

- Underserved populations means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.
- Culturally specific means the program is primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300u-6(g))).
- Racial and ethnic minority group means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks; and Hispanics.
- Hispanic means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.

Does your program have a primary focus on serving a culturally specific population? (The organization must do more than merely provide services to an underserved population or culturally specific group; rather, the organization's primary focus must be on providing culturally competent services designed to meet the specific needs of the target population in order to justify a YES response in the section below.)

☐ Yes

☒ No

If you answered '**YES**' above, you must explain in the box below how your organization's program is specifically designed to focus on and meet the needs of culturally specific populations. If this item does not apply enter '**N/A**'.

Certifications

In addition to the requirements found in existing statute, regulation, and the funding announcement, this program requires applicant organizations to certify compliance with the following:

Constitutional Compliance

Applicant assures that it will not engage in any activity that violates Constitutional law including profiling based upon race.

Forensic Medical Examination Payments

Health care facilities shall conduct a forensic medical examination of a victim of an alleged sexual assault if the victim arrived at the facility within 120 hours after the assault occurred and the victim consents to the examination. The victim is not required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination, nor pay for the forensic examination or the evidence collection kit. Crime Victim Compensation funds may be used to pay for the medical portion of the exam unless the victim of sexual assault is required to seek reimbursement for the examination from their insurance carrier. If a health care facility does not provide diagnosis or treatment services for sexual assault victims, the facility is required to refer the victim to a facility that provides those services.

Confidentiality and Privacy

Applicant agrees to maintain the confidentiality of client-counselor information and research data, as required by state and federal law. Personally identifying information or individual information collected in connection with services requested, utilized, or denied may not be disclosed; or, reveal individual client information without informed, written, reasonably time-limited consent of the person about whom information is sought. If release of information is compelled by statutory or court mandate, reasonable attempts to provide notice to victims affected by the disclosure of information will be made and steps necessary to protect the privacy and safety of the persons affected by the release of information will be taken.

Activities that Compromise Victim Safety and Recovery

Applicant agrees to not engage in activities that jeopardize victim safety, deter or prevent physical or emotional healing for victims, or allow offenders to escape responsibility for their actions.

Polygraph Testing Prohibition

A peace officer or attorney representing the state may not require an adult or child victim of an alleged sex offense to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense. In addition, the refusal of a victim to submit to a polygraph or other truth telling examination will not prevent the investigation, charging, or prosecution of an alleged sex offense or on the basis of the results of a polygraph examination.

Protection Orders

Victims applying for a protective order or their attorney may not bear the costs associated with the filing of an order of protections.

Offender Firearm Prohibition

The applicant certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 18 USC § 992(g)(8) and (g)(9).

Criminal Charges

In connection with the prosecution of any misdemeanor or felony domestic violence offense, the victim may not bear the costs associated with the filing of criminal charges against a domestic violence offender, issuance or service of a warrant, or witness subpoena.

Cybersecurity Training Requirement

Local units of governments must comply with the Cybersecurity Training requirements described in Section 772.012 and Section 2054.5191 of the Texas Government Code. Local governments determined to not be in compliance with the cybersecurity requirements required by Section 2054.5191 of the Texas Government Code are ineligible for OOG grant funds until the second anniversary of the date the local government is determined ineligible. Government entities must annually certify their compliance with the training requirements using the [Cybersecurity Training Certification for State and Local Government](#). A copy of the Training Certification must be uploaded to your eGrants application. For more information or to access available training programs, visit the [Texas Department of Information Resources Statewide Cybersecurity Awareness Training](#) page.

Criminal History Reporting

Entities receiving funds from PSO must be located in a county that has an average of 90% or above on both

adult and juvenile dispositions entered into the computerized criminal history database maintained by the Texas Department of Public Safety (DPS) as directed in the *Texas Code of Criminal Procedure, Chapter 66*. The disposition completeness percentage is defined as the percentage of arrest charges a county reports to DPS for which a disposition has been subsequently reported and entered into the computerized criminal history system.

Counties applying for grant awards from the Office of the Governor must commit that the county will report at least 90% of convictions within five business days to the Criminal Justice Information System at the Department of Public Safety.

Uniform Crime Reporting (UCR)

Eligible applicants operating a law enforcement agency must be current on reporting complete UCR data and the Texas specific reporting mandated by 411.042 TGC, to the Texas Department of Public Safety (DPS) for inclusion in the annual Crime in Texas (CIT) publication. To be considered eligible for funding, applicants must have submitted a full twelve months of accurate data to DPS for the most recent calendar year by the deadline(s) established by DPS. Due to the importance of timely reporting, applicants are required to submit complete and accurate UCR data, as well as the Texas-mandated reporting, on a no less than monthly basis and respond promptly to requests from DPS related to the data submitted.

Entities That Collect Sexual Assault/Sex Offense Evidence or Investigate/Prosecute Sexual Assault or Other Sex Offenses

In accordance with Texas Government Code, Section 420.034, any facility or entity that collects evidence for sexual assault or other sex offenses or investigates or prosecutes a sexual assault or other sex offense for which evidence has been collected, must participate in the statewide electronic tracking system developed and implemented by the Texas Department of Public Safety. Visit DPS's [Sexual Assault Evidence Tracking Program](#) website for more information or to set up an account to begin participating. Additionally, per Section 420.042 "A law enforcement agency that receives evidence of a sexual assault or other sex offense...shall submit that evidence to a public accredited crime laboratory for analysis no later than the 30th day after the date on which that evidence was received." A law enforcement agency in possession of a significant number of Sexual Assault Evidence Kits (SAEK) where the 30-day window has passed may be considered noncompliant.

Immigration Legal Services

PSO prioritizes funding of projects that provide a full spectrum of counseling, crisis services, and other direct victim services. PSO will not fund projects that focus primarily on immigration legal services and do not provide a significant level of other types of victim services.

Legal Representation in Divorce and Custody Cases

PSO limits eligibility for legal representation in divorce and custody cases to circumstances where the survivor has been directly victimized by intimate partner violence (IPV) within the last six (6) months. This may include physical violence, sexual violence, stalking, and psychological aggression (including coercive tactics) by a current or former intimate partner against the survivor or survivor's kin sharing the residence. Additionally, legal services in divorce and custody cases funded under this award are limited to emergency order assistance, safety planning, client representation in divorce or guardianship proceedings, and other family law matters directly resulting from the victimization. Through acceptance of this award, grantee agrees that reimbursement for divorce and custody-related legal services will be limited to circumstances listed above.

Discrimination

Applicant agrees not to discriminate against victims because they disagree with the State's prosecution of the criminal case.

Records

Applicant agrees to maintain daily time and attendance records specifying the time devoted to allowable victim services.

Volunteers

If awarded VOCA funds, applicant agrees to use volunteers to support either the project or other agency-wide services/activities, unless PSO determines that a compelling reason exists to waive this requirement.

Crime Victims' Compensation

Applicant agrees to assist crime victims in applying for crime victims' compensation benefits.

Community Efforts

Applicant agrees to promote community efforts to aid crime victims. Applicants should promote, within the community, coordinated public and private efforts to aid crime victims. Coordination efforts qualify an organization to receive these funds, but are not activities that can be supported with these funds.

Civil Rights Information

Applicant agrees to maintain statutorily required civil rights statistics on victims served by race, national origin, sex, age, and disability of victims served, within the timeframe established by PSO. This requirement is waived when providing services, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

Victims of Federal Crime

Applicant agrees to provide equal services to victims of federal crime. (Note: Victim of federal crime is a victim of an offense that violates a federal criminal statute or regulation; federal crimes also include crimes that occur in an area where the federal government has jurisdiction, such as Indian reservations, some national parks, some federal buildings, and military installations.)

No Charge

Applicant agrees to provide grant-funded services at no charge to victims of crime. Applicants are also prohibited from billing Crime Victims Compensation, private insurance, Medicaid, or Medicare for services provided using VOCA funds.

Effective Services

Applicants applying for funds to provide victim services must demonstrate a record of providing effective services to crime victims. (See "Eligible Organizations" in the Funding Announcement.)

College Campus Confidential Direct Services Providers

All personnel compensated through OOG or match funds are Confidential Direct Service Providers that maintain victim's confidentiality for all case information (written or oral) and share information only at the victim's request and with the victim's informed consent, except when release of information is required by law. Confidential Direct Service Providers compensated with grant funds shall not be required to disclose client or case information to any entity, including a campus Title IX officer or coordinator, except when release of information is required by law. A victim may not be coerced or required to file a report or disclose information regarding their victimization with any entity as a condition of receiving services from a Confidential Direct Service Provider.

Failure to comply with this certification may result in PSO, at its sole discretion, withholding reimbursement on personnel line items contained in the program budget until satisfactory evidence of compliance is provided.

Compliance with State and Federal Laws, Programs and Procedures

Local Units of Government: Local units of government, including cities, counties and other general purpose political subdivisions, as appropriate, and institutions of higher education that operate a law enforcement agency, must comply with all aspects of the programs and procedures utilized by the U.S. Department of Homeland Security ("DHS") to: (1) notify DHS of all information requested by DHS related to illegal aliens in Agency's custody; and (2) detain such illegal aliens in accordance with requests by DHS. Additionally, counties and municipalities may NOT have in effect, purport to have in effect, or make themselves subject to or bound by, any law, rule, policy, or practice (written or unwritten) that would: (1) require or authorize the public disclosure of federal law enforcement information in order to conceal, harbor, or shield from detection fugitives from justice or aliens illegally in the United States; or (2) impede federal officers from exercising authority under 8 U.S.C. § 1226(a), § 1226(c), § 1231(a), § 1357(a), § 1366(1), or § 1366(3). Lastly, eligible applicants must comply with all provisions, policies, and penalties found in Chapter 752, Subchapter C of the Texas Government Code.

Each local unit of government, and institution of higher education that operates a law enforcement agency, must download, complete and then upload into eGrants the [CEO/Law Enforcement Certifications and Assurances Form](#) certifying compliance with federal and state immigration enforcement requirements. This Form is required for each application submitted to PSO and is active until August 31, 2025 or the end of the grant period, whichever is later.

Non-profit Organizations: Each non-profit 501(c)(3) organization must certify that it does not have, and will continue not to have any policy, procedure, or agreement (written or unwritten) that in any way encourages, induces, entices, or aids any violations of immigration laws. Additionally, the organization certifies that it does not have in effect, purport to have in effect, and is not subject to or bound by any rule, policy, or practice (written or unwritten) that would: (1) encourage the concealment, harboring, or shielding from detection of fugitives from justice or aliens who illegally came to, entered, or remained in the United States; or (2) impede federal officers from exercising authority under 8 U.S.C. § 1226(a), § 1226(c), § 1231(a), § 1357(a), § 1366(1), or § 1366(3). Lastly, the organization certifies that it will not adopt, enforce, or endorse a policy which prohibits or materially limits the enforcement of immigration laws, and will not, as demonstrated by pattern or practice, prohibit or materially limit the enforcement of immigration laws.

Each non-profit organization must download, complete and then upload into eGrants the [CEO/NGO Certifications and Assurances Form](#) certifying compliance with federal and state immigration enforcement requirements.

Equal Employment Opportunity Plan (EEO Plan)

If awarded, applicant agrees to comply with the Equal Employment Opportunity Program (EEOP) requirements per 28 C.F.R. § 42 Subpart E. Agencies may use the EEO Utilization Report Builder to assist with preparing Verification Forms and, if required, Utilization Reports.

Civil Rights Liaison

A civil rights liaison who will serve as the grantee's civil rights point of contact and who will be responsible for ensuring that the grantee meets all applicable civil rights requirements must be designated. The designee will act as the grantee's liaison in civil rights matters with PSO and with the federal Office of Justice Programs.

Enter the Name of the Civil Rights Liaison:

Shari Miller

Enter the Address for the Civil Rights Liaison:

712 S. Stagecoach Trail, Suite 1063 San Marcos, Tx 78666

Enter the Phone Number for the Civil Rights Liaison [(999) 999-9999 x9999]:

(512) 393-2245

Overall Certification

Each applicant agency must certify to the specific requirements detailed above as well as to comply with all requirements within the PSO Funding Announcement, the *Guide to Grants*, the *Grantee Conditions and Responsibilities*, any authorizing or applicable state and federal statutes and regulations to be eligible for this program.

I certify to all of the application content & requirements.

Project Abstract :

The Hays County Sheriffs Office is seeking funding to continue the Peer Support Group and counseling services

for officers as well as dispatchers. Officers and dispatchers will be able to seek counseling services from a trained professional for duty-related issues. The Hays County Sheriffs Office also offers a Peer Support Group that allows officers to be trained to identify when issues may be surfacing in their colleagues in which therapy may be beneficial in order to help their mental state. The Peer Support Group allows officers to have accessible points of contact - their colleagues - to go to when facing struggles. Peer Support Group members can then offer judgement free advice and information on therapy available through the Hays County Sheriffs Office.

Problem Statement :

The Hays County Sheriffs Office historically used funds from the county's insurance provider in order to offer cost free therapy services for first responders for duty-related issues. Due to changes in the insurance providers policy, these services were no longer covered as of January 1, 2022. Hays County is seeking funding to be able to provide these essential services for officers. The program is designed to mitigate stressful incidents in order to minimize the damaging effects they can have on personnel and workplace environments, allowing officers to more effectively perform their jobs. Often officers and dispatchers may not know about services that are available to them or may feel uncomfortable reaching out for help. The Peer Support Group is designed to give officers the skills to identify when their colleagues may be in need of help or just need someone to talk to. The Peer Support Group is completely voluntary and officers sign-up to be trained and to help their colleagues.

Supporting Data :

In 2021, the Hays County Sheriffs Office used an average of 5 hours per month of counseling services. In 2022, the contracted counseling service that Hays County uses will be raising their hourly rate by almost 30%. 2021 was the first year that the Peer Support Group formed. Because of the pandemic there was not an option for the counseling service to offer their in person two day training. In FY23, grant funds were able to cover 8 months worth of counseling services. In the first 3 months of FY24, over half of the funds for counseling services have been expended. The need for and use of these services has grown within the Sheriffs Office leading to a larger grant request for FY25.

Project Approach & Activities:

If officers or dispatchers feel that they are struggling with their mental health due to duty-related incidents, they are able to access counseling services through a therapist who specializes in counseling for first responders. Additionally, officers who are interested in serving their colleagues may volunteer to be a part of the Peer Support Group. These officers are trained to serve as a safe space for their colleagues and to identify when fellow officers may be in need of or may benefit from the counseling services offered through the Sheriffs Office. A two day intensive training will be offered twice a year for officers who are interested in serving as part of the Peer Support Group.

Capacity & Capabilities:

The Hays County Sheriffs Office has an established relationship with a contracted counselor who is a Doctor of Psychology (PsyD) and a Licensed Clinical Social Worker (LCSW) who specializes in first responder and veteran mental health. For the purpose of this program, assistance will be given to the project leads by the Hays County Grants Department and Hays County Auditing, of which has expertise in managing state and federal grants and has the capacity to conduct the required accounting, auditing, and programmatic reporting

Performance Management :

The Hays County Sheriffs Office collects information about how many hours of counseling are used each month by staff. Information will also be collected on how many officers attend the two day peer support group training.

Target Group :

The target group is the Hays County Sheriffs Officers including the correctional facility staff and officers as well as 9-1-1 dispatchers, who have experienced traumatic events.

Evidence-Based Practices:

In 2021, the Texas Department of State Health Services (DSHS) released a survey done by Project HEROES. In a survey of approximately 1500 first responders in Texas, 60% expressed that they exhibit symptoms of a significant mental disorder "including physical symptoms, sleep disturbance, and anger." By offering counseling services at no-cost to its employees, The Hays County Sheriffs Office allows their officers to be more focused, calm, and level-headed in the line of duty.

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[Print This Page](#)**Agency Name:** Hays County**Grant/App:** 4464103 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** Hays County First Responder Peer Support and Mental Health**Status:** Application Pending Submission

Project Activities Information

Introduction

This section contains questions about your project. It is very important for applicants to review their funding announcement for guidance on how to fill out this section. Unless otherwise specified, answers should be about the EXPECTED activities to occur during the project period.

First Responder Mental Health Programs

Program Organization and Characteristics

Is this a new program or building capacity for an existing program?

☐ New Program

☒ Building Capacity for an Existing Program

In the space below NEW programs should describe any completed needs assessments and/or steps taken to date. Additionally, all programs must describe how services will be provided – internally, externally, or a hybrid of both – and who will provide them. Finally, describe the guidelines used to manage case load under the program.

Programs are a hybrid model of internal and external services. Counseling services are provided by an external contractor (Tania Glenn and Associates, PA) and the services for the Peer Support Group are done internally by the Peer Support team. The Peer Support Team is led by two officers.

Describe where in the organizational chart will the program reside and under whose authority. Where will program activities physically take place? If the program is housed in the same building as operations, address how the program will mitigate any stigma associated with utilizing the program.

Counseling services will be contracted out to Tania Glenn and Associates. These services will take place at Tania Glenn and Associates' office. The contract will be monitored by the Hays County Sheriffs Office and the Hays County Auditors Office. The Peer Support Group will reside under the authority of the Hays County Sheriffs Office. Stigma associated with using the program will be mitigated by leaders within the Hays County Sheriffs Office promoting and positively representing the program and sharing its benefits.

Target Group

For each of the target populations below, identify whether all services will be available to each, a subset of services will be provided, or only referrals will be offered (Note: if only referrals will be offered, you may be asked to submit a copy of your referral policy):

Line Officers, Command Staff, and Administrators:

☒ All services

☐ Subset of services

☐ Referrals only

☐ Not served

Dispatchers:

☒ All services

☐ Subset of services

☐ Referrals only

☐ Not served

Non-Sworn Personnel (e.g., crime scene technicians):

☐ All services

☐ Subset of services

☐ Referrals only

☒ Not served

Family Members of First Responders:

- ☐ All services
- ☐ Subset of services
- ☐ Referrals only
- ☒ Not served

Other Nearby Law Enforcement Personnel (e.g., officers from other departments, federal agents or corrections officers):

- ☒ All services
- ☐ Subset of services
- ☐ Referrals only
- ☐ Not served

First Responders Exposed to Traumatic/Critical Incidents (e.g., exposure to violent crime, line-of-duty death or serious injury, officer-involved shootings, or mass trauma):

- ☒ All services
- ☐ Subset of services
- ☐ Referrals only
- ☐ Not served

In the space below, list the **types of incidents** that are targeted for services:

Examples of critical incidents that may prompt the support of the Peer Support Group include: line of duty incidents resulting in serious injury, accidents resulting in serious injury, fire/tornado/flood/other wedding events resulting in serious injury, deaths (work related or personal), multiple casualties/disaster events, suicide events, and hostage and or targeted employee events. Other events may warrant the support of the Peer Support Group at the discretion of the team. Officers may also seek counseling services during times of crisis as a result of work related events and stresses.

Referral Network Description

Describe the types and method of referrals provided for each of the six target populations described above. Distinguish between voluntary and mandatory referrals. Describe the plan for an escalation referral system (when in-house services are not capable of handling a particular situation).

Referrals may occur in the following ways: 1) An employee may contact any Peer Supporter, the HR director, or a Peer Support Coordinator for a referral to use either the contracted counseling services or to receive support from a Peer Supporter. 2) An employee aware of another employee who may need assistance can initiate a referral by contacting any Peer Supporter, the HR director, or a Peer Support Coordinator. The referred employee would then be contacted to assess their receptiveness to Peer Support intervention. 3) Supervisory personnel have the authority and responsibility to recommend a Peer Supporter to employees when appropriate. This support is voluntary and the employee cannot be ordered to participate. The employee will be assured that the consultation is solely for their benefit and will remain confidential 4) Any employee or family member of an employee may contact any member of the Peer Support program or HR to seek assistance or support. Contact information for Peer Support Program coordinators will be provided. Participation is voluntary. Under most circumstances, referrals to both the Peer Support Group and counseling services are voluntary. However, under certain circumstances the Human Resource Director may direct an employee to use the provided counseling services. The contracted psychologist will then make a determination to the Sheriff and their designee about the length of time the employee should remain in consultation.

Notification of Services

Describe the types of informational materials produced and how they are distributed or made available to employees.

Informational materials with contact and program information are provided and placed around the Hays County Sheriffs Office and 9-1-1 Dispatch Center so that they are easily accessible for employees. Supervisors are also ready with information that can be provided to employees whenever needed.

Required Peer Support Program

Describe how this program employs the Peer Support Network model to facilitate communication and continuity of care. For additional information, consult the [International Association of Chiefs of Police Peer Support Guidelines](#).

Members of the Peer Support Group will have the opportunity to attend a training held by the contracted psychologist Tania Glenn to learn best practices and tactics for identifying fellow employees in crisis mode. This training will cover topics like problem solving skills, problem assessments, both verbal and non-verbal communication, and more. The Peer Support Group has a formal policies and procedures document that helps frame their duties.

Selected Project Activities:

ACTIVITY	PERCENTAGE:	DESCRIPTION
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Peer Support Groups	30.00	Officers volunteer to participate in the peer support program in order to serve as a resource for their colleagues and identify when fellow officers may benefit from or need to access counseling services. Training will be held for officers to learn to identify signs that others may be in need of referrals and how best to help.
Professional Therapy and Counseling	70.00	Staff will have access to professional therapist who specializes in services for first responders.

CJD Purpose Areas

PERCENT DEDICATED	PURPOSE AREA	PURPOSE AREA DESCRIPTION
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Agency Name: Hays County
Grant/App: 4464103 **Start Date:** 10/1/2024 **End Date:** 9/30/2025

Project Title: Hays County First Responder Peer Support and Mental Health
Status: Application Pending Submission

Measures Information

Objective Output Measures

OUTPUT MEASURE	TARGET LEVEL
Number of counseling hours provided to survivors.	107
Number of support group sessions held.	2
Number of survivors participating in support groups.	20
Number of survivors receiving counseling / therapy.	20
Number of victims / survivors seeking services who were served.	30

Objective Outcome Measures

OUTCOME MEASURE	TARGET LEVEL
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Custom Output Measures

CUSTOM OUTPUT MEASURE	TARGET LEVEL
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Custom Outcome Measures

CUSTOM OUTCOME MEASURE	TARGET LEVEL
------------------------	--------------

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Agency Name: Hays County**Grant/App:** 4464103 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** Hays County First Responder Peer Support and Mental Health**Status:** Application Pending Submission**Budget Details Information****Budget Information by Budget Line Item:**

CATEGORY	SUB CATEGORY	DESCRIPTION	OOG	CASH MATCH	IN-KIND MATCH	GPI	TOTAL	UNIT/%
Contractual and Professional Services	Non-Substance Abuse-Related Case Management, Forensic Interviews, Counseling, Outpatient, and/or Treatment Services	Tania Glenn & Associates, PA will provide services. Services are \$90/hr and are billed each month. \$81.25/hr of these costs will be covered with grant funds and the remaining costs will be covered by Hays County. Services include counseling sessions for Sheriffs Officers. Tania Glenn specializes in mental health services for first responders, veterans, and their family members. The \$8,693.75 allocated will allow for up to 107 hours of counseling services.	\$6,955.00	\$1,738.75	\$0.00	\$0.00	\$8,693.75	0
Contractual and Professional Services	Professional, Presentation, and/or Training Services	Training costs are for Tania Glenn to provide a 2.5 day training, twice a	\$2,600.00	\$650.00	\$0.00	\$0.00	\$3,250.00	0

		<p>year, for officers interested in participating in the Hays County Sheriffs Office Peer Support Group. This training will allow officers to better identify potential problems or mental health needs in fellow officers in order to better support them. Each training will be 20 hours for a total of 40 hours per year. The training is billed at \$90/hr. \$81.25/hr will be billed to the grant for a total of \$3,250.00 in training costs for members of the Peer Support Group</p>						
Supplies and Direct Operating Expenses	Office Supplies (e.g., paper, postage, calculator)	<p>Costs to create printed materials supporting the Peer Support Group including information for officers and dispatchers about joining Peer Support Group.</p>	\$480.00	\$120.00	\$0.00	\$0.00	\$600.00	0

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General Information and Instructions

Agency Type

Implementing Agency Type - Government

Which designation best describes your agency (select only one):

- ☐ Corrections
- ☐ Courts
- ☐ Juvenile justice
- ☒ Law enforcement
- ☐ Prosecutor
- ☐ Other – describe below

If Other is selected describe below:

Purpose of Award

Check all that apply:

- ☒ Continue an OOG-funded victim project funded in a previous year
- ☐ Expand or enhance an existing project not funded by OOG in the previous year
- ☐ Start up a new victim services project
- ☐ Start up a new Native American victim services project
- ☐ Expand or enhance an existing Native American project

Type of Crime Funding Distribution

Identify the percent of funding dedicated to each type of victimization. The percentages provided below should not include matching funds. Cumulative total for all types of victimization must equal 100%.

Type of Crime	Percent of Funds Dedicated to Crime <i>Enter whole percentages only</i>	Funds Dedicated to Crime <i>Current Award x Percent Entered</i>
Child Physical Abuse	<div>0</div>	\$0.00
Child Sexual Abuse	<div>0</div>	\$0.00
Domestic and Family Violence	<div>0</div>	\$0.00
Child Sexual Assault	<div>0</div>	\$0.00
Adult Sexual Assault	<div>0</div>	\$0.00
DUI/DWI Crashes	<div>0</div>	\$0.00
Assault	<div>0</div>	\$0.00

Adults Molested As Children	<input type="text" value="0"/>	\$0.00
Elder Abuse	<input type="text" value="0"/>	\$0.00
Robbery	<input type="text" value="0"/>	\$0.00
Survivors of Homicide	<input type="text" value="0"/>	\$0.00
Adult Human Trafficking	<input type="text" value="0"/>	\$0.00
Child Human Trafficking	<input type="text" value="0"/>	\$0.00
Other Violent Crimes	<input type="text" value="100"/>	\$10,035.00
Description:	<input type="text" value="Officers and dispatchers may receive grant funded services for any duty-related incident"/>	
Other Non-Violent Crimes	<input type="text" value="0"/>	\$0.00
Description:	<input type="text"/>	
SUM of %'s <i>Sum of % MUST = 100%</i>	SUM of Funds <i>Sum of Funds MUST = OOG Current Budget</i>	\$10,035.00

Use of Funds

Does this project provide **DIRECT SERVICES** to victims:

☐ Yes

☒ No

Types of Victimizations

Check the types of victimization that best describe the victims the grant-funded project will serve. “Other” refers to a type that is not associated with any of the types provided in the list. Check all that apply:

Type of Victimization

☐ Adult physical assault (includes aggravated and simple assault)

☐ Adult sexual assault

☐ Adults sexually abused/assaulted as children

☐ Arson

☐ Bullying (verbal, cyber, or physical)

☐ Burglary

☐ Child physical abuse or neglect

☐ Child pornography

- ☐ Child sexual abuse/assault
- ☒ Domestic and/or family violence
- ☒ DUI/DWI incidents
- ☒ Elder abuse or neglect
- ☐ Hate crime: racial/religious/gender/sexual orientation/other

If Hate Crime is TRUE provide explanation:

- ☒ Human trafficking: labor
- ☒ Human trafficking: sex
- ☐ Identity theft/fraud/financial crime
- ☒ Kidnapping (noncustodial)
- ☒ Kidnapping (custodial)
- ☐ Mass violence (domestic/international)
- ☐ Other vehicular victimization (e.g., hit and run)
- ☐ Robbery
- ☐ Stalking/harassment
- ☐ Survivors of homicide victims
- ☒ Teen dating victimization
- ☐ Terrorism (domestic/international)
- ☒ Other

If Other is TRUE provide explanation:

The selected crimes are examples of crimes often seen by officers in Hays County. These are not the only incidents that individuals may seek help for.

Budget and Staffing

Answer the questions below based on your current fiscal year. Report the total budget available to the victim services program by source of funding. Do not report the entire agency budget, unless the entire budget is devoted to victim services program.

Annual funding amounts allocated to all victimization programs and/or services for the current fiscal year:

Identify by source the amount of funds allocated to the victimization program/services budget for your agency. DO NOT

COUNT FUNDS IN MORE THAN ONE CATEGORY. OTHER FEDERAL includes all federal funding except the award amount for this grant.

OOG Current Budget: **\$10,035.00**

Other State Funds:

Other Local Funds:

Other Federal Funds:

Other Non-Federal Funds:

Total Victimization Program Budget: **\$10,035.00**

Total number of paid staff for all grantee victimization program and/or services:

COUNT each staff member once. Both full and part time staff should be counted as one staff member. DO NOT prorate based on FTE.

Total number of staff:

Number of staff hours funded through THIS grant award (plus match) for grantee's victimization programs and/or services:

Total COUNT of hours to work by all staff supporting the work of this award, including match.

Total number of hours:

Number of volunteer staff supporting the work of this award (plus match) for grantee's victimization programs and/or services:

COUNT each volunteer staff once. DO NOT prorate based on FTE.

Total number of volunteer staff:

Number of volunteer hours supporting the work of this award (plus match) for grantee's victimization programs:

Total COUNT of hours to work by all volunteers supporting the work of the award, including match.

Total hours to work by all volunteers:

Explain how your organization uses volunteers to support its victimization programs or if your organization does not use volunteers explain any circumstances that prohibit the use of volunteers.



Resolution

STATE OF TEXAS §
§
COUNTY OF HAYS §

WHEREAS, The Hays County Commissioners' Court finds it in the best interest of the citizens of Hays County, that the Hays County First Responder Peer Support and Mental Health grant project be operated in the 2025 year; and

WHEREAS, The Hays County Commissioners' Court agrees to provide applicable matching funds for the said project as required by the Office of the Governor, State Criminal Justice Planning Funds - First Responder Mental Health Program grant application; and

WHEREAS, The Hays County Commissioners' Court agrees in the event of loss or misuse of the Office of the Governor funds, the Hays County Commissioner's Court assures that the funds will be returned to the Office of the Governor in full.

WHEREAS, The Hays County Commissioners' Court designates Ruben Becerra, Hays County Judge as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court approves the submission of the grant application for the Hays County First Responder Peer Support and Mental Health Grant to the Office of the Governor.

ADOPTED THIS THE 30TH DAY of JANUARY, 2024

Ruben Becerra
Hays County Judge

ATTEST:

Elaine Cardenas
Hays County Clerk



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY

Sponsor:

Commissioner Shell

Agenda Item:

Authorize the submission of a grant application to the FY24 Texas Parks and Wildlife Department, Recreational Trails Grant Program in the amount of \$300,000.00. **SHELL/T.CRUMLEY**

Summary:

If awarded, these funds would be used for the construction of a new multi-use, 1.8 mile long recreational trail on the Presa Grande property located off Hilliard Road in San Marcos. This project is in partnership with the Great Springs Project. There is a 20% match required which will be made up of the value of land owned by Hays County (easement valued at \$40,820 and trail head area valued at \$19,188) and a cash donation from the Great Springs Project of \$15,600 resulting in a total match of \$75,608. An application for this project was submitted in 2023, but was not funded.

Fiscal Impact:

Amount Requested: None (\$75,608 match; \$60,000 HC land value & \$15,600 cash match provided by Great Springs Project)

Line Item Number: N/A

Budget Office:

Source of Funds: TPWD Grant Funds & Donated Funds

Budget Amendment Required Y/N?: No

Comments: Grant funds and cash match will be budgeted if grant is awarded and accepted.

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD for Construction

Auditor's Office

G/L Account Validated Y/N?: TBD

New Revenue Y/N?: TBD if awarded

Comments:

Attachments

Resolution

Application

Application Attachments

Great Springs Project Letter of Support



Resolution

STATE OF TEXAS §
§
COUNTY OF HAYS §

WHEREAS, The Hays County Commissioners' Court finds it in the best interest of the citizens of Hays County, that the Presa Grande Trail Project be operated in the 2025 year; and

WHEREAS, The Hays County Commissioners' Court agrees to provide applicable matching funds as required by the Texas Parks and Wildlife – Recreational Trails grant application in the form of an in-kind donation; and

WHEREAS, The Hays County Commissioners' Court designates Ruben Becerra, Hays County Judge as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court approves the submission of the grant application for the Texas Parks and Wildlife – Recreational Trails grant program.

ADOPTED THIS THE 30TH DAY of JANUARY, 2024

Ruben Becerra
Hays County Judge

ATTEST:

Elaine Cardenas
Hays County Clerk

Applicant Information

Hays County

REC-2024-Hays County-00076

Sponsor Information

Name of Sponsor/Applying Entity:	Hays County
Sponsor City:	San Marcos
Sponsor Address (Street):	712 S. Stagecoach Trl.
Sponsor State:	Texas
Sponsor County:	Hays County
Sponsor Zip Code:	78666
Sponsor Phone:	(512) 393-7779
Sponsor Fax (if applicable):	
Tax ID #/Comptroller ID (if government entity):	99999999999
Tax Exempt #/EIN (If Non-profit):	746002241
SAM - CAGE Code:	4QXN9
Unique Entity Identifier (UEI Number):	

Primary Grant Management Contact for this Application

Application's Primary Contact: If primary contact is not shown in the dropdown menu, your Sponsor Administrator will need to add that person to this application (instructions for doing that can be found [HERE](#)). Primary Contact Information will populate below after saving the page.

Corprew, Simone

Primary Contact Information:

Primary Contact First Name:	Simone
Primary Contact M.I.:	
Primary Contact Last Name:	Corprew
Primary Contact Title/Position:	Grant Writer
Primary Contact Address (Street):	712 S. Stagecoach Trl.
Primary Contact City:	San Marcos
Primary Contact State:	Texas
Primary Contact Zip Code:	78666
Primary Contact Phone:	(512) 393-7779
Primary Contact Fax (if applicable):	
Primary Contact Email:	simone.corprew@co.hays.tx.us

Application Prepared By

Is the 'Primary Grant Management Contact' the person preparing this application for submission?

☒ Yes ☐ No
☐ No

Preliminary Acknowledgements, Eligibility Confirmation, Legal Information

Hays County

REC-2024-Hays County-00076

Preliminary Acknowledgements

☒ I certify that I have fully read and understand the [Recreational Trails Program Guidance and Application Instructions](#) document prior to completing this application.

Do you have Your DUNS and SAM CAGE Code?

☒ Yes ☐ No

Eligibility Information

Sponsor Entity Type:

- ☒ City/County
☐ State Agency
☐ Federal Agency
☐ Other Governmental Body
☐ Not-for-Profit

If Not-for-Profit is selected, confirm you hold current 501c3 or Texas Not-for-Profit status.

Upload Proof of Not-For-Profit Document:

Check All Eligible Project Activities that are part of this project:

- ☐ Acquisition of Easements or Leases for Trail Corridors (**CONTACT PROGRAM STAFF IF CHECKED**)
☐ Acquisition of Property by Fee Simple Title for Trail Corridors (**CONTACT PROGRAM STAFF IF CHECKED**)
☒ Construction of New Recreational Trails
☐ Educational or Interpretational Signage
☐ Environmental Mitigation
☐ Renovation of Existing Trails
☐ Trail Accessibility Improvements
☐ Trail-head or Trail-side Facilities

Project Must Be Maintained and Open to the Public

☒ I confirm that this project will be **maintained and regularly open to the public for 20 years or more** upon completion.

Project Sponsor Must Be Able to Expend Funds Prior to Grant Reimbursement

☒ I fully understand that this is a reimbursement grant program, and my organization must have its own funding to expend for the completion of project grant elements prior to receiving reimbursement funds from TPWD.

Briefly describe (1000 characters or less) the commitment to continued maintenance for the proposed project. Please indicate who will be responsible for which operational and maintenance functions and how they will be funded (sustainability plan):

Hays County staff will handle the maintenance of the newly constructed trail with staff from both the Parks Department and Building Maintenance contributing. Funds will come from the county budget.

Please describe the grant management experience of your staff and your plan to manage the programmatic

Preliminary Acknowledgements, Eligibility Confirmation, Legal Information

Hays County

REC-2024-Hays County-00076

and fiscal aspects of this federal trail grant. Include key staff names and past or current experience with TPWD grants or other grants (4000 characters or less):

Programmatic reporting of this project will be handled by staff from the Grants Department which is comprised of two Grants Coordinators. Simone Corprew will maintain reporting and has 3 years of grants experience, including federal, state, and private funds. The Grants Department maintains approximately 30 grants per year. Financial reporting will be completed by staff in the Hays County Auditors Office. Reports will be complete and submitted by a Grants Financial Analyst with 3 years of experience maintaining grant reports.

Current staff has not managed a TPWD grant previously, but has handled grants from other state agencies.

List any previous grants received from the Recreation Grants Branch specific to this Project site. If none, enter N/A. (1000 characters or less):

N/A

Describe any non-compliance issues with any grant from the Recreation Grants Branch and provide a plan of action to remedy. Applicants in non-compliance may be considered ineligible for funding, depending on the severity of the issues. If none, enter N/A. (4000 characters or less):

N/A

Legal Information

Proof of Ownership and/or Legal Control

Describe the ownership of the trail corridor. If the land is currently in public hands, identify the name of the public land. If the land is not in the sponsor's ownership, include a statement of permission from the landowner to construct the trail project and keep it open to the public for 20 years. If land, easement, or other property interest will be acquired, describe how this will be accomplished. If acquisition in fee simple, include a statement of why easement was not possible. (4000 characters or less)

The San Marcos Outer Loop Trail – Presa Grande Segment ("Presa Grande Segment") will be constructed on a 7.85-acre trail corridor easement and a 3.69-acre trailhead area. Hays County purchased and holds a conservation easement over the trail easement area of the Presa Grande Segment. Hays County owns the trailhead on the Presa Grande Segment through a quitclaim deed. Attached in the "Proof of Ownership" upload section, please find the public access easement and the quitclaim deed documentation.

Upload any Documents related to proof of ownership, permission, and/or legal control, if applicable:

https://tpwd-recgrants.intelligrants.com/_Upload/33632_1116713-HAYSCOUNTY_PUBLICACCESSEASEMENTQUITCLAIMDEED.pdf

Describe any rights-of-way and/or easements at the Project site, if applicable (2000 characters or less):

Project/Site Information

Hays County

REC-2024-Hays County-00076

General Project Information

Project Name: San Marcos Outer Loop Trail – Presa Grande Segment

Project Site Information

County Name for proposed project location:	Hays County
Texas Senate District Number for proposed project location (Not sure? Click here):	21
Texas House of Representatives District Number for the proposed project location (Not sure? Click Here):	45
US Congressional District Number for the proposed project location (Not sure? Click Here):	21
LATITUDE at trailhead or most prominent trail access point (as - or + ddd.ddddr). Not sure? Click Here :	29.925272
LONGITUDE at trailhead or most prominent trail access point (as - or + ddd.ddddr). Not sure? Click Here :	-97.947921
Project Extent Geospatial Data (in Google KML) optional:	
TXDOT District of Project Site (Not sure? Click Here):	Hays 106
Is the project site inside the boundaries of a Metropolitan Planning Organization (MPO) ? If so, enter the name here. If not, leave blank. (Not sure? Click Here):	Yes
If the project site is inside the boundaries of an MPO, enter the MPO ID here. (Not sure? Click Here):	Capital Area

Physical Address of Project Site (or nearest intersection to the trail):

Street: 1775 Hilliard Road

City: San Marcos

State: Texas

Zip: 78666

Site Map

This is to locate the trail for orientation purposes. The trail drawn on a park map or city map will suffice.

Please make sure the trail corridor is clearly marked and label any identifying landmarks like the nearest road.

Upload Site Map Document: https://tpwd-recgrants.intelligrants.com/_Upload/33634_1116709-HAYSCOUNTY_SITEMAP.pdf

Vicinity Map

This is to identify the general area within a county or large city. A sample is available [HERE](#).

If multiple files, scan into one document and upload.

Upload Vicinity Map Document: https://tpwd-recgrants.intelligrants.com/_Upload/33634_1116705-HAYSCOUNTY_VICINITYMAP.pdf

USGS Topo Map (7.5' series)

If multiple files, scan into one document and upload.

Free downloads are available from the USGS [HERE](#).

Please make sure your project site is marked on the map.

Project/Site Information

Hays County

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Upload USGS Topo Map Document: https://tpwd-recgrants.intelligrants.com/_Upload/33634_1116714-HAYSCOUNTY_TOPOMAP.pdf

Site Photographs

If multiple files, scan into one document and upload.

Provide well-labelled, representative photographs of the Project Site.

Upload Site Photographs Document: https://tpwd-recgrants.intelligrants.com/_Upload/33634_1116707-HAYSCOUNTY_PHOTOS.pdf

Is the proposed project location built on reclaimed land?

☐ Yes ☒ No

Is there any history of ground contamination at the Project Site? e.g. former landfill, gas station, illegal dumping, brownfield, etc.

☐ Yes ☒ No

Proposed Project Summary and Details

Project Summary

Please provide a brief summary of your project capturing only key essentials. Include any pertinent quantifiable metrics e.g. "Renovation of 12 miles natural surface equestrian trail with bridge replacement and volunteer training." (or) "New .81 mile 10' wide multi-use concrete trail with retaining walls, benches, signs, bike racks and trailheads." Please include only pertinent details such as trail length, trail width, trail material and any additional amenities requested within the grant. (200 characters or less)

Construction of a new 1.80-mile 5' wide multi-use natural surface trail within a 7.85-acre trail corridor easement and a 3.69-acre trailhead area, including benches, a bridge, and a trailhead kiosk.

Project Description

Please provide a clear and concise description of the proposed Project. Include a description of the trail length, width, surfacing, and configuration (loop, linear, network); trailhead and trailside amenities. Detail all work to be performed; any right-of-way or easements to be acquired; the relationship between Project and any other work planned or existing; partnerships and/or community involvement; and educational/interpretive aspects of the Project. (2000 characters or less)

The San Marcos Outer Loop Trail – Presa Grande Segment ("Presa Grande Segment") is comprised of a 3.69-acre trailhead parcel and a 7.85-acre trail easement that parallels the eastern and southern perimeters of the expansive 694.383-acre Presa Grande tract. The 7.85-acre trail easement is part of a conservation easement, including an additional 377.15 acres of the Presa Grande Phase I tract, held by Hays County. Of the remaining 309.383 acres of the Presa Grande tract, 91.383 acres will remain in agricultural and limited development use, while the remaining 218 acres are expected to be conserved under a conservation easement (Presa Grande Phase II) to be held by Hays County.. Separately, Hays County recently acquired the 3.69-acre trailhead tract via a quitclaim deed. From the proposed trailhead at Hilliard Road, the 30' wide trail easement runs south toward Sink Creek, then west to the mid-point of the southern boundary of the tract. Within this trail easement area, a loop trail segment approximately 1.80 miles in length and five feet wide will be constructed. This new trail will be similar in character to trails commonly seen in the existing San Marcos natural areas, usually represented as single track, natural surface trails. Trail construction will include channel armoring in areas that are at high risk of erosion, switchbacks at areas where steep side slopes exist, and a 30' bridge with a supported center for low water crossings. The 3.69-acre trailhead area will provide access to the Presa Grande Segment and will be located at the approximate junction of Hilliard Road and Powder Horn Drive. Additional trail amenities include benches, a 30' bridge with supported center, and a trailhead kiosk. The Presa Grande Segment is supported by Great Springs Project, LCSM North, LP, Texas State University, San Marcos Greenbelt Alliance, San Marcos River Foundation, and the City of San Marcos.

Project Use and Benefits

Provide a brief description of the benefits of the proposed project in terms of the project's quality, geographic scope, recreational needs that are to be met and expected amount of trail use or population to be served. (2000 characters or less)

The Presa Grande Segment will provide significant connectivity to nearby trails in San Marcos, including the San Marcos Outer Loop Trail – Freeman Ranch Segment ("Freeman Ranch Segment") and the San Marcos Outer Loop Trail – La Cima Segment ("La Cima Segment"), both situated to the south. Visual representations of these trail segments can be found on the attached Vicinity Map. Texas State University has submitted a TPWD Recreational Trails Grant (RTG) application for the Freeman Ranch Segment, while Great Springs Project secured funding for the La Cima Segment in 2023 through TPWD's RTG program. The alignment of these three trail segments will provide the San Marcos community with an impressive 4.5 miles of new trails for recreational use and enjoyment.

Adding to its significance, the Presa Grande Segment and the La Cima Segment will directly link with the 18-mile San Marcos Loop and Check trail system. A detailed overview of this interconnected trail system,

Proposed Project Details

Hays County

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including various Natural Areas in San Marcos, can be found on the attached Vicinity Map. Furthermore, the Presa Grande Segment will forge connections with a proposed trail segment extending north from the Hilliard Road trailhead to the Blanco River in Kyle. This strategic linkage will eventually contribute to the regional 100+ mile Great Springs Trail that will connect Austin and San Antonio.

Beyond its connectivity, the Presa Grande Segment promises an unparalleled and high-quality trail experience, navigating the rugged topography of Sink Creek. This trail is designed to cater to a diverse user base, including nearby residents, Texas State University students, and visitors from across the state, ensuring accessibility for individuals with varying abilities. Serving a substantial population of 36,327 within a three-mile radius, the Presa Grande Segment is well-positioned to meet the evolving needs of a growing community.

Intended Uses:

☐ Motorized ☒ Non-Motorized ☐ Both

Types of Intended Uses

☐ All-Terrain Vehicles

☒ Bicycling

☐ Equestrian

☐ Four-wheel Drive Vehicles

☒ Hiking/Walking

☒ Jogging/Running

☐ Motorcycles

☒ Mountain Bicycling

☐ Provisions for Disabilities

☐ Skating/Skateboarding

☐ Wheelchairs

☐ Other

(Please specify)

Total Project Length (in linear feet): 9600

Total Project Width (in linear feet): 5

Total Project Length in Miles: 1.8

Is the intended Project for new trail construction, renovation of an existing trail, or for other amenities/infrastructure? (select all that apply)

☒ New Trail

☐ Renovation of Existing Trail

☐ Both New Trail and Renovation of Existing Trail

☒ Other Amenities/Infrastructure (bathrooms, parking lots, trail signage)

New Trail Construction

Provide the length of the trail and designate whether the length given is in miles or feet. If not applicable, please enter N/A.

1.80miles

Proposed Project Details

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Renovation of Existing Trail

Provide the length of the trail and designate whether the length given is in miles or feet. If not applicable, please enter N/A.

N/A

Other Amenities / Infrastructure

Please identify the other amenities / infrastructure that are included in your grant budget. If not applicable, please enter N/A. (1,000 characters or less)

The Presa Grande Segment will include seven benches, a 30' bridge with supported center, and a trailhead kiosk. Benches will be placed along the length of the trail in areas where scenic views of the Texas Hill Country can be observed. The 30' bridge with support center will be placed along the trail for low water crossings. The kiosk, placed prominently at the proposed trailhead on Hilliard Road, will provide information to trail users.

Public Access

Access by the general public is a fundamental element of the Recreational Trails Program. Describe your plan for general public access, including the level of access that the general public will have to the site, the number of days per week, number of hours per day, whether public access is currently offered at the site, security concerns, and any other pertinent access information. (4000 characters or less)

The San Marcos Outer Loop Trail – Presa Grande Segment will be publicly accessible seven days a week, from sunrise to sunset. The Presa Grande Segment is not currently open to the public but will be made available immediately following the completed trail construction. Trailheads providing access to the Presa Grande Segment will be located at the approximate junction on Hilliard Road, just west of Powder Horn Trail to the north, and Academy Oaks Drive and Ranch Road 12 to the south.

Project Budget Details

Hays County

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Project Cost Summary and Budget Narrative

Itemized Budget

- You must select SAVE after the entry of each line item, unit number, and unit cost so that the system may calculate the total cost.
- Enter whole dollar amounts for line items when possible. (i.e. round up to the nearest dollar)
- If it is not possible to enter a whole dollar amount for the price per unit (i.e. cost of labor will be \$22.55 an hour for a line item, etc), please note that this form will automatically round the total cost of each line item entered **UP** to the nearest whole dollar upon page save.
- Be sure to provide an itemized list of all activities to be undertaken and the cost of each activity. Provide as much detail as possible but combine similar materials into single line items (i.e., "trail tools", "3-in. asphalt surfacing with 6-in. road base course", etc.). You may provide additional detail in the narrative portion of the grant proposal or as a supporting document.
- Most line items should be split 80%-20% except in-kind, volunteer labor, and similar match items that should be 100% sponsor costs.
- Applications that contain ineligible budget items may not be considered for funding by the Recreational Trails Advisory Board .

							<i>For TPWD use only</i>	
Unit Description	# of Units	Cost Per Unit	Sponsor Cost (20%)	TPWD Cost (80%)	Total Cost (Rounded up to nearest dollar)	Approved Federal Share	Approved Total Cost	TPWD Line Item Notes
SERVICE DELIVERY COSTS								
Labor (Force Account)			\$0	\$0	\$0	\$0	\$0	
Construction Costs (Contracted Services for Construction) and Materials/Supplies			\$15,600.00	\$300,000.00	\$315,600.00	\$0	\$0	
Trail Design	Mile	1.8	\$5,000.00	\$1,800	\$7,200	\$9,000.00		
Flagging Materials	Each	40	\$15.00	\$200	\$400	\$600.00		
Natural Surface Trail Construction	Linear Foot	9,600	\$15.00	\$0	\$144,000	\$144,000.00		
Trail Armoring	Linear Foot	10	\$350.00	\$700	\$2,800	\$3,500.00		
Shallow Creek Armoring	Each	6	\$1,000.00	\$0	\$6,000	\$6,000.00		
Trail Switchback (material close)	Each	8	\$4,000.00	\$6,400	\$25,600	\$32,000.00		
Trail switchback (no material)	each	13	\$6,000.00	\$0	\$78,000	\$78,000.00		

Hays County				Project Budget Details			REC-2024-Hays County-00076	
30' Bridge with Supported Center	Each	1	\$15,000.00	\$3,000	\$12,000	\$15,000.00		
Trailhead Kiosk	each	1	\$10,000.00	\$0	\$10,000	\$10,000.00		
Benches	each	7	\$2,500.00	\$3,500	\$14,000	\$17,500.00		
Environmental Surveys				\$0	\$0	\$0	\$0	\$0
Engineering and Professional Services				\$0	\$0	\$0	\$0	\$0
Equipment Rental/Use				\$0	\$0	\$0	\$0	\$0
Miscellaneous				\$60,008.00	\$0	\$60,008.00	\$0	\$0
Donation of Trail Easement Area - MATCH	acre	7.85	\$5,200.00	\$40,820	\$0	\$40,820.00		
Donation of Trailhead Area - MATCH	acre	3.69	\$5,200.00	\$19,188	\$0	\$19,188.00		
TOTAL PROJECT COST				\$75,608.00	\$300,000.00	\$375,608.00	\$0	\$0
NOTE: All fields below will calculate after you have saved this page								
TOTAL PROJECT COST				\$75,608	\$300,000	\$375,608	\$0	\$0
REQUESTED PERCENTAGE (%)				20.13 %	79.87 %			
TPWD APPROVED PERCENTAGE (%)				0.00 %	0.00 %			
Proposed - Total Itemized Project Costs - (both federal and matching funds)				\$375,608				
Proposed - Total Federal Funds Requested - (80% or less of Total Project Cost)				\$300,000				
Proposed - Local Match Amount - (20% or more of total Project Cost)				\$75,608				
Approved - Total Itemized Project Costs - (both federal and matching funds):				\$0				

Project Budget Details

Hays County

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Approved - Total Federal Funds - (80% or less of Total Project Cost):	\$0
Approved - Local Match Amount - (20% or more of Total Project Cost):	\$0

Proposed Method of Financing Sponsor's Share

Please describe the source of funds, donations, or in-kind contributions that will make up the Sponsor's match (at least 20%). You may include government appropriations; private donations of land, easement, cash, labor, materials and equipment; or in-house labor, equipment and materials: Hays County will provide the donation of the trail easement area, valued at \$40,820, and the trailhead area, valued at \$19,188. Great Springs Project will provide a cash donation of \$15,600. These donation and cash contributions amount to \$75,608 as the 20% required match, with an overmatch of \$608.

How will the development of the project be constructed/installed?

- ☒ Contract
- ☐ Force Account
- ☐ In Kind
- ☐ Other Government Assistance
- ☐ Qualified Youth Corps
- ☐ Volunteers

In-Kind/Volunteer Match

Describe (1000 characters or less) the Methodology of financial value obtained for In-Kind/ Volunteer

The donation of the trail easement area (7.85 acres) and trailhead area (3.69 acres) on the Presa Grande Segment has a combined value of \$60,008 (\$5,200/acre X 11.54 acres) as supported by an appraiser's evaluation from a recent appraisal of the property . Hays County paid \$5,200 per acre for a conservation easement covering 384.98 acre of Presa Grande that includes the trail easement. Attached in the Additional Optional Uploads section of this proposal, please find the public access easement and the quitclaim deed documentation.

Project Scope (if available - from Grant Agreement Details form)

TPWD Notes: *For TPWD use only*

Floodplains and Wetlands

Floodplain: The lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum the 100-year floodplain.

Wetlands: Those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Additional information on wetlands is available from the Texas Outdoor Recreation Plan (TORP) [Chapter 3-Wetlands](#).

Is any part of the Project area within a 100-year floodplain or include wetlands?

☒ Yes ☐ No

Provide a floodplain map delineating the floodplain/wetland area and identify the proposed Project area. [Click Here](#)

Upload Floodplain/Wetland Map Document:

https://tpwd-recgrants.intelligrants.com/_Upload/33638_1116702-HAYSCOUNTY_FLOODPLAINMAP.pdf

Environmental Impacts

Identify the level of any perceived environmental impacts. Describe the impacts based on the proposed development, and discuss any anticipated short and long-term impacts of the Project on the site.

The trail construction for the Presa Grande Segment is expected to have minimal environmental impacts both in the short- and long-term timeline of the project. The trail easement area is undeveloped and there will be no impervious cover due to this being a natural surface trail.

PUBLIC ACCESS EASEMENT

THIS PUBLIC ACCESS EASEMENT, dated this the 28 day of October, 2022, is hereby made by Byrdnest Ventures, LLC ("Grantor"), in favor of Hays County, a political subdivision of the State of Texas ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of approximately, 678 acres of land within Hays County, Texas, further described in **Exhibit PA-A**, which is attached hereto and incorporated herein for all purposes ("the Property");

WHEREAS, Grantee wishes to acquire, for the benefit of the citizens of Hays County and the general public, two public access hike and bike trail easements, the alignment of which is further depicted in **Exhibit PA-B**, which is attached hereto and incorporated herein for all purposes ("the Trail Easements");

WHEREAS, Grantor wishes to convey the Trail Easements to Grantee in consideration of and as part of Grantee's acquisition of a Conservation Easement over a portion of the Property;

NOW THEREFORE, in consideration of the foregoing, and intending to be mutually bound hereby, the Parties agree as follows:

1. **Easement.** Grantor hereby grants and conveys to Grantee a permanent public access hike and bike trail easement extending from the southeastern corner of the Property and running along the entire southeasterly border of the Property and the entire southwesterly border of the Property. The area in which the easement may be located extends one hundred feet (100') from the property line along each border described above ("Usable Easement Area"). However, the area utilized for the trail may not be wider than thirty feet (30') and the trail, as constructed, may not be wider than six feet (6'). Once constructed, the Trail Easements area shall extend fifteen feet (15') in either direction from the center of the trail ("Actual Easement Area"). The Parties agree that the alignment of the Actual Easement Area is depicted in Exhibit PA-B.
2. **Use.** The Trail Easements area shall be used exclusively for the installation, operation and maintenance of a public access hike and bike trail. No motorized vehicles shall be allowed upon the Trail Easements, other than those utilized by Grantee for maintenance of the Trail Easements or for emergency access. As the fee owner of the Property, Grantor may continue to use the Easement area, including access to the Trail Easements with motorized vehicles, as long as Grantor's access to the Trail Easements does not interfere with the rights of Grantee (or the general public) described herein.
3. **Public Trail.** Grantor acknowledges that the Trail Easements shall be used by the general public, at times and subject to rules and limitations provided by Grantee. Grantor and

Corridor Title Co. GF# 22-1923-C

Grantee shall confer on a periodic basis (at least once annually) to address needs associated with public access to the Trail Easements.

4. **Construction.** While the Trail Easements are being granted for uses compatible and consistent with that of a public hike and bike trail, the Parties recognize that activities in support that objective, such as construction and maintenance, shall be necessary from time to time. At Grantee's expense, Grantee shall install and maintain trail surfaces, fills, grades, culverts, gates and other trail-related improvements, the initial construction timeline which shall be determined by Grantee. Grantee shall be responsible for controlling the use of the trail, as well as ensuring that best safety practices are followed by Grantee's agents and promoted to users of the Trail Easements.
5. **Fencing.** Grantor agrees to construct fencing along the border of the Property and Trail Easements. The cost of fencing shall be borne by Grantor. Under no circumstance shall Grantee be responsible for construction or maintenance of fencing on the Property, unless the Parties determine that damage to fencing has been caused by users of the Trail Easements. Grantor may align fencing along the border of the Usable Easement Area or, in the alternative, may wait until Grantee establishes the Trail Easements alignment, after which Grantor may align fencing along the Actual Easement Area.
6. **Maintenance and Repairs.** Grantee shall be responsible for maintenance and repair of the Trail Easements improvements.
7. **MUTUAL INDEMNITY.** GRANTEE AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS GRANTOR, ITS OFFICERS, DIRECTORS AND EMPLOYEES AGAINST ALL DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND DEFENSE COSTS, TO THE EXTENT CAUSED BY GRANTEE'S NEGLIGENT INSTALLATION OR OPERATION OF THE TRAIL EASEMENTS.

GRANTOR AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS GRANTEE, ITS OFFICERS, DIRECTORS, EMPLOYEES AND SUBCONTRACTORS AGAINST ALL DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND DEFENSE COSTS, TO THE EXTENT CAUSED BY GRANTOR'S NEGLIGENT ACTS IN CONNECTION WITH THIS PUBLIC ACCESS EASEMENT.

NEITHER GRANTOR NOR GRANTEE SHALL BE OBLIGATED TO INDEMNIFY THE OTHER PARTY IN ANY MANNER WHATSOEVER FOR THE OTHER PARTY'S NEGLIGENCE.
8. **Successors.** This Public Access Easement shall be binding upon the Parties hereto, their respective heirs, successors and assigns. In the event Grantor or Grantee sells or otherwise transfers their interests in the subject Property, such transfer shall be subject to this Public Access Easement and such transferee shall become bound to all terms and obligations accruing subsequent to such transfer.

9. **Term and Termination.** This Public Access Easement shall be recorded in the Hays County Official Public Records and shall run with the land perpetually. However, once Trail Easements improvements have been made and the Trail Easements have been opened to the public, should Grantee close the Trail Easements for public use for more than two (2) consecutive years, then Grantor shall have a right to demand that this Public Access Easement be terminated. If, pursuant to the conditions in this Section, Grantor demands termination of this Public Access Easement, then Grantee shall have ninety (90) days to remove any improvements it has made to the Trail Easements area, after which the termination will be effective.

10. **Notices.** All notices issued by Grantor under or regarding this Public Access Easement shall be provided in writing to the County at: Hays County, Attn: County Judge, 111 E. San Antonio, Suite 300 San Marcos, Texas 78666.

All notices issued by Grantee under or regarding this Public Access Easement shall be provided in writing to Grantor at 1621 Churchwood Cove, Austin, TX 78746.

Notices from one party to another under this Section may be made by U.S. Mail, parcel post, or courier, sent to the designated contact at the designated addresses cited above.

11. **Recitals.** The recitals set forth in the preamble of this Agreement are hereby incorporated into this Public Access Easement as if fully set forth herein.

In Witness Whereof, the parties have caused their representatives to set their hands. By the signature of its representative below, Grantor conveys and Grantee manifests its acceptance of this Easement.

Grantor:

Grantee:

Hays County, a political subdivision of the State of Texas

Signature: _____

7C Bld

Signature: _____

Mark Kennedy

Printed

Name: _____

KEVIN BIRD

Printed

Name: _____

Mark Kennedy

Title: _____

MEMBER

Title: _____

General Counsel

Date: _____

10/28/22

Date: _____

10/28/22

ATTEST: _____

Elaine Cardenas, MBA, PhD

Hays County Clerk

Approved as to Form:

Mark Kennedy

General Counsel

STATE OF TEXAS §

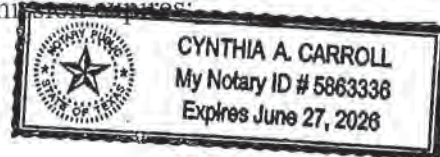
COUNTY OF HAYS §

This Public Access Easement was acknowledged this date before me by Kevin Byrd, member
/name of signer/, a single/married person/office or position held/ such as general partner/managing
partner/President/ of Byrdnest Ventures, LLC name/, a Texas (state, such as Texas) sole
proprietorship/general partnership/limited partnership/limited liability partnership/limited liability
company/corporation/ in the capacity therein stated and on behalf of such entity.

Date: October 28, 2022Cynthia A. Carroll

Notary Public, State of Texas

My Commission Expires:



STATE OF TEXAS §

COUNTY OF Hays §

This Easement was acknowledged before me this date by Mark Kennedy,
General Counsel of Hays County, a political subdivision of the State of Texas, in the
capacity therein stated and on behalf of such entity.

Date: October 28, 2022Cynthia A. Carroll

Notary Public, State of Texas

My Commission expires: _____

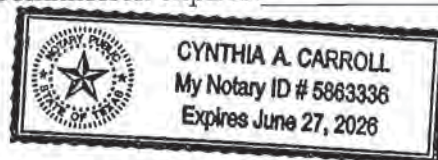


Exhibit PA-A

“The Property”

FIELD NOTE DESCRIPTION FOR AN 844.44 ACRE TRACT OF LAND, SITUATED IN HAYS COUNTY, TEXAS:

BEING 844.44 ACRES OF LAND OUT OF THE ELIJAH CLARK SURVEY, ABSTRACT NO. 84 AND THE JOHN CARSON SURVEY, ABSTRACT NO. 80 IN HAYS COUNTY, TEXAS, DESCRIBED AS 848.70 ACRES CONVEYED BY SPECIAL WARRANTY DEED TO JP STEWART HOLDINGS LIMITED PARTNERSHIP, RECORDED IN VOLUME 1343, PAGE 371 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod lying in the south right-of-way line of Hilliard road, a public road, marking the southeast corner of a tract of land, known as Lot 5 of the Bueche-Wilson Subdivision, recorded in Volume 10, Page 244 of the Official Public Records of Hays County, Texas, for the north corner of this tract;

THENCE, generally along said south right-of-way Hilliard Road, common with the east line of this tract, the following twelve (12) courses and distances:

- 1) South 49°02'02" East, a distance of 121.72 feet to a 1/2" iron rod found, at the point-of-curvature of a curve to the left, for an angle corner of this tract;
- 2) Along said curve to the left, an arc of 260.19 feet, said curve having a radius of 1,043.42 feet, a chord which bears South 39°17'18" East, for a distance of 259.52 feet to a 1/2" iron rod found, at the point-of-tangency of said curve, for an angle corner of this tract;
- 3) South 46°28'41" East, a distance of 1,266.46 feet to a 1/2" iron rod found, at the point-of-curvature of a curve to the right, for an angle corner of this tract;
- 4) Along said curve to the right, an arc of 601.36 feet, said curve having a radius of 1,105.04 feet, a chord which bears South 30°53'27" East, for a distance of 593.97 feet to a 1/2" iron rod set, at the point-of-tangency of said curve, for an angle corner of this tract;
- 5) South 15°18'12" East, a distance of 404.84 feet to a 1/2" iron rod set, at the point-of-curvature of a curve to the left, for an angle corner of this tract;
- 6) Along said curve to the left, an arc of 1079.55 feet, said curve having a radius of 3,859.72 feet, a chord which bears South 23°20'07" East, for a distance of 1,076.03 feet to a 1/2" iron rod set, at the point-of-tangency of said curve, for an angle corner of this tract;
- 7) South 31°20'38" East, a distance of 2,102.60 feet to a 1/2" iron rod found, for an angle corner of this tract;
- 8) South 16°48'25" West, a distance of 178.06 feet to a 1/2" iron rod set, for an angle corner of this tract;
- 9) South 16°03'12" West, a distance of 106.28 feet to a 1/2" iron rod set, for an angle corner of this tract;
- 10) South 17°50'27" West, a distance of 98.56 feet to a magnail with a washer found, for an angle corner of this tract;

- 11) South $52^{\circ}59'48''$ East, a distance of 513.55 feet to a 1/2" iron rod set, for an angle corner of this tract, and;
- 12) South $53^{\circ}51'24''$ East, a distance of 72.05 feet to an oak fence post, marking the north corner of a tract of land, known as Lot 20 of the Hunters Glen Subdivision, recorded in Volume 1, Page 61 of the Official Public Records of Hays County, Texas, for the east corner of this tract;

THENCE, along the west line of said Hunters Glen Subdivision Lots 20 through 28, common with the east line of this tract, the following eight (8) courses and distances:

- 1) South $44^{\circ}50'36''$ West, a distance of 312.07 feet, to a 1/2" pipe, for an angle corner of this tract;
- 2) South $44^{\circ}22'30''$ West, a distance of 574.88 feet, to a 1" pipe, for an angle corner of this tract;
- 3) South $42^{\circ}37'40''$ West, a distance of 180.51 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 4) South $34^{\circ}34'08''$ West, a distance of 334.12 feet, to a 1/2" pipe, for an angle corner of this tract;
- 5) South $34^{\circ}47'51''$ West, a distance of 702.76 feet, to a 1/2" iron rod found, for an angle corner of this tract;
- 6) South $34^{\circ}59'44''$ West, a distance of 128.05 feet, to a 1/2" pipe, for an angle corner of this tract;
- 7) South $27^{\circ}20'50''$ West, a distance of 120.19 feet, to 1/2" iron rod set, for an angle corner of this tract, and;
- 8) North $80^{\circ}06'16''$ West, a distance of 36.27 feet, to a magnail with a washer found, marking the east corner of a 52.34 acre tract of land conveyed by Warranty Deed with Vendor's Lien to Robert W. and Pamela D. Starnes, recorded in Volume 3081, Page 705 of the Official Public Records of Hays County, Texas, for the southeast corner of this tract;

THENCE, along the southeast line of this tract, common with the northeast line of said 52.34 acre tract, the following twelve (12) courses and distances;

- 1) North $43^{\circ}26'53''$ West, a distance of 41.56 feet, to 1/2" iron rod found, for an angle corner of this tract;
- 2) North $30^{\circ}56'11''$ West, a distance of 602.45 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 3) North $31^{\circ}15'52''$ West, a distance of 326.67 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 4) North $25^{\circ}30'13''$ East, a distance of 5.68 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 5) North $30^{\circ}20'42''$ West, a distance of 190.03 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 6) North $31^{\circ}41'42''$ West, a distance of 125.80 feet, to a 1/2" iron rod set, for an angle corner of this tract;

- 7) North 33°00'02" West, a distance of 78.33 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 8) North 35°58'20" West, a distance of 57.59 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 9) North 32°36'35" West, a distance of 224.23 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 10) North 33°13'14" West, a distance of 81.86 feet, to a fence corner post, for an angle corner of this tract;
- 11) North 80°00'27" West, a distance of 4.65 feet, to a 1/2" iron rod set, for an angle corner of this tract, and;
- 12) South 50°04'58" West, a distance of 269.76 feet, to a fence corner post, for an angle corner of this tract;

THENCE, along the southeast line of this tract, common with the northeast line of an unrecorded subdivision, known as Backus Estates, the following five (5) courses and distances;

- 1) North 56°17'16" West, a distance of 315.08 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 2) North 56°50'10" West, a distance of 336.44 feet, to a 1/2" iron rod found, for an angle corner of this tract;
- 3) North 57°25'02" West, a distance of 291.77 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 4) North 60°42'56" West, a distance of 62.61 feet, to a 1/2" iron rod found, for an angle corner of this tract, and;
- 5) North 61°38'15" West, a distance of 350.79 feet, to a 1/2" iron rod found, marking the east corner of a 17.08 acre tract of land conveyed by General Warranty Deed to Bradley and Courtney Landsbaum, recorded in Volume 3792, Page 368 of the Official Public Records of Hays County, Texas, for an angle corner of this tract;

THENCE, along the southeast and southwest lines of this tract, common with the northeast and northwest lines of said 17.08 acre tract, the following eleven (11) courses and distances:

- 1) North 16°12'25" West, a distance of 493.01 feet, to a magnail with a washer, for an angle corner of this tract;
- 2) North 01°40'12" West, a distance of 176.30 feet, to 1/2" iron rod set, for an angle corner of this tract;
- 3) North 01°03'52" West, a distance of 194.38 feet, to 1/2" iron rod found, for the south corner of this tract;

- 4) South 44°24'55" West, a distance of 269.77 feet, to a fence corner post, for an angle corner of this tract;
- 5) South 39°28'24" West, a distance of 38.97 feet, to a fence corner post, for an angle corner of this tract;
- 6) South 41°26'16" West, a distance of 18.78 feet, to a fence corner post, for an angle corner of this tract;
- 7) South 43°29'01" West, a distance of 32.73 feet, to a 10" Elm Tree, for an angle corner of this tract;
- 8) South 44°51'54" West, a distance of 61.37 feet, to a dead tree, for an angle corner of this tract;
- 9) South 56°33'13" West, a distance of 24.93 feet, to a dead tree, for an angle corner of this tract;
- 10) South 55°44'18" West, a distance of 340.15 feet, to a fence corner post, for an angle corner of this tract, and;
- 11) South 56°14'07" West, a distance of 375.02 feet, to a 23" Oak Tree, marking the east corner of a 35.82 acre tract of land conveyed by General Warranty Deed with Vendor's Lien to Rene and Tiffany R. Calderon, recorded in Document No. 19008293 of the Official Public Records of Hays County, Texas, for an angle corner of this tract;

THENCE, North 59°07'18" West, along the northeast line of said 35.82 acre tract, common with the southwest line of this tract, a distance of 1,138.08 feet, to a 1/2" iron rod set, for an angle corner of this tract;

THENCE, North 57°37'24" West, along the northeast line of said 35.82 acre tract, common with the southwest line of this tract, a distance of 684.38 feet, to fence corner post, for an angle corner of this tract;

THENCE, North 57°50'22" West, along the northeast line of said 35.82 acre tract, common with the southwest line of this tract, a distance of 101.31 feet, to a fence corner post, for an angle corner of this tract;

THENCE, South 43°48'26" West, along the northwest line of said 35.82 acre tract, common with a southeast line of this tract, a distance of 317.16 feet, to a fence corner post, marking the east corner of a 3,380.82 acre tract of land, conveyed by Special Warranty Deed, to the Harold M. Freeman Educational Foundation, recorded in Volume 359, Page 887 of the Official Public Records of Hays County, Texas, for an angle corner of this tract;

THENCE, North 42°27'54" West, along the northeast line of said 3,380.82 acre tract, common with the southwest line of this tract, a distance of 1,681.61 feet, to a fence post, for an angle corner of this tract;

THENCE, North 42°21'19" West, along the northeast line of said 3,380.82 acre tract, common with the southwest line of this tract, a distance of 1,534.32 feet, to a fence post, for an angle corner of this tract;

THENCE, North 42°16'57" West, along the northeast line of said 3,380.82 acre tract, common with the southwest line of this tract, a distance of 1,040.19 feet, to a fence post, for an angle corner of this tract;

THENCE, North 40°50'58" West, along the northeast line of said 3,380.82 acre tract, common with the southwest line of this tract, a distance of 488.06 feet, to a fence post, for an angle corner of this tract;

THENCE, North 40°13'46" West, along the northeast line of said 3,380.82 acre tract, common with the southwest line of this tract, a distance of 2.25 feet, to a fence corner post, marking the south corner of a 49.95 acre tract of land, conveyed by Warranty Deed to Blumen Field Farms, Ltd, recorded in Volume 1303, Page 120 of the Official Public Records of Hays County, Texas, for the west corner of this tract;

THENCE, along the northwest line of this tract, common with the southeast line of said 49.95 acre tract, a 50.03 acre tract of land conveyed by Special Warranty Deed with Vendor's Lien to Robert P. and Margret Ingram, recorded in Volume 1262, Page 95 of the Official Public Records of Hays County, Texas, and a 25.00 acre tract of land, conveyed by General Warranty Deed with Vendor's Lien to Lorena De La Pena Oranday and Fernando Gonzalez Olague, recorded in Document No. 20010432 of the Official Public Records of Hays County, Texas, the following four (4) courses and distances:

- 1) North 43°23'20" East, a distance of 1,579.25 feet, to a 1/2" iron rod set, for an angle corner of this tract;
- 2) North 44°00'42" East, a distance of 547.11 feet, to a magnail with a washer, for an angle corner of this tract;
- 3) North 43°17'07" East, a distance of 785.49 feet, to 1/2" iron rod found, for an angle corner of this tract, and;
- 4) North 44°07'20" East, a distance of 241.09 feet, to 1/2" iron rod found, marking the west corner of a 14.00 acre tract of land conveyed by General Warranty Deed with Vendor's Lien to Luc and Sandra L'etoile, recorded in Volume 2852, Page 11 of the Official Public Records of Hays County, Texas, for the northwest corner of this tract;

THENCE, South 46°36'26" East, along the northeast line of this tract, common with the southwest line of said 14.00 acre tract, a subdivision, known as Swisher's Ridge, Lots 4 and 5, recorded in Volume 11, Page 92 of the Official Public Records of Hays County, Texas, and a 10.00 acre tract of land conveyed by Warranty Deed to Elmer Ray and Doris J. Jackson, recorded in Document No. 20022401 of the Official Public Records of Hays County, Texas, a distance of 2,377.72 feet, to 1/2" iron rod set, for an angle corner of this tract;

THENCE, along the northeast line of this tract, common with the southwest line of said 10.00 acre tract and said Bueche-Wilson Subdivision, Lots 2 and 3, the following two courses and distances:

- 1) South 46°33'49" East, a distance of 1,093.95 feet, to a 1/2" iron rod set, for an angle corner of this tract, and;
- 2) South 46°56'21" East, a distance of 521.04 feet, to a 1/2" iron rod found, marking the south corner of said Lot 3, for an angel corner of this tract;

THENCE, North 43°12'30" East, along a northwest line of this tract, common with the southeast line of said Lot 3, a distance of 42.90 feet, to a 1/2" iron rod set, for an angle corner of this tract;

THENCE, North 43°38'34" East, along a northwest line of this tract, common with the southeast line of said Bueche-Wilson Subdivision, Lots 3,4 and 5, a distance of 1,568.17 feet, to a 1/2" iron rod set, for an angle corner of this tract;

THENCE, North 43°33'21" East, a distance of 327.12 feet to the POINT OF BEGINNING containing 844.44 acres of land, more or less.

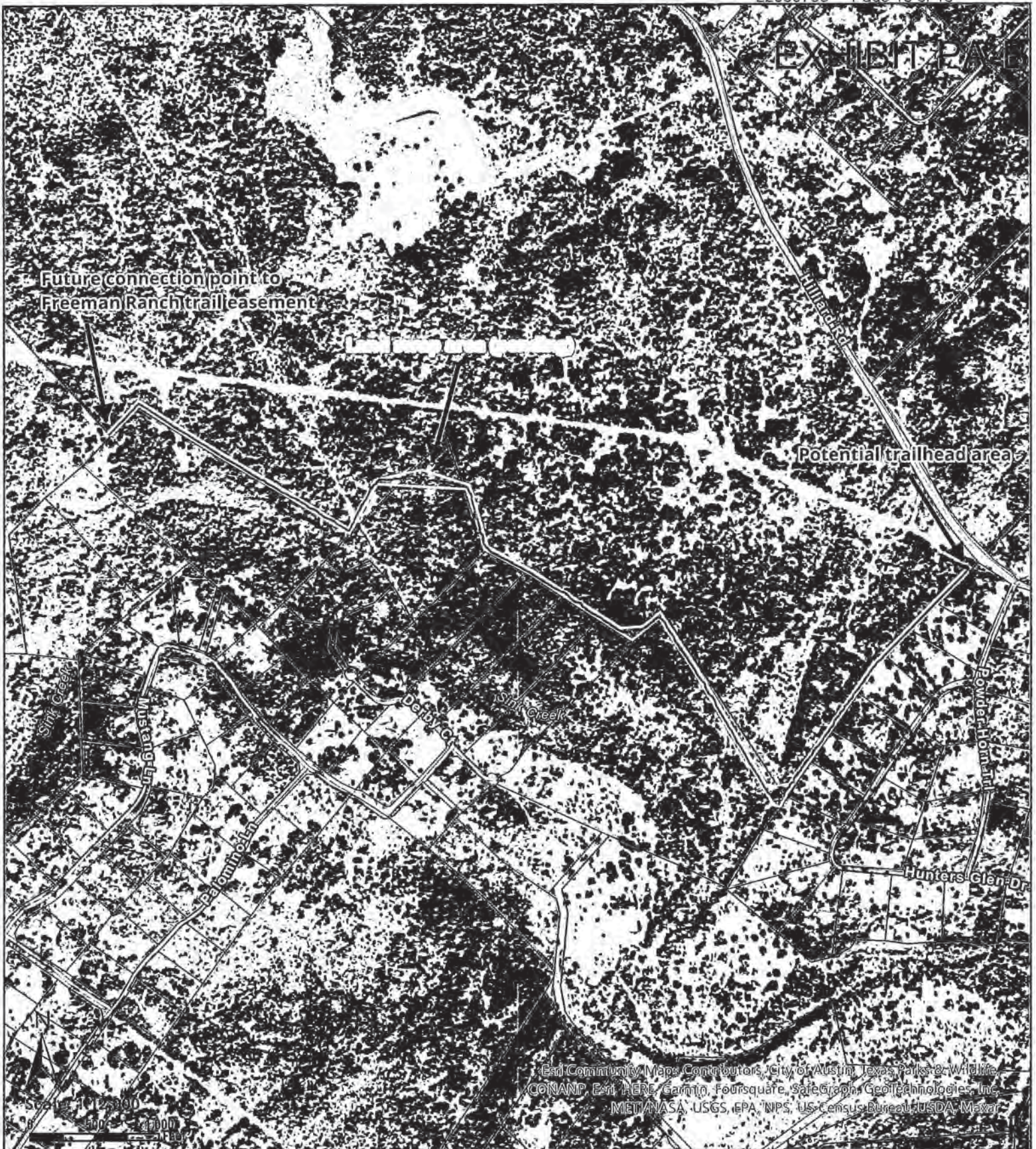


George E. Lucas
Registered Professional Land Surveyor No. 4160
Celco Surveying, Firm Registration No. 10193975
2205 Stonecrest Path
New Braunfels, Texas 78130
Date: September 9, 2021

Exhibit PA-B

“The Trail Easements”

EXHIBIT PAGE



Preliminary Trail Alignment

Presa Grande Trail Corridor

Great Springs Project | Map Date: 10/14/2022

**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.

22050785 EASEMENT
10/31/2022 03:13:19 PM Total Fees: \$82.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

QUITCLAIM DEED

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

ByrdNest Ventures, LLC, a Texas limited liability company ("Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, has QUITCLAIMED and does QUITCLAIM to Hays County, a political subdivision of the State of Texas ("Grantee"), all of Grantor's right, title, and interest in and to the real property in Hays County, Texas, fully described in Exhibit A, and all improvements located on it, together with all of Grantor's right, title, and interest in and to (a) any and all rights, titles, powers, privileges, easements, licenses, rights-of-way, and interests appurtenant to the real property and any improvements on the real property, and (b) any and all rights, titles, powers, privileges, easements, licenses, rights-of-way, and interests of Grantor, either at law or in equity, in possession or in expectancy, in and to any real estate lying in the streets, highways, roads, alleys, rights-of-way, or sidewalks, open or proposed, in front of, above, over, under, through, or adjoining the real property, and in and to any strips or gores of real estate adjoining the real property (collectively, the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances to it in any way belonging, to Grantee, its successors, and its assigns forever, WITHOUT ANY WARRANTIES OR REPRESENTATIONS BY GRANTOR, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE, OR WITH RESPECT TO THE VALUE, PROFITABILITY, OR MARKETABILITY OF THE PROPERTY; so that neither Grantor nor Grantor's heirs, administrators, executors, successors, or assigns will have, claim, or demand any right or title to the Property or any part of it.

Grantee, by its acceptance of this deed, assumes, from the date of Execution cited below, payment of all standby charges, ad valorem taxes, and assessments for the 2022 calendar year and later calendar years not yet due and payable, each to the extent attributable to all or part of the Property and to the extent due and owing by Grantee.

Grantee's address is: 111 E. San Antonio Street, Suite 202, San Marcos, TX 78666.

(SIGNATURES FOLLOW ON THE NEXT PAGE)

Corridor Title Co. GF# 22-1923-C

EXECUTED as of October 28, 2022.

GRANTOR:

ByrdNest Ventures LLC, a Texas limited liability company

By: Kevin Byrd
Kevin Byrd, Member

STATE OF TEXAS

§

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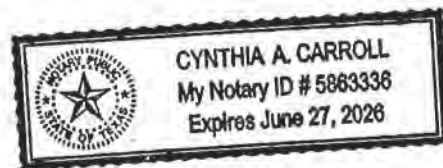
COUNTY OF HAYS

§

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Kevin Byrd, Member of ByrdNest Ventures, LLC, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that it was the act of ByrdNest Ventures, LLC, a Texas limited liability company, and that he executed it as the act of the corporation for the purposes and consideration expressed in it, and in the capacity stated in it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 28 day of Oct, 2022.

Cynthia A. Carroll
Notary Public – State of Texas



FIELD NOTE DESCRIPTION FOR A 3.69 ACRE TRACT OF LAND, SITUATED IN HAYS COUNTY, TEXAS:

BEING 3.69 ACRES OF LAND OUT OF THE REMAINING 384.98 ACRES OF A CERTAIN 844.44 ACRES OF LAND OUT OF THE ELIJAH CLARK SURVEY, ABSTRACT NO 84 IN HAYS COUNTY, TEXAS, CONSISTING OF ABANDONED HAYS COUNTY RIGHT OF WAY, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found, lying in the southwest right-of-way line of Hilliard road, a public road, marking an angle corner of a 10.02 acre tract of land conveyed by General Warranty Deed to Roland Bruno Merz, Jr. and Anita Faye Merz, recorded in Document No. 22043542 of the Official Public Records of Hays County, Texas, for the POINT OF BEGINNING of this tract;

THENCE, along the northeast line of this tract, common with the southwest right-of-way line of said Hilliard Road, the following two (2) courses and distances:

- 1) South 31°34'26" East, a distance of 261.33 feet, to a 1/2" iron rod set, marking an angle corner of the southwest right-of-way line of said Hilliard Road, at the point-of-curvature of a curve to the left, for an angle corner of this tract, and;
- 2) along said curve to the left, an arc of 762.10 feet, said curve having a radius of 2,011.83 feet, a chord which bears South 43°26'03" East, for a distance of 757.55 feet, to a 1/2" iron rod set, at a point of said curve to the left, lying in the northeast line of a tract of land, known as Lot 20 of the Hunters Glen Subdivision, recorded in Volume 1, Page 61 of the Official Public Records of Hays County, Texas, conveyed by General Warranty Deed to Shelby Ryall, recorded in Document No. 20055711 of the Official Public Records of Hays County, Texas, marking an angle corner of said Lot 20 of the Hunters Glen Subdivision, for the southeast corner of this tract;

THENCE, North 69°32'34" West along the southwest line of this tract, common with the northeast line of said Lot 20 of the Hunters Glen Subdivision, a distance of 79.86 feet, to a calculated point, marking an angle corner of said Lot 20 of the Hunters Glen Subdivision, for an angle corner of this tract;

THENCE, North 78°20'34" West along the southwest line of this tract, common with the northeast line of said Lot 20 of the Hunters Glen Subdivision, a distance of 214.00 feet, to a 1/2" iron pipe, marking the north corner of said Lot 20 of the Hunters Glen Subdivision, for an angle corner of this tract;

THENCE, South 44°18'55" West along the southeast line of this tract, common with the northwest line of said Lot 20 of the Hunters Glen Subdivision, a distance of 22.93 feet, to an old fence post, marking an angle corner of said Lot 20 of the Hunters Glen Subdivision, common with the southeasterly corner of a 647.28 acre tract of land conveyed by Special Warranty Deed to Byrdnest Ventures, LLC, recorded in Document No. 21052047 of the Official Records of Hays County, Texas, for the south corner of this tract;

THENCE, along the southwest line of this tract, common with the northeast line of said Byrdnest Ventures, LLC, tract and said Merz, Jr. tract, the following three (3) courses and distances:

- 1) North 53°51'24" West, a distance of 72.05 feet, to a 1/2" iron rod found, marking an angle corner of the said Merz, Jr. tract, for an angle corner of this tract;
- 2) North 52°59'48" West, a distance of 375.10 feet, to a 1/2" iron rod set, marking an angle corner of the said Merz, Jr. tract, for an angle corner of this tract, and;

- 3) North $52^{\circ}59'48''$ West, a distance of 138.45 feet, to a magnail with a washer, marking an angle corner of the said Merz, Jr. tract, for the west corner of this tract;

THENCE, along the west line of this tract, common with the east line of said Merz, Jr. tract, the following three (3) courses and distances:

- 1) North $17^{\circ}50'27''$ East, a distance of 98.56 feet, to a calculated point, marking an angle corner of the said Merz, Jr. tract, for an angle corner of this tract;
- 2) North $16^{\circ}03'12''$ East, a distance of 106.28 feet, to a calculated point, marking an angle corner of the said Merz, Jr. tract, for an angle corner of this tract, and;
- 3) North $16^{\circ}48'25''$ East, a distance of 178.06 feet, to the POINT OF BEGINNING containing 3.69 acres of land, more or less.



George E. Lucas
Registered Professional Land Surveyor No. 4160
Celco Surveying, Firm Registration No. 10193975
18018 Overlook Loop, Suite 105
San Antonio, Texas 78259
Date: October 27, 2022

**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.

22050584 DEED

10/31/2022 07:35:56 AM Total Fees: \$38.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas



San Marcos Outer Loop Trail

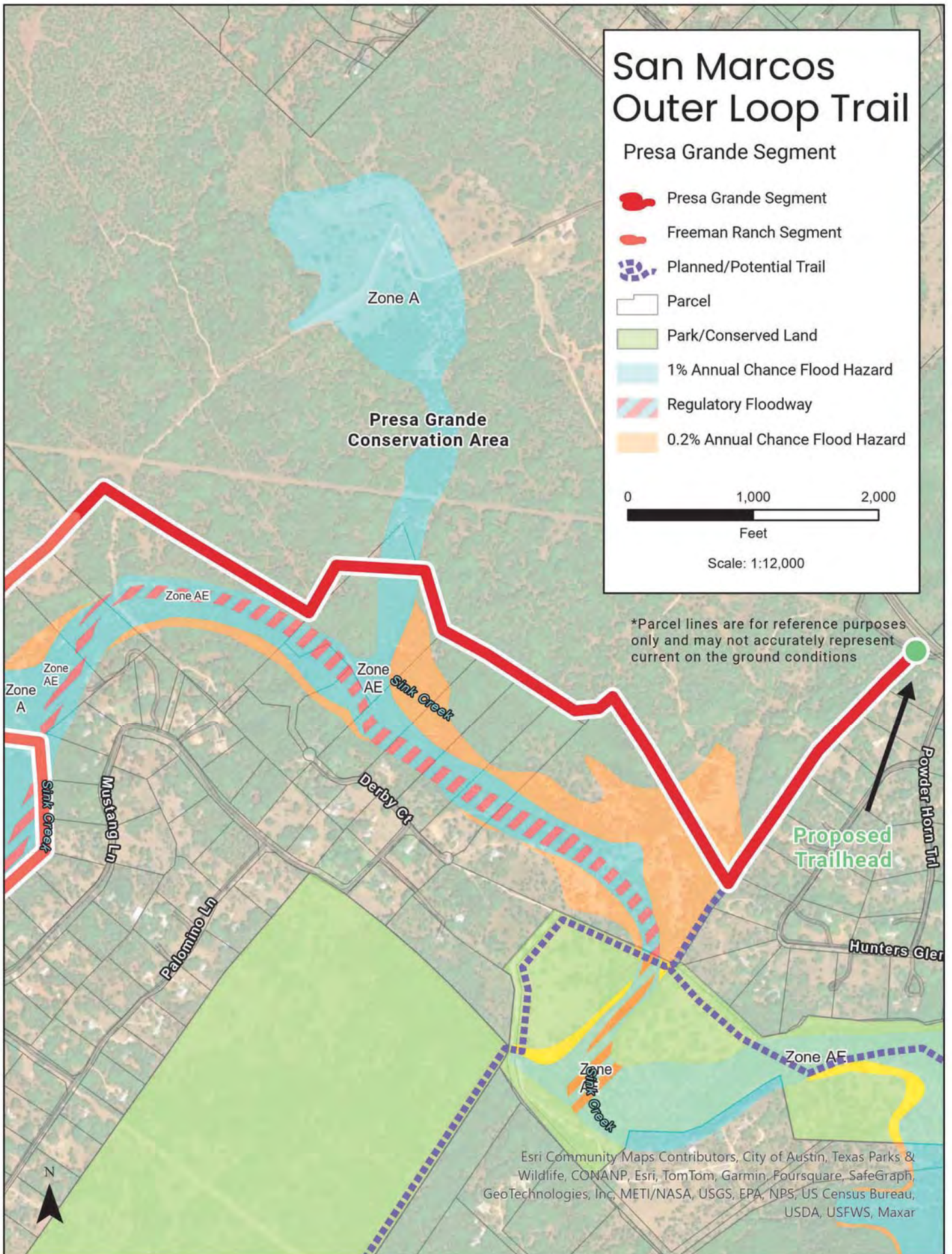
Presa Grande Segment

-  Presa Grande Segment
-  Freeman Ranch Segment
-  Planned/Potential Trail
-  Parcel
-  Park/Conserved Land
-  1% Annual Chance Flood Hazard
-  Regulatory Floodway
-  0.2% Annual Chance Flood Hazard

0 1,000 2,000
Feet

Scale: 1:12,000

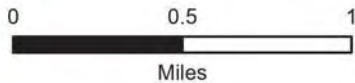
*Parcel lines are for reference purposes only and may not accurately represent current on the ground conditions



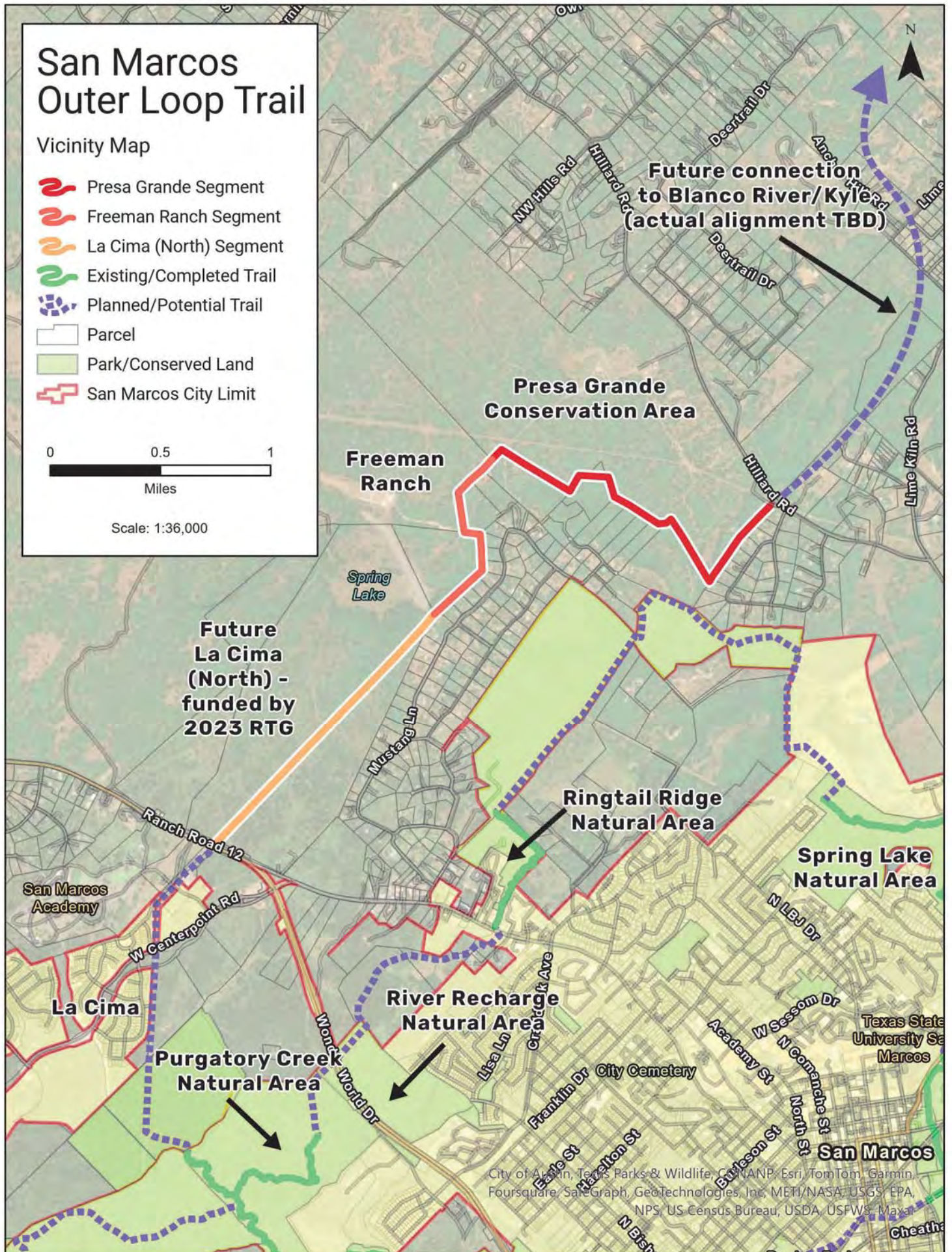
San Marcos Outer Loop Trail

Vicinity Map

-  Presa Grande Segment
-  Freeman Ranch Segment
-  La Cima (North) Segment
-  Existing/Completed Trail
-  Planned/Potential Trail
-  Parcel
-  Park/Conserved Land
-  San Marcos City Limit



Scale: 1:36,000



San Marcos Outer Loop Trail

Presa Grande Segment

Site Photographs

Hays County



Cleared Trail Corridor

Presa Grande Segment



Flagged Trail Corridor

Presa Grande Segment



San Marcos Outer Loop Trail

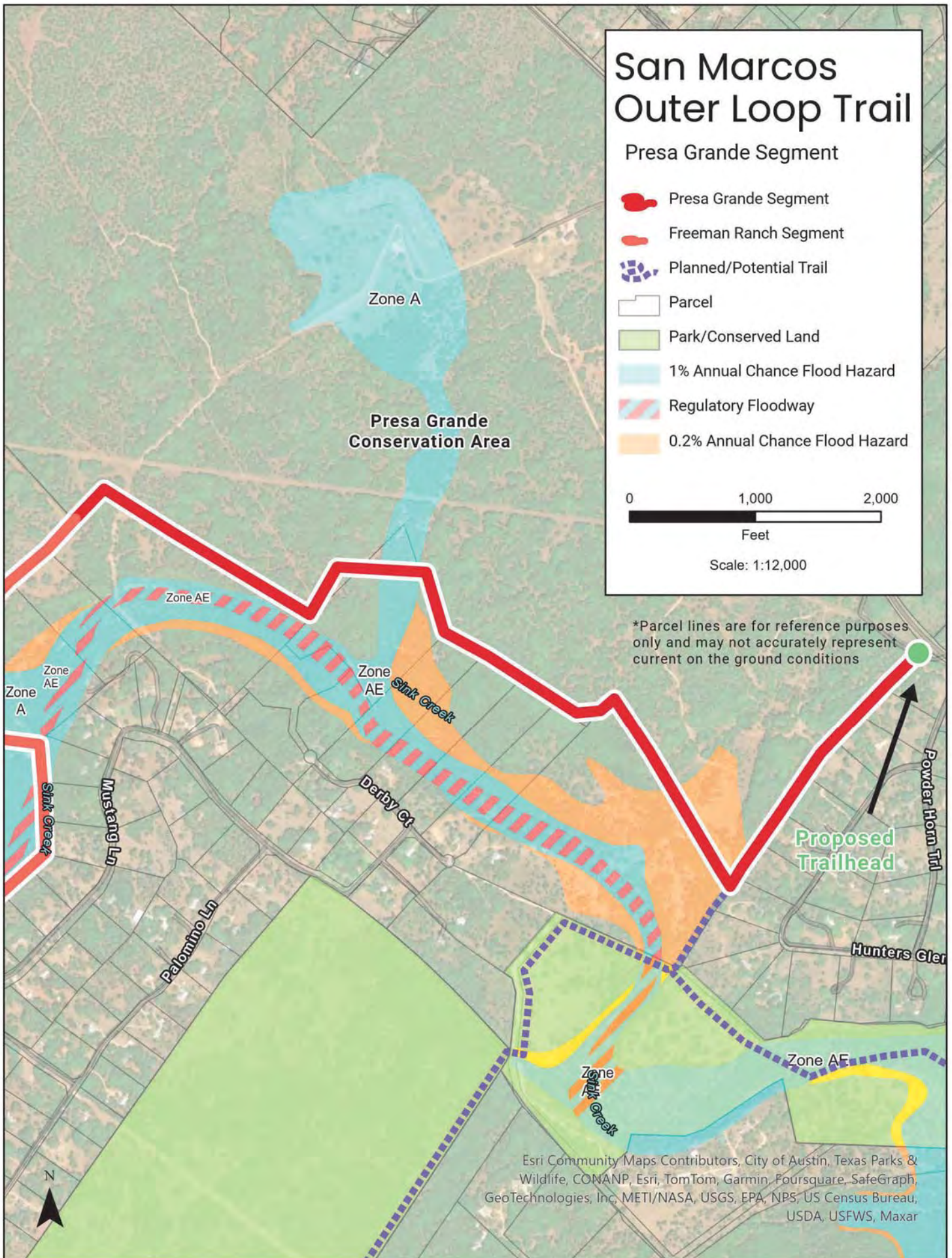
Presa Grande Segment

-  Presa Grande Segment
-  Freeman Ranch Segment
-  Planned/Potential Trail
-  Parcel
-  Park/Conserved Land
-  1% Annual Chance Flood Hazard
-  Regulatory Floodway
-  0.2% Annual Chance Flood Hazard

0 1,000 2,000
Feet

Scale: 1:12,000

*Parcel lines are for reference purposes only and may not accurately represent current on the ground conditions



Esri Community Maps Contributors, City of Austin, Texas Parks & Wildlife, CONANP, Esri, TomTom, Garmin, Foursquare, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS, Maxar



Great Springs Project, through partnership and bold initiative, is creating a network of spring-to-spring trails and protected natural areas over the Edwards Aquifer between San Antonio and Austin.

January 23, 2024

Texas Parks and Wildlife Department
Attn: Trey Cooksey, Recreational Trails Program Manager
4200 Smith School Road
Austin, TX 78744

Re: Letter of Support for the Development of the San Marcos Outer Loop Trail – Presa Grande Segment and the San Marcos Outer Loop Trail – Freeman Ranch Segment

BOARD

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CEO

Garry Merritt

Dear Mr. Cooksey,

I am writing on behalf of Great Springs Project, extending our support for two compelling applications submitted by Hays County and Texas State University for the Texas Parks and Wildlife Department (TPWD) Recreational Trails Grant (RTG). These applications focus on the development of the San Marcos Outer Loop Trail – Presa Grande Segment and the San Marcos Outer Loop Trail – Freeman Ranch Segment respectively. We firmly endorse these proposals, recognizing their transformative potential to enhance connectivity with existing and planned trails, including our 2023 TPWD RTG-funded La Cima Segment, to deliver substantial recreational benefits to the San Marcos community.

The development of the Presa Grande Segment and the Freeman Ranch Segment holds the promise of delivering not only recreational advantages but also substantial contributions to health, flood mitigation, and the preservation of natural resources for the City of San Marcos. These two segments will seamlessly integrate with a comprehensive network of existing and planned trails, including the 18-mile San Marcos Loop and Check trail system that encircles the city with publicly accessible trails and greenspace, and the regional Great Springs Trail connecting Austin and San Antonio through a 100+ mile network of trail. Through these two grants, Hays County and Texas State University are poised to catalyze the continued development of trails that foster healthier lifestyles by connecting people to their community.

Great Springs Project is committed to working in tandem with Hays County and Texas State University, aligning our goals with the objectives outlined in each grant proposal. Our support and active collaboration aim to play a pivotal role in advancing the development of both the Presa Grande Segment and the Freeman Ranch Segment, as well as their alignment with the TPWD RTG-funded La Cima Segment in San Marcos. We look forward to working with Hays County and Texas State University on this exciting endeavor. Thank you for your full and fair consideration.

Sincerely,

Garry Merritt
Chief Executive Officer

PO Box 12331
Austin, TX 78711

GreatSpringsProject.org





Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY

Sponsor:

Commissioner Shell

Agenda Item

Authorize Commissioner, Precinct 3 to execute a letter of support for a grant application from Texas State University to the Texas Parks and Wildlife Recreational Trails Grant Program. **SHELL/T.CRUMLEY**

Summary

Texas State University is submitting an application to the Texas Parks and Wildlife Department, Recreational Trails program to construct a trail on the Freeman Ranch property. This property lies in Precinct 3. They are seeking a letter of support from Hays County.

Attachments

Letter of Support

January 30, 2024

Trey Cooksey, Recreational Trails Program Manager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744

Re: Letter of Support for the Development of the San Marcos Outer Loop Trail – Presa Grande Segment

Dear Mr. Cooksey,

I am writing on behalf of Hays County in support of Texas State University's grant application to the Texas Parks and Wildlife Department (TPWD) Recreational Trails Grant (RTG) for the development of the San Marcos Outer Loop Trail – Freeman Ranch Segment. We firmly endorse this proposal, recognizing their transformative potential to enhance connectivity with existing trails and deliver substantial recreational benefits to the San Marcos community.

The development of the Freeman Ranch Segment holds the promise of delivering not only recreational advantages but also substantial contributions to health, flood mitigation, and the preservation of natural resources for the City of San Marcos. This trail segment will seamlessly integrate with a comprehensive network of existing and planned trails, including the 2023 TPWD RTG-funded La Cima Segment to the south, the proposed Presa Grande Segment to the north, the 18-mile San Marcos Loop and Check trail system that encircles the city with publicly accessible trails and greenspace, and the regional Great Springs Trail connecting Austin and San Antonio through a 100+ mile network of trail. Through this grant, Texas State University is poised to catalyze the continued development of trails that foster healthier lifestyles by connecting people to their community.

Hays County is committed to working in tandem with Texas State University, aligning our goals with the objectives outlined in the grant proposal. Our support and active collaboration aim to play a pivotal role in advancing the development of the Freeman Ranch Segment and its alignment with the proposed Presa Grande Segment in San Marcos. We look forward to working with Texas State University on this exciting endeavor.

Thank you for your full and fair consideration.

Sincerely,

Lon Shell
Commissioner, Pct. 3



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY/HIGGINS

Sponsor:

Commissioner Ingalsbe

Agenda Item

Authorize the submission of a grant application to the Office of the Governor, Criminal Justice Grant Program in the amount of \$142,183.71. **INGALSBE/T.CRUMLEY/HIGGINS**

Summary

If awarded, this grant would support two staff positions in the District Attorney's Office as well as equipment and training costs. The positions are an Environmental Investigator and an Admin II position. Both positions would be focused on environmental crime investigations, as well as leading trainings and community education events. There is no match required for this grant.

Grant number 4993001

Grant period 10/01/2024 - 9/30/2025

Attachments

Application

Resolution

[Print This Page](#)**Agency Name:** Hays County**Grant/App:** 4993001 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** Hays County Environmental Enforcement Program**Status:** Application Pending Submission

Narrative Information

Introduction

The purpose of this funding is to support projects that promote public safety, reduce crime, and improve the criminal justice system.

Certifications

In addition to the requirements found in existing statute, regulation, and the funding announcement, this program requires applicant organizations to certify compliance with the following:

Constitutional Compliance

Applicant assures that it will not engage in any activity that violates Constitutional law including profiling based upon race.

Information Systems

Applicant assures that any new criminal justice information systems will comply with data sharing standards for the Global Justice XML Data Model and the National Information Exchange Model.

Bulletproof Vests

Applicant assures that if it plans to purchase body armor with grant funds, that it has adopted a mandatory wear policy and that all vests purchased have been tested and found to comply with the latest applicable National Institute of Justice (NIJ) ballistic or stab standards. Additionally, vests purchased must be American-made.

Cybersecurity Training Requirement

Local units of governments must comply with the Cybersecurity Training requirements described in Section 772.012 and Section 2054.5191 of the Texas Government Code. Local governments determined to not be in compliance with the cybersecurity requirements required by Section 2054.5191 of the Texas Government Code are ineligible for OOG grant funds until the second anniversary of the date the local government is determined ineligible. Government entities must annually certify their compliance with the training requirements using the [Cybersecurity Training Certification for State and Local Government](#). A copy of the Training Certification must be uploaded to your eGrants application. For more information or to access available training programs, visit the [Texas Department of Information Resources Statewide Cybersecurity Awareness Training](#) page.

Criminal History Reporting

Entities receiving funds from PSO must be located in a county that has an average of 90% or above on both adult and juvenile dispositions entered into the computerized criminal history database maintained by the Texas Department of Public Safety (DPS) as directed in the *Texas Code of Criminal Procedure, Chapter 66*. The disposition completeness percentage is defined as the percentage of arrest charges a county reports to DPS for which a disposition has been subsequently reported and entered into the computerized criminal history system.

Counties applying for grant awards from the Office of the Governor must commit that the county will report at least 90% of convictions within five business days to the Criminal Justice Information System at the Department of Public Safety.

Uniform Crime Reporting (UCR)

Eligible applicants operating a law enforcement agency must be current on reporting complete UCR data and the Texas specific reporting mandated by 411.042 TGC, to the Texas Department of Public Safety (DPS) for inclusion in the annual Crime in Texas (CIT) publication. To be considered eligible for funding, applicants must have submitted a full twelve months of accurate data to DPS for the most recent calendar year by the deadline(s) established by DPS. Due to the importance of timely reporting, applicants are required to submit complete and accurate UCR data, as well as the Texas-mandated reporting, on a no less than monthly basis and respond promptly to requests from DPS related to the data submitted.

Entities That Collect Sexual Assault/Sex Offense Evidence or Investigate/Prosecute Sexual Assault or Other Sex Offenses

In accordance with Texas Government Code, Section 420.034, any facility or entity that collects evidence for sexual assault or other sex offenses or investigates or prosecutes a sexual assault or other sex offense for which evidence has been collected, must participate in the statewide electronic tracking system developed and implemented by the Texas Department of Public Safety. Visit [DPS's Sexual Assault Evidence Tracking Program website](#) for more information or to set up an account to begin participating. Additionally, per Section 420.042 "A law enforcement agency that receives evidence of a sexual assault or other sex offense...shall submit that evidence to a public accredited crime laboratory for analysis no later than the 30th day after the date on which that evidence was received." A law enforcement agency in possession of a significant number of Sexual Assault Evidence Kits (SAEK) where the 30-day window has passed may be considered noncompliant.

DNA Testing of Evidentiary Materials

When funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be

uploaded to the Combined DNA Index System (CODIS) by a government DNA lab with access to CODIS.

Interoperable Communications

Funds to support emergency communications activities must ensure compliance with the FY 2018 SAFECOM Guidance on Emergency Communications Grants; adherence to the technical standards set forth in the FCC Waiver Order, or any succeeding FCC orders, rules, or regulations pertaining to broadband operations in the 700 MHz public safety band; and are fully coordinated with the full-time [Statewide Interoperability Coordinator \(SWIC\)](#) for Texas.

Twelve-Step Programs

Grant funds may not be used to support or directly fund programs such as the Twelve Step Program which courts have ruled are inherently religious. PSO grant funds cannot be used to support these programs, conduct meetings, or purchase related materials.

Program Income

Applicant agrees to comply with all federal and state rules and regulations for program income and agrees to report all program income that is generated as a result of the project's activities. Applicant agrees to report program income through a formal grant adjustment and to secure PSO approval prior to use of the program income. Applicant agrees to use program income for allowable costs and agrees to expend program income immediately after PSO's approval of a grant adjustment and prior to requesting reimbursement of funds.

Deduction Method - Program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless PSO authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the PSO award and grantee match rather than to increase the funds committed to the project.

Asset Seizures and Forfeitures - Program income from asset seizures and forfeitures is considered earned when the property has been adjudicated to the benefit of the plaintiff (e.g., law enforcement entity).

National Instant Background Check System (NICS)

Entities receiving funds under this solicitation that are to generate or upgrade court dispositions or other records that are relevant to National Instant Background Check System (NICS) determinations must have a system in place to ensure that all such NICS-relevant dispositions or records that are generated or upgraded are made available in timely fashion to state repositories/databases that are accessed by NICS.

Body-Worn Cameras (BWCs)

Applicant assures that if it plans to purchase body-worn cameras with grant funds, that it has adopted adequate policies and procedures related to BWC equipment usage, data storage and access, privacy considerations and training. The certification form related to BWC policies and procedures can be found [here](#).

Compliance with State and Federal Laws, Programs and Procedures

Local units of government, including cities, counties and other general purpose political subdivisions, as appropriate, and institutions of higher education that operate a law enforcement agency, must comply with all aspects of the programs and procedures utilized by the U.S. Department of Homeland Security ("DHS") to: (1) notify DHS of all information requested by DHS related to illegal aliens in Agency's custody; and (2) detain such illegal aliens in accordance with requests by DHS. Additionally, counties and municipalities may NOT have in effect, purport to have in effect, or make themselves subject to or bound by, any law, rule, policy, or practice (written or unwritten) that would: (1) require or authorize the public disclosure of federal law enforcement information in order to conceal, harbor, or shield from detection fugitives from justice or aliens illegally in the United States; or (2) impede federal officers from exercising authority under 8 U.S.C. § 1226(a), § 1226(c), § 1231(a), § 1357(a), § 1366(1), or § 1366(3). Lastly, eligible applicants must comply with all provisions, policies, and penalties found in Chapter 752, Subchapter C of the Texas Government Code.

Each local unit of government, and institution of higher education that operates a law enforcement agency, must download, complete and then upload into eGrants the [CEO/Law Enforcement Certifications and Assurances Form](#) certifying compliance with federal and state immigration enforcement requirements. This Form is required for each application submitted to PSO and is active until August 31, 2025 or the end of the grant period, whichever is later.

Equal Employment Opportunity Plan (EEO Plan)

If awarded, applicant agrees to comply with the Equal Employment Opportunity Program (EEOP) requirements per 28 C.F.R. § 42 Subpart E. Agencies may use the EEO Utilization Report Builder to assist with preparing Verification Forms and, if required, Utilization Reports.

Civil Rights Liaison

A civil rights liaison who will serve as the grantee's civil rights point of contact and who will be responsible for ensuring that the grantee meets all applicable civil rights requirements must be designated. The designee will act as the grantee's liaison in civil rights matters with PSO and with the federal Office of Justice Programs.

Enter the Name of the Civil Rights Liaison:

Shari Miller

Enter the Address for the Civil Rights Liaison:

712 S. Stagecoach Trail, Ste 1063 San Marcos, TX 78666

Enter the Phone Number for the Civil Rights Liaison [(999) 999-9999 x9999]:

(512) 393-2245

Overall Certification

Each applicant agency must certify to the specific requirements detailed above as well as to comply with all requirements within the PSO Funding Announcement, the *Guide to Grants*, the *Grantee Conditions and Responsibilities*, any authorizing or applicable state and federal statutes and regulations to be eligible for this program.

☐ **I certify to all of the application content & requirements.**

Project Abstract :

In 2023, the Hays County District Attorney's Office formed an Environmental Taskforce in collaboration with the Hays County Sheriff's Office and Office of Development Services to address environmental crime throughout the county and to improve interagency communications regarding environmental issues. The Task Force was created with training and input from environmental enforcement units in neighboring counties. The primary focus for the Task Force in 2024 is accessibility, community education, and trainings for prosecutors, law enforcement and the courts. The primary focus for 2025 will be enforcement and compliance, as increased community complaints are anticipated and as more criminal matters are filed. Hays County is requesting funds to hire two staff members in the District Attorney's Office dedicated to receiving environmental complaints, investigating environmental crimes, providing training and performing community outreach: one full-time investigator position and one full-time administrative position. Additional funds are requested to support continuing education and training opportunities, as well as supplies.

Problem Statement :

Hays County has experienced exponential growth in the last decade, which has led to pollution from development and construction debris, unauthorized discharge in water, littering, and illegal dumping. There

was a lack of interagency communication and cooperation on environmental crimes, creating a gap in enforcement of these types of cases. An Environmental Task Force was created in 2023 and identified a need for specialized trainings, as law enforcement, prosecutors, court staff and code enforcement representatives did not have consistent specialized trainings to support robust enforcement efforts in Hays County, particularly with unrelated staffing concerns. Once efforts are made to train local law enforcement agencies on environmental violations, there should be a corresponding increase in case referrals in the normal course of patrol duties. While an Environmental Task Force has been created to focus on environmental crimes and fill the communication gaps, a full-time investigator and administrator are needed to conduct Task Force business and to conduct Environmental investigations, including leading trainings and community education events. Since environmental crimes and code violations such as septic and sewage issues or illegal dumping can lead to many community health and safety issues, these offenses often affect large groups of people. Having a dedicated Task Force with consistent staff can generate large impact in communities since environmental issues will be centrally handled from complaint to compliance to follow up.

Supporting Data :

Currently CAPCOG maps incidents of illegal dumping that have been reported to the illegal dumping hotline. Of the 10 counties mapped, Hays County shows a medium level of activity. The counties with the highest level of activity have a strong presence of environmental investigators. By increasing presence and public education, crimes are more likely to be reported and remedied.

Project Approach & Activities:

The Environmental Investigator will receive and address community complaints regarding state and local environmental violations within Hays county, in addition to investigating and following up on interagency referrals. The Investigator will work a complaint from intake to investigation to education/warning/notice to violation or referral for prosecution or attorney review. The Investigator and administrator will attend two regional trainings and one conference in order to receive specialized training in environmental law enforcement. The investigator and administrator will plan, coordinate and execute interagency trainings based on the information learned in their specialized trainings, including guests and speakers from those trainings

Capacity & Capabilities:

The Hays County Criminal District Attorney's Office will supervise the investigator and administrator who will collaborate with the Sheriff's Office, other local law enforcement agencies, Fire agencies and prosecutors within the Task Force. The investigator staff member will be a licensed peace officer and will report directly to the Environmental Prosecutor for casework and the Investigator Supervisor. The administrator staff member will report directly to the Environmental Prosecutor for casework and the Administrative Supervisor. The investigator and administrator will also represent Hays County at the CAPCOG Regional Environmental Task Force Meetings, as they continue to learn best practices for the Task Force and offer counsel to counties who also want to create environmental compliance units.

Performance Management :

Based on research from surrounding counties participating in the RETF, we anticipate the Task Force will receive from 100-300 complaints annually, with the primary goal being compliance. Compliance can be achieved through various avenues- from community education and individual warnings to criminal and civil case filings. The Environmental Investigator will work with the administrator to compile and monitor data points from each investigation from initial complaint to resolution and follow up. The Investigator will use Odyssey for case organization and will coordinate with the Sheriff's Office to use New World for case investigation and evidence management. Nontraditional resolutions to encourage compliance and specialty court assessments will be a focus of the Task Force and the Investigators. Accordingly, specialty court involvement and other resolutions will be collected and monitored as data points.

Target Group :

The target population for services is residents of Hays County, as the investigator and administrator will coordinate investigations across Hays County and will organize trainings to various agencies. The population of Hays County was 241,066 according to the 2020 Census.

Evidence-Based Practices:

In order to achieve the goal, the investigator will enforce local and state laws. Additionally, practices will be informed by Texas Commission on Environmental Quality.

You are logged in as **User Name:** scorprew

Print This Page

Agency Name: Hays County
Grant/App: 4993001 **Start Date:** 10/1/2024 **End Date:** 9/30/2025

Project Title: Hays County Environmental Enforcement Program
Status: Application Pending Submission

Project Activities Information

Introduction

This section contains questions about your project. It is very important for applicants to review their funding announcement for guidance on how to fill out this section. Unless otherwise specified, answers should be about the EXPECTED activities to occur during the project period.

Selected Project Activities:

ACTIVITY	PERCENTAGE:	DESCRIPTION
Crime Prevention	100.00	Funds will be used to support environmental law enforcement in Hays County. Investigator will work with Task Force to receive environmental complaints, investigate environmental violations, collect evidence, refer cases for prosecution, follow up on resolutions, and refer services and community programs to interested parties to reduce recidivism.

CJD Purpose Areas

PERCENT DEDICATED	PURPOSE AREA	PURPOSE AREA DESCRIPTION
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[Print This Page](#)**Agency Name:** Hays County**Grant/App:** 4993001 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** Hays County Environmental Enforcement Program**Status:** Application Pending Submission**Measures Information**

Objective Output Measures

OUTPUT MEASURE	TARGET LEVEL
Casework, non-licensed counseling, individual advocacy, or other support: Hours delivered.	
Casework, non-licensed counseling, individual advocacy, or other support: Individuals receiving	50
Instruction and Support for Pro-social, Educational, Vocational, or Employment skills: Hours delivered.	
Instruction and Support for Pro-social, Educational, Vocational, or Employment skills: Individuals receiving.	
Training or professional development: Individuals provided	
Training or professional development: Individuals received	2
Training, professional development, or technical assistance: Hours provided	
Training, professional development, or technical assistance: Hours received	68

Objective Outcome Measures

OUTCOME MEASURE	TARGET LEVEL
-----------------	--------------

Custom Output Measures

CUSTOM OUTPUT MEASURE	TARGET LEVEL

Custom Outcome Measures

CUSTOM OUTCOME MEASURE	TARGET LEVEL

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[Print This Page](#)
Agency Name: Hays County**Grant/App:** 4993001 **Start Date:** 10/1/2024 **End Date:** 9/30/2025**Project Title:** Hays County Environmental Enforcement Program**Status:** Application Pending Submission**Budget Details Information****Budget Information by Budget Line Item:**

CATEGORY	SUB CATEGORY	DESCRIPTION	OOG	CASH MATCH	IN-KIND MATCH	GPI	TOTAL	UNIT/%
Personnel	Assistant	One Admin II position to support the program. Salary at \$38,155.00. Fringe at \$19,969.55 (Social Security @ \$2,365.61; Medicare @ \$553.25; Retirement @ \$5,250.13; Medical @ \$11,332.56; Dental @ \$404.88; Life @ \$63.12)	\$58,124.55	\$0.00	\$0.00	\$0.00	\$58,124.55	100
Personnel	Certified Peace Officer - All Others	One investigator dedicated to enforcement of environmental law. Salary at \$53,688 and fringe costs at \$23,295.16. Fringe is made up of FICA@ 6.2% (\$3,328.66); Medicare @ 1.45% (\$778.48); Retirement @ 13.76% (\$7,387.47); Medical at \$11,332.56; Dental @	\$76,983.16	\$0.00	\$0.00	\$0.00	\$76,983.16	100

		\$404.88; Life @ \$63.12.						
Travel and Training	In-State Registration Fees, Training, and/or Travel	CAPCOG Basic Environmental law Enforcement Training. Two registrations at \$50 each	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0
Travel and Training	In-State Registration Fees, Training, and/or Travel	CAPCOG Intermediate Environmental Law Enforcement Training. Two registrations at \$50 each	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0
Travel and Training	In-State Registration Fees, Training, and/or Travel	Registration for the Texas Environmental Law Enforcement Association annual conference. Two registrations at \$800 each.	\$1,600.00	\$0.00	\$0.00	\$0.00	\$1,600.00	0
Equipment	Desktop System and Accessories	Computer equipment including one Dell Optiplex Computer (\$1,025) with dual monitors (\$568), keyboard and mouse (\$37), and speakers (\$33)	\$1,663.00	\$0.00	\$0.00	\$0.00	\$1,663.00	1
Equipment	Bulletproof Vest	1 RSC, Black, IIIA Standard, AAS3A01 bulletproof vest for investigator	\$753.00	\$0.00	\$0.00	\$0.00	\$753.00	1
Supplies and Direct Operating Expenses	Cellular, Fax, Pager, and/or Office Telephone	Monthly cost for cellphone for investigator. Budgeted at \$60/month for 12 months	\$720.00	\$0.00	\$0.00	\$0.00	\$720.00	0
Supplies and Direct	Network and Server Software	Two Adobe Pro Cloud licenses for staff	\$140.00	\$0.00	\$0.00	\$0.00	\$140.00	0

Operating Expenses	and/or Licenses (\$5,000 or less per unit)	members charged at \$70.00 each						
Supplies and Direct Operating Expenses	Office Supplies (e.g., paper, postage, calculator)	General office supplies including paper, pens, envelopes, etc.	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0
Supplies and Direct Operating Expenses	Office Supplies (e.g., paper, postage, calculator)	Printing of educational handouts about illegal dumping and environmental law	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00	0
Supplies and Direct Operating Expenses	Project Supplies (e.g., binocular, battery, flexicuff, drug testing kit)	Notice of Violation Booklets	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00	0
Supplies and Direct Operating Expenses	Project Supplies (e.g., binocular, battery, flexicuff, drug testing kit)	Citation Booklets	\$150.00	\$0.00	\$0.00	\$0.00	\$150.00	0
Supplies and Direct Operating Expenses	Project Supplies (e.g., binocular, battery, flexicuff, drug testing kit)	Red Tags	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0
Supplies and Direct Operating Expenses	Project Supplies (e.g., binocular, battery, flexicuff, drug testing kit)	Illegal dumping signs	\$300.00	\$0.00	\$0.00	\$0.00	\$300.00	0
Supplies and Direct	Project Supplies (e.g.,	Uniform pieces for investigator including one	\$450.00	\$0.00	\$0.00	\$0.00	\$450.00	0

Operating Expenses	binocular, battery, flexicuff, drug testing kit)	long sleeve uniform shirt @ \$50,00, 5 polos with logo embroidered priced at \$50 each, work gloves priced at \$50.00, and boots priced at \$100.00 for a total of \$450.00						
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You are logged in as **User Name:** scorprew



Resolution

STATE OF TEXAS §
§
COUNTY OF HAYS §

WHEREAS, The Hays County Commissioners' Court finds it in the best interest of the citizens of Hays County, that the Hays County Environmental Enforcement Program grant project be operated in the 2025 year; and

WHEREAS, The Hays County Commissioners' Court agrees to provide applicable matching funds for the said project as required by the Office of the Governor, State Criminal Justice Planning Funds Edward Byrne Memorial Justice Assistance Grant Program grant application; and

WHEREAS, The Hays County Commissioners' Court agrees in the event of loss or misuse of the Office of the Governor funds, the Hays County Commissioner's Court assures that the funds will be returned to the Office of the Governor in full.

WHEREAS, The Hays County Commissioners' Court designates Ruben Becerra, Hays County Judge as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court approves the submission of the grant application for the Hays County Environmental Enforcement Program to the Office of the Governor.

ADOPTED THIS THE 30TH DAY of JANUARY, 2024

Ruben Becerra
Hays County Judge

ATTEST:

Elaine Cardenas
Hays County Clerk

Grant Number 4993001



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

T. CRUMLEY

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize the submission of a renewal grant application to the Department of State Health Services (DSHS), Public Health Emergency Preparedness (CPS/PHEP) Grant program in the amount of \$126,721.00. **INGALSBE/T.CRUMLEY**

Summary:

This is a yearly grant application that supports two staff positions as well as associated costs for the Health Department. The positions include the Emergency Preparedness Coordinator (fully supported) and one Epidemiologist (partially supported). Additional costs include supplies, conferences, and translation services. There is a required 10% match of \$12,672.00.

Contract period: 7/1/2024 - 6/30/2025

Fiscal Impact:

Amount Requested: \$12,672

Line Item Number: 120-675-99-058

Budget Office:

Source of Funds: DSHS Grant Funds & Family Health Services Fund for required match

Budget Amendment Required Y/N?: No

Comments: If awarded, grant and matching funds will be budgeted during the annual budget process.

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD for supplies ordered, and conference attendance

Auditor's Office

G/L Account Validated Y/N?: TBD

New Revenue Y/N?: TBD if Awarded

Comments:

Attachments

Budget

BUDGET SUMMARY (REQUIRED)

Legal Name of Respondent:

Hays County Health Department

Budget Categories	Total Budget (1)	DSHS Funds Requested (2)	Direct Federal Funds (3)	Other State Agency Funds* (4)	Local Funding (Match) (5)	Other Funds (6)
A. Personnel	\$84,829	\$84,829			\$0	
B. Fringe Benefits	\$35,535	\$35,535			\$0	
C. Travel	\$2,044	\$2,044			\$0	
D. Equipment	\$0	\$0			\$0	
E. Supplies	\$8,505	\$1,833			\$6,672	
F. Contractual	\$1,200	\$1,200			\$0	
G. Other	\$7,280	\$1,280			\$6,000	
H. Total Direct Costs	\$139,393	\$126,721	\$0	\$0	\$12,672	\$0
I. Indirect Costs	\$0	\$0				
J. Total (Sum of H and I)	\$139,393	\$126,721	\$0	\$0	\$12,672	\$0
				Match Percentage	10.00%	

If the Contractor is using Indirect Costs as Match, then enter the amount in Line 16, Column H.

PERSONNEL Budget Category Detail Form

Legal Name of Respondent:

Hays County Health Department

[illegible]

SalaryWage Total

\$84,829

FRINGE BENEFITS

Itemize the elements of fringe benefits in the space below:

FICA = \$84829 X 6.2% = \$5260,	MEDICARE X 1.45% = \$1231,	RETIREMENT X 13.51% = \$11461
MEDICAL, DENTAL, & LIFE INSURANCE = (944.38+33.74+5.25) = \$11,800.44 x 1.49= \$17583		

Total Number of FTEs:	1.49		Fringe Benefit Rate %	41.89%
-----------------------	------	--	-----------------------	--------

	Fringe Benefits Total	\$35,535

TRAVEL Budget Category Detail Form

Legal Name of Respondent:

Hays County Health Department

Conference / Workshop Travel Costs					
Description of Conference/Workshop	Justification	Location City/State	Number of: Days & Employees	Travel Costs	
				TDEM Conference (Other Costs is the conference fee)	Emergency Management CE
Airfare					
Meals	\$144				
Lodging	\$500				
Other Costs	\$756				
Total	\$1,400				
PHEP Related Conference/Continuing Education (TBD)	Emergency Management CE	TX	4 Days/ Juli Barksdale	Mileage	
				Airfare	
				Meals	\$144
				Lodging	\$500
				Other Costs	
				Total	\$644
				Mileage	\$0
				Airfare	\$0
				Meals	\$0
				Lodging	\$0
				Other Costs	\$0
				Total	\$0
				Mileage	\$0
				Airfare	\$0
				Meals	\$0
				Lodging	\$0
				Other Costs	\$0
				Total	\$0
TOTAL FROM TRAVEL SUPPLEMENTAL CONFERENCE/WORKSHOP BUDGET SHEETS					\$0

Total for Conference / Workshop Travel

\$2,044

Revised 3/25/2014

Other / Local Travel Costs

Justification	Number of Miles	Mileage Reimbursement Rate	Mileage Cost (a)	Other Costs (b)	Total (a) + (b)
			\$0		\$0
			\$0		\$0
			\$0		\$0
			\$0		\$0
			\$0		\$0
			\$0		\$0
			\$0		\$0
TOTAL FROM TRAVEL SUPPLEMENTAL OTHER/LOCAL TRAVEL COSTS BUDGET SHEETS					\$0

Total for Other / Local Travel **\$0**Other / Local Travel Costs: **\$0**Conference / Workshop Travel Costs: **\$2,044****Total Travel Costs: \$2,044**

Indicate Policy Used:

Respondent's Travel Policy State of Texas Travel Policy

Detail Form

Hays County Health Department

[illegible]

\$0

SUPPLIES Budget Category Detail Form

Legal Name of Respondent:

Hays County Health Department

Itemize and describe each supply item and **provide an estimated quantity and cost (i.e. #of boxes & cost/box) if applicable.** Provide a justification for each supply item. Costs may be categorized by each general type (e.g., office, computer, medical, educational, etc.)

Description of Item Provide estimated quantity and cost	Purpose & Justification	Total Cost
Temporary leashes, bowls, animal supplies	Supplies to be used for animals/pets that are in our care during emergencies and evacuations. Not to go over \$499 per purchase. This will be used when individuals are evacuated from their homes during major disasters and are relocated to Hays County for temporary shelter. Often individuals are placed in temporary housing situations where they cannot take their animals/pets with them. In these cases, Hays County provides temporary shelter for these animals. This is not permanent care.	\$400
Power Station	To provide power in emergency situations to laptop & communication devices (1 power station @ \$500)	\$500
Air Purifier Filters	To prevent the spread of airborne virus (as many as possible with the allowed funds)	\$433
Floor Standing Propane Heaters	To provide heat/warmth during outside events. (2 heaters at \$250 each)	\$500
TOTAL FROM SUPPLIES SUPPLEMENTAL BUDGET SHEETS		\$0

Total Amount Requested for Supplies:

\$1,833

CONTRACTUAL Budget Category Detail Form

Legal Name of Respondent: Hays County Health Department

List contracts for services related to the scope of work that is to be provided by a third party. If a third party is not yet identified, describe the service to be contracted and show contractors as "To Be Named." Justification for any contract that delegates \$100,000 or more of the scope of the project in the respondent's funding request, must be attached behind this form.

CONTRACTOR NAME (Agency or Individual)	DESCRIPTION OF SERVICES (Scope of Work)	Justification	METHOD OF PAYMENT (i.e., hourly, daily, weekly, monthly, quarterly, cost reimb., unit rate, lump sum)	# of Payments	RATE OF PAYMENT (i.e., hourly, daily, weekly, monthly, quarterly, cost reimb., unit rate, lump sum)	TOTAL COST
TBD	Translation and interpreting services	To comply with ADA requirements	Lump Sum	12	\$100.00	\$1,200
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
						\$0
TOTAL FROM CONTRACTUAL SUPPLEMENTAL BUDGET SHEETS						\$0

Total Amount Requested for CONTRACTUAL:

\$1,200

OTHER COSTS Budget Category Detail Form

Legal Name of Respondent:

Hays County Health Department

Description of Item Include quantity and cost/quantity	Purpose & Justification	Total Cost
Office Supplies	General office supplies for two employees. Paper, pens, folders, binders, etc.	\$500
T-Mobile Internet Service	Internet service for security cameras (\$40 per month X 12 months)	\$480
APIC Membership - Juli Barksdale	Association of Public Infection Control (APIC) annual membership fee for one (1) employee	\$300
TOTAL FROM OTHER SUPPLEMENTAL BUDGET SHEETS		\$0

Total Amount Requested for Other:

\$1,280

Indirect Costs

Legal Name of Respondent:

Hays County Health Department

Total amount of indirect costs allocable to the project:

Amount:

Indirect costs are based on (mark the statement that is applicable):

The respondent's most recent indirect cost rate approved by a federal cognizant agency or state single audit coordinating agency. **Expired rate agreements are not acceptable. Attach a copy of the rate agreement to this form (Form I - 7 Indirect)**

RATE:

BASE:

Applies only to governmental entities. The respondent's current central service cost rate or indirect cost rate. **Attach a copy of Certification of Cost Allocation Plan or Certification of Indirect Costs.**

Note: Governmental units with only a Central Service Cost Rate must also include the indirect cost of the governmental units department (i.e. Health Department). In this case indirect costs will be comprised of central service costs (determined by applying the rate) and the indirect costs of the governmental department. The allocation of indirect costs must be addressed in Part V - Indirect Cost Allocation of the Cost Allocation Plan that is submitted to DSHS.

RATE:

TYPE:

BASE:

A cost allocation plan. A cost allocation plan as specified in the DSHS Contractor's Financial Procedures Manual (CFPM), Appendix A must be submitted to DSHS within 60 days of the contract start date.

GO TO PAGE 2 (below)

Page 2, FORM I - 7 Indirect Costs

If using an central service or indirect cost rate, identify the types of costs that are included (being allocated) in the rate:

Organizations that do not use an indirect cost rate and governmental entities with only a central service rate must identify the types of costs that will be allocated as indirect costs and the methodology used to allocate these costs in the space provided below. The costs/methodology must also be disclosed in Part V-Indirect Cost Allocation of the Cost Allocation Plan that is submitted to DSHS. **Identify the types of costs that are being allocated as indirect costs, the allocation methodology, and the allocation base:**



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Shell

Agenda Item

Approve specifications for IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting and Pavement Markings and authorize Purchasing to solicit for bids and advertise. **SHELL/BORCHERDING**

Summary

The proposed project will add safety illumination and raised profile reflective pavement markings.

Attachments

IFB 2024-B09 Project Manual



HAYS COUNTY

PROJECT CONSTRUCTION MANUAL

FOR

**WINTERS MILL PARKWAY ROADWAY IMPROVEMENTS,
LIGHTING & PAVEMENT MARKINGS**

Federal-Aid Project Number: STP 2024(361)HESG

TxDOT CSJ: 0914-33-092

Bid No. IFB 2024-B09

Bid Date: February 22, 2024

Bid Time: 10:00 AM CST

Hays County, Texas
Purchasing Office

712 South Stagecoach Trail, Suite 101212
San Marcos, TX 78666

January 31, 2024

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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 will be deemed nonresponsive and will 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. Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
- ____ 11. FHWA-1273 Certification
- ____ 12..State of Texas Child Support Business Ownership Form Form
- ____ 13.. System for Award Management (www.SAM.gov) Entity Registration Page
- ____ 14. 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 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 1012, San Marcos, TX 78666 within 24 hours of bid due date.e

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 1012, 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 2024-B03 Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings

Sealed Bids will be received by Hays County, through either hard copy at the Purchasing Office, Hays County Government Center, 712 South Stagecoach Trail, Suite 1012, San Marcos, TX 78666 or electronically through www.bidnetdirect.com/hayscounty (the BidNet Direct website) until 10:00 AM local time on February 22, 2024, 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

- | | |
|--------------------------------------|--|
| 1. Issuing Office: | Hays Purchasing Office
712 S. Stagecoach Trail, Suite 1012
San Marcos, TX 78666 |
| 2. Responses to Solicitation: | 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
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. |
| 3. Deadline for Responses: | In issuing office or submitted to BidNet Direct no later than:
February 22, 2024; 10:00 a.m. Central Time (CT) |
| 4. Pre-Bid Meeting: | Recommended
February 7, 2024; 10:00 a.m. Central Time (CT)
Hays County Transportation Department
2171 Yarrington Road, San Marcos, TX 78666 |
| 5. 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 |
| 6. Retainage | The owner will withhold 5% retainage of the Contractor. The Contractor may withhold retainage on subcontractors in accordance with state and federal regulations. |
| 7. Initial Contract Term: | 16 standard workweek days |
| 8. Optional Contract Terms: | None |
| 9. Designated Contact: | Hays County Purchasing
Email: purchasing@co.hays.tx.us |

10. Questions & Answers:

Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than February 14, 2024; 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 ESBD 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.
13. Websites:

Plans, Specifications, and Bidding documents for pre-qualified bidders and interested non-bidders may be secured from the following websites:
www.bidnetdirect.com/hayscounty,
<http://www.txsmartbuy.com/sp>,
<https://www.sanmarcostx.gov/Bids.aspx>

Anticipated Schedule of Events

January 31, 2024	Issuance of IFB
February 7, 2024	Pre-Bid Meeting in-person (10:00 AM, CT)
February 14, 2024	Deadline for Submission of Questions (5:00 PM, CT)
February 22, 2024	Deadline for Submission of Bids (10:00 AM, CT) Late bids will not be accepted
March 2024	Anticipated Contract Award Date

SECTION 3
BID INSTRUCTIONS / REQUIREMENTS

BID INSTRUCTIONS/REQUIREMENTS

A. Scope of Work

The proposed project will add safety illumination and raised profile reflective pavement markings. The attachments to this IFB provide specific detail regarding this project and should be thoroughly reviewed prior to bid submittal:

Attachment A: IFB 2024-B09 Construction Plans

B. Qualifications

Prospective bidder shall meet the following requirements:

1. Be qualified via "Confidential Questionnaire" by the Texas Department of Transportation (TxDOT) for bidding on State projects or within the 90-day grace period for the preparation of a new qualification statement, or have submitted the Confidential Questionnaire and have it on file with TxDOT at least 14 days before the date proposals are to be opened;
2. not on the TxDOT list of currently debarred/sanctioned contractors; and
3. Provide suitable evidence of prior experience for similar work and be able to provide written documentation of successfully complete similar contracts.
4. Contractor must confirm prequalification for all subcontractors and materials suppliers of greater than \$10,000.

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
- Have a satisfactory record of performance
- Be otherwise qualified and eligible to receive an award

SYSTEM FOR AWARD MANAGEMENT: Respondent and its Principals may not be debarred or suspended nor otherwise have an exclusion record created in the System for Award Management (SAM.gov). 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). Enclose a printout of the Entity Registration page that shows your firm is in active status and is not expired.

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.

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.

C. 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.

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 IFB shall be governed by the laws of the State of Texas.

LIQUIDATED DAMAGES FOR DELAYS: If the work is not substantially complete within the contract time, 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 \$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 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 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.

SECTION 4

BID FORM

VENDOR/BIDDER'S AFFIRMATION

BID FORM: SCHEDULE OF RATES AND PRICES

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

DEBARMENT AND LICENSING CERTIFICATION

VENDOR REFERENCES

RELATED PARTY DISCLOSURE FORM

APPENDIX II TO PART 200 - CONTRACT PROVISIONS FOR NON-FEDERAL ENTITIY

CONTRACTS UNDER FEDERAL AWARD

FHWA 1273 CERTIFICATION

STATE OF TEXAS CHILD SUPPORT BUSINESS OWNERSHIP FORM

BID FORM

PROJECT IDENTIFICATION

Project No. IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings

THIS BID IS SUBMITTED TO:

Electronically: BidNet Direct: www.bidnetdirect.com//hayscounty

Manually:

Hays County Purchasing Department
Attn: Stephanie Hunt
712 South Stagecoach Trail, Suite 1012
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 **16 standard workweek 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/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

BID FORM
SCHEDULE OF RATES AND PRICES
HAYS COUNTY, TEXAS

PROJECT: IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein.

BID ITEM	TECH SPEC ¹	DESCRIPTION WITH UNIT PRICES IN WORDS			BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
1	416 6029	DRILL SHAFT (RDWY ILL POLE)(30 IN) at	Dollars and	Cents per	48	LF		\$ -
2	432 6001	RIPRAP (CONC)(4") at	Dollars and	Cents per	2.10	CY		\$ -
3	500 6001	MOBILIZATION at	Dollars and	Cents per	1	LS		\$ -
4	502 6001	BARRICADES, SIGNS AND TRAFFIC HANDLING at	Dollars and	Cents per	2	MO		\$ -
5	610 6162	IN RD IL (TY SA) 30T-8 (250W EQ) LED at	Dollars and	Cents per	6	EA		\$ -
6	618 6023	CONDT (PVC) (SCH 40) (2") at	Dollars and	Cents per	1005	LF		\$ -
7	618 6024	CONDT (PVC) (SCH 40) (2") (BORE) at	Dollars and	Cents per	35	LF		\$ -
8	620 6007	ELEC CONDR (NO.8) BARE at	Dollars and	Cents per	1080	LF		\$ -

¹Refer to the Technical Specifications section for a description of the specific reference number.

BID FORM
SCHEDULE OF RATES AND PRICES
HAYS COUNTY, TEXAS

PROJECT IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein.

BID ITEM	TECH SPEC ¹	DESCRIPTION WITH UNIT PRICES IN WORDS			BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
9	620 6008	ELEC CONDR (NO.8) INSULATED at	Dollars and	Cents per	2160	LF		\$ -
10	624 6002	GROUND BOX TY A (122311)W/APR ON at	Dollars and	Cents per	2	EA		\$ -
11	628 6045	ELC SRV TY A 240/480 060(NS)SS(E)SP(O) at	Dollars and	Cents per	2	EA		\$ -
12	666 6035	REFL PAV MRK TY I (W)8"(SLD)(090MIL) at	Dollars and	Cents per	280	LF		\$ -
13	666 6047	REFL PAV MRK TY I (W)24"(SLD)(090MIL) at	Dollars and	Cents per	41	LF		\$ -
14	666 6053	REFL PAV MRK TY I (W) (ARROW) (090MIL) at	Dollars and	Cents per	3	EA		\$ -
15	666 6077	REFL PAV MRK TY II (W) (WORD) at	Dollars and	Cents per	2	EA		\$ -
16	666 6174	REFL PAV MRK TY II (W) 6" (SLD) at	Dollars and	Cents per	21,900	LF		\$ -

¹Refer to the Technical Specifications section for a description of the specific reference number.

BID FORM
SCHEDULE OF RATES AND PRICES
HAYS COUNTY, TEXAS

PROJECT IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings

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BID ITEM	TECH SPEC ¹	DESCRIPTION WITH UNIT PRICES IN WORDS			BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
17	666 6178	REFL PAV MRK TY II (W) 8" (SLD) at	Dollars and	Cents per	280	LF		\$ -
18	666 6182	REFL PAV MRK TY II (W) 24" (SLD) at	Dollars and	Cents per	41	LF		\$ -
19	666 6184	REFL PAV MRK TY II (W) (ARROW) at	Dollars and	Cents per	3	EA		\$ -
20	666 6192	REFL PAV MRK TY II (W) (WORD) at	Dollars and	Cents per	2	EA		\$ -
21	666 6208	REF PAV MRK TY II (Y) 6" (BRK) at	Dollars and	Cents per	1,900	LF		\$ -
22	666 6210	REF PAV MRK TY II (Y) 6" (SLD) at	Dollars and	Cents per	10,880	LF		\$ -
23	666 6285	REF PROF PAV MRK TY I (Y) 6" (BRK) (090MIL) at	Dollars and	Cents per	21,900	LF		\$ -
24	666 6289	REF PROF PAV MRK TY I (Y) 6" (SLD) (090MIL) at	Dollars and	Cents per	10,880	LF		\$ -

¹Refer to the Technical Specifications section for a description of the specific reference number.

BID FORM

PROJECT IFB 2024-B09 Winters Mill Parkway Improvements, Lighting & Pavement Markings

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein.

BID ITEM		TECH SPEC¹	DESCRIPTION WITH UNIT PRICES IN WORDS			BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
25		666 6291	REF PROF PAV MRK TY I (Y)6"(BRK)(090MIL) at	Dollars and	Cents per	1,900	LF		\$ -
26		672 6007	REFL PAV MRKR TY I-C at	Dollars and	Cents per	14	EA		\$ -
27		672 6009	REFL PAV MRKR TY II-A-A at	Dollars and	Cents per	233	EA		\$ -
28		6056 6002	PREFORMED CENTERLINE RUMBLE STRIP at	Dollars and	Cents per	3380	LF		\$ -
29		6185 6002	TMA (STATIONARY) at	Dollars and	Cents per	5	DAY		\$ -
30		6185 6005	TMA (MOBILE OPERATION) at	Dollars and	Center per	5	DAY		\$ -
TOTAL AMOUNT OF BID									
				Dollars and	Cents				
						\$ -			

¹Refer to the Technical Specifications section for a description of the specific reference number.

BID FORM
SCHEDULE OF RATES AND PRICES
HAYS COUNTY, TEXAS

PROJECT IFB 2024-B09 Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein.

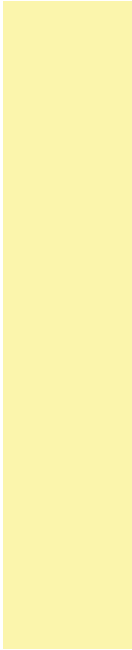
NOTE: THE COURT MAY EITHER REJECT ALL BIDS OR AWARD A CONTRACT TO THE LOWEST AND/OR BEST BID.

Acknowledgment of Addenda

Addendum No. 1:

Addendum No. 2:

Addendum No. 3:



¹Refer to the Technical Specifications section for a description of the specific reference number.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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 that is awarded a contract or purchase approved by Hays County Commissioner's Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed and notarized copy of the form to the County. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County receives and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

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

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: _____

Vendor References

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: _____

Email: _____

Scope & Duration of Contract: _____

REFERENCE TWO

Company Name: _____

Address: _____

Contact Person and Title: _____

Phone Number: _____

Email: _____

Scope & Duration of Contract: _____

REFERENCE THREE

Company Name: _____

Address: _____

Contact Person and Title: _____

Phone Number: _____

Email: _____

Scope & Duration of Contract: _____

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 2nd degree of consanguinity or affinity to either of the above⁽¹⁾ (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

⁽¹⁾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.

Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, 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.

(B) 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 effected and the basis for settlement.

(C) 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.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). 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 Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages 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. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) 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.

(F) 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.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - 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 Clean Air Act ([42 U.S.C. 7401-7671q](#)) and 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) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 covered by [31 U.S.C. 1352](#). 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.

(J) Procurement of recovered materials (§ 200.323) - 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.

(K) Prohibition on certain telecommunications and video surveillance services or equipment (§200.216)

(a) Recipients and subrecipients are 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) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

(L) (200.322) Domestic preferences for procurements –

(a) As appropriate and to the extent consistent with law, the non-Federal entity 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 non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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.

FHWA 1273 CERTIFICATION

I have read, understand, and agree to comply with the FHWA 1273 presented in Appendix D. 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.

CHILD SUPPORT STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

State of Texas Child Support Business Ownership Form

County: _____

Project Name: _____

TxDOT CSJ: _____

LG Project Number: _____

Business Entity Submitting Bid: _____

Section 231.006, Family Code, requires a bid for a contract paid from state funds to include the names and social security number of individuals owning 25% or more of the business entity submitting the bid.

1. In the spaces below please provide the names and social security number of individuals owning 25% or more of the business.

Name	Social Security Number
_____	_____
_____	_____
_____	_____
_____	_____

2. Please check the box below if no individual owns 25% or more of the business.

() No individual own 25% or more of the business.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provisions of Part A and D to Title IV of the Federal Social Security Act (42 USC Section 601-617 and 651-699).

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

The information collected on this form will be maintained by Enter Local Government Name. With few exceptions, you are entitled on request to be informed about the information collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have information about you corrected that you believe is incorrect.

Signature

Date

Printed Name

IF THIS PROJECT IS A JOINT VENTURE,
ALL PARTIES TO THE JOINT VENTURE MUST PROVIDE A COMPLETED FORM.

SECTION 5
STANDARD FORM OF CONTRACT

STANDARD FORM OF CONTRACT
Hays County, Texas

Contract

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 2024-B09 - Winters Mill Parkway Roadway Improvements, Lighting & Pavement Markings**
(Project Name)

Article 2. Engineer of Record

The Project has been designed by **WSB & Associates, 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 **16 Standard Workweek 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)

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 if 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 authorizes 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 IMPLIES, 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: _____

Dr. Elaine H. Cardenas, County Clerk

Attest: _____

**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	\$11.82		\$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
	Concrete Pavement Finishing Machine																
1318	Operator				\$16.05		\$15.48			\$16.05		\$19.31				\$13.07	
	Concrete Paving, Curing, Float, Texturing																
1315	Machine Operator									\$14.48	\$17.33					\$11.71	
1333	Concrete Saw Operator				\$14.67											\$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																
	Crane Operator, Lattice Boom 80 Tons																
1342	Crane Operator, Lattice Boom Over 80 Tons	\$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
	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/Settler, 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
	Foundation Unit Operator, Crawler Mounted				\$17.99					\$17.99						\$17.43	
1360	Foundation Unit Operator, Mounted																
1363	Truck Mounted Front End Loader Operator, 3 CY or Less		\$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, Over 3 CY	\$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	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	\$14.12	\$14.12	\$14.12	\$15.18	\$13.58	\$12.87	\$17.00	\$16.61	\$14.13	\$14.29	\$12.90
1187	Mechanic	\$20.14	\$15.47	\$17.47	\$17.74	\$17.00	\$17.10	\$17.74	\$17.47	\$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)
	Motor Grader Operator,																
1390	Fine Grader	\$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					\$21.29	\$18.34						\$21.29			\$18.62	
1396	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	Service	\$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																
	Slurry Seal or Micro-Surfacing Machine Operator																
1708																	
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	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
	Truck Driver, Tandem Axle Tractor with																
1607	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
	Tunneling Machine Operator, Heavy																
1441																	
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		\$11.88	\$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, , , , 8, 24, 25, 27, 28, 29, 30, 3 , 3 , 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.

POLICY NO.	TYPE OF INSURANCE		LIMITS OF LIABILITY
	EFFECTIVE	EXPIRES	
Workmen's Compensation		1 Person	\$ _____
Public Liability		1 Accident	\$ _____
Contingent Liability		1 Person 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 AS SET 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 REQUIREMENTS AND COVENANTS, AND APPLICABLE SPECIAL PROVISIONS (See Section 13 “Technical Specifications”).

SECTION 11
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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:

Purchasing Office
Hays County
712 South Stagecoach Trl, Ste 1012
San Marcos, TX 78666

County Engineer _____
Hays County _____
2171 Yarrington Road _____
Kyle, TX 78640 _____

II. The Construction Inspector

HAYS COUNTY 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

WSB & ASSOCIATES, 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
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

The policy shall include 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 TxDOT Special Specification 000-1243L 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 **10** 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 XXXIV-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

GENERAL NOTES: Version: August 4, 2023

The following standard detail sheet or sheets have been modified:

Modified Standards

None

GENERAL

Contractor questions, material specification reports, and requests for documents on this project are to be addressed to the following individual(s), after contract award. If during the solicitation process then all questions MUST be addressed to the Purchasing email below:

Purchasing Office purchsing@co.hays.tx.us

Hays County jerry@co.hays.tx.us

Design Engineer drogers@wsbeng.com

Submit material specification reports prior to material use. Any material installed prior to specification report approval may be subject to removal at the expense of the contractor at the discretion of the engineer.

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.

Equip all construction equipment used in roadway work with highly visible omnidirectional flashing warning lights.

Keep the roadway free of debris and sediment caused by construction activities. Dispose of all material in accordance with federal, state, and local regulations. This work is subsidiary.

Damage to existing pipes and SET's due to Contractor operations will be repaired at Contractor's expense.

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.

The assigned minimum DBE goal for this project is **0.00%**.

ITEM 5 – CONTROL OF THE WORK

Electronic Shop Drawing Submittals.

Submit electronic shop drawing submittals as noted below:

Submittal Contact List

Hays County	jerry@co.hays.tx.us
Design Engineer	drogers@wsbeng.com

ITEM 6 - CONTROL OF MATERIALS

Give a minimum of 1 business day notice for materials, which require inspection at the Plant.

For Federally Funded Contracts, comply with the latest provisions of Build America, Buy America Act (BABA Act) of the Bipartisan Infrastructure Law, by submitting a notarized original of the TxDOT Construction Material Buy America Certification Form for all items classified as construction materials. This form is not required for materials classified as a manufactured product. Refer to the Buy America Material Classification Sheet, located at the following link, for clarification on material categorization. [Buy America material classification sheet \(txdot.gov\)](https://www.txdot.gov/buy-america-material-classification-sheet)

ITEM 7 – LEGAL RELATIONS AND RESPONSIBILITIES

Roadway closures during key dates and/or special events are prohibited. See notes for Item 502 for the key dates and/or special events.

Refer to the Environmental Permits, Issues and Commitments (EPIC) plan sheets for additional requirements and permits.

When any abandoned well is encountered, cease construction operations in this area and notify the Engineer who will coordinate the proper plugging procedures. A water well driller licensed in the State of Texas must be used to plug a well.

Perform maintenance of vehicles or equipment at designated maintenance sites. Keep a spill kit on-site during fueling and maintenance. This work is subsidiary.

Maintain positive drainage for permanent and temporary work for the duration of the project. Be responsible for any items associated with the temporary or interim drainage and all related maintenance. This work is subsidiary.

Suspend all activities near any significant recharge features, such as sinkholes, caves, or any other subterranean openings that are discovered during construction or core sampling. Do not proceed until the designated Geologist or TCEQ representative is present to evaluate and approve remedial action.

Locate aboveground storage tanks kept on-site for construction purposes in a contained area as to not allow any exposure to soils. The containment will be sized to capture 150% of the total capacity of the storage tanks.

PSL in Edwards Aquifer Recharge and Contributing Zone.

Obtain written approval from the Engineer for all on or off right of way PSLs not specifically addressed in the plans. Provide a signed sketch of the location 30 business days prior to use of the PSL. Include a list of materials, equipment and portable facilities that will be stored at the PSL. TxDOT will coordinate with the necessary agencies. Approval of the PSL is not guaranteed. Un approved PSL is not a compensable impact.

Migratory Birds and Bats.

Migratory birds and bats may be nesting within the project limits and concentrated on roadway structures such as bridges and culverts. Remove all old and unoccupied migratory bird nests from any structures, trees, etc. between September 16 and February 28. Prevent migratory birds from re-nesting between March 1 and September 15. Prevention shall include all areas within 25 ft. of proposed work. All methods used for the removal of old nesting areas and the prevention of re-nesting must be submitted to TxDOT 30 business days prior to begin work. This work is subsidiary.

If active nests are encountered on-site during construction, all construction activity within 25 ft. of the nest must stop. Contact the Engineer to determine how to proceed.

Back Up Alarm.

For hours 9 P to 5 A, utilize a non-intrusive, self-adjusting noise level reverse signal alarm. This is not applicable to hotmix or seal coat operations. This is subsidiary.

ITEM 8 – PROSECUTION AND PROGRESS

Working days will be charged in accordance with 8.3.11.4 “Standard Workweek.”

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.

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 416 - DRILLED SHAFT FOUNDATIONS

Stake all Foundations, for approval, before beginning drilling operations.

Calculate the vertical signal head clearance before placing any signal pole foundation.

For mast-arm signal and strain pole anchor bolts, set two in tension and two in compression.

Obtain approval of placement prior to placing concrete.

Remove spoils from a flood plain at the end of each work day.

ITEM 427 - SURFACE FINISHES FOR CONCRETE

Provide a rub finish to Surface Area I.

ITEM 432 - RIPRAP

Mow strip riprap will be 4 in. and all other riprap will be 5 in. unless otherwise shown on the plans.

ITEM 502 - BARRICADES, SIGNS, AND TRAFFIC HANDLING

For roadways without defined allowable closure times, nighttime lane closures will be allowed from 8 P to 6 A.

Daytime or Friday night lane closures will not be allowed unless otherwise shown on the plans. One lane in each direction will remain open at all times for all roadways unless otherwise shown on the plans.

No closures will be allowed on the weekends, working day prior, and working day after the National Holidays defined in the Standard Specifications, Good Friday, and Easter weekend.

No closures will be allowed 1 P.M. to 11 P.M. the Sunday of the Super Bowl.

Time charges will not be suspended during the large and special events listed below. These events are provided in the contract to allow scheduling of work around these lane closure restrictions.

All lanes will be open by noon of the day before the large events listed in below table. No closures will be allowed on Friday and the weekends for projects within 20 miles of these large events:

Table 4 (Large Events)

Event	City	Dates
Formula 1 @ COTA	Austin	Annually (See Event Website)
Moto GP @ COTA	Austin	Annually (See Event Website)
ACL Fest	Austin	Annually (See Event Website)
SXSW	Austin	Annually (See Event Website)
ROT Rally	Bastrop	Annually (See Event Website)
UT Football Games	Austin	Annually (See Event Website)
Sales Tax Holiday	All	Annually (See Event Website)
Rodeo Austin	Austin	Annually (See Event Website)

All lanes will be open by noon of the day before the special events listed in below table. No closures will be allowed on Friday and the weekends for projects within 10 miles of these special events:

Table 5 (Special Events)

Event	City	Dates
Wimberley Market Days	Wimberley	1 st Saturday of each month March - December
Christmas on Mercer	Dripping Springs	Dec 2, 2023
Christmas Nights of FBG Lights	Fredericksburg	Nov 21, 2023
Lady of Guadalupe Procession	Fredericksburg	Dec 12, 2023
Eaker BBQ Competition	Fredericksburg	March 10, 2024
Founders Day Ceremony	Fredericksburg	2 nd Weekend in May
Crawfish Festival	Fredericksburg	Saturday before Memorial Day
Red Poppy Festival	Georgetown	April 26-28, 2024
Wine and Music Festival	Georgetown	Last Saturday of September
Texas State Graduation Fall	San Marcos	TBD
Texas State Graduation Spring	San Marcos	TBD

All the large and special events listed in the above tables occur annually. Coordinate with the Department and review the city/event website to plan around the future events.

No closures will be allowed during the upcoming eclipse on April 8, 2024. All lanes will be open from noon April 5th to noon April 9th. Time charges will not be suspended during this event.

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.

For CR 193, 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.

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 current and future traffic control, if at any time the queue becomes greater than 20 minutes.

Consider inclement weather prior to implementing the lane closures. Do not set up traffic control when the pavement is wet.

Cover, relocate, or remove existing small, large, and overhead signs that conflict with traffic control. Cover large and overhead signs to remain using latest standard TS-CD. This work is subsidiary.

Place a 28-inch cone, meeting requirements of BC (10) and Ty III barricades, on top of foundations that have protruding studs. This work is subsidiary.

Vertical panels used on roadways with speed limit 55mph or greater must be round in shape or have a self-righting mechanism. The “flat” or “oblong” shaped vertical panels are not allowed.

ITEM 506 - TEMPORARY EROSION, SEDIMENTATION, AND ENV CONTROLS

If SW3P plan sheets are not provided, place the control measures as directed.

Install, maintain, remove control measures as directed by the Engineer in areas of the right of way utilized by the Contractor that are outside the limits of disturbance required for construction. Permanently stabilize the disturbed area after soil disturbing activities are complete. Stabilization of disturbed areas at a minimum will include installing topsoil, fertilizing, seeding and watering. This work is subsidiary.

Erosion control measures must be initiated immediately in areas where construction activities have ceased and will not resume for a period exceeding 14 calendar days. Vertical track all exposed soil, stockpiles, and slopes. Re-track after each rain event or every 14 days, whichever occurs first. Sheep foot roller is allowed for vertical tracking. This work is subsidiary.

Unless a specific pay item is provided in the plans, the installation of the 6:1 or flatter for RFD side slopes in the safety zone will be subsidiary to pertinent bid items.

ITEMS 600s & 6000s – ITS, TOLLING, LIGHTING, SIGNING, MARKINGS, AND SIGNALS

Meet the requirements of the NEC, Texas MUTCD, TxDOT standards, and TxDOT Standard Specifications. Notify the Engineer if existing elements to remain do not meet code or specification.

Contractor shall provide all service, equipment and material required to provide a functional item and interface with existing equipment and software.

Use the TxDOT provided form to submit an electrical, illumination, and signal checklist prior to request for signal activation or a punch list.

Provide a 7-day advance email notice to the Engineer to request illumination punch list inspection.

Stakes or other physical method shall be installed to hold down conduit prior to placement of concrete/flow fill encasement.

Minimum distance between HDPE joints will be 200 ft.

ITEM 610 - ROADWAY ILLUMINATION ASSEMBLIES

For both transformer and shoe-base type illumination poles, provide double-pole breakaway fuse holder.

Provide 10-amp time delay fuses.

Maintain all new and existing illumination for the duration of the contract. All existing illumination will remain operational until replaced by new illumination or required to be removed due to construction.

ITEM 618 - CONDUIT

Shift the locations of conduit and ground boxes to accommodate field conditions. Install conduit not exceeding 2 feet in any direction from a straight line. Install conduit at a minimum depth of 2 ft. below finished grade. Installation of the conduit by jacking or boring method will be at a depth of at least 1 ft. below subgrade.

Install a high tension, non-metallic pull rope in all empty conduit runs. This work is subsidiary.

Use a coring device, not a hammer drill, when drilling holes through concrete structures.

Structurally mounted junction boxes will be as shown on the plans. When used for traffic signal installations, these boxes will be 12" x 12" x 8". This work is subsidiary.

For underground conduit, smooth wall schedule 40 equivalent HDPE can be substituted for schedule 40 PVC. Schedule 80 bore can be replaced with a schedule 40 equivalent HDPE carrier pipe of adequate size to carry the proposed conduits. HDPE must transition to RMC/PVC per ED (11)-14.

When using existing conduit, ensure that all conduits have bushings and cleaned of dirt, mud, grease, and other debris. Re-strap existing or relocated conduit per the specification. This work is subsidiary.

Abandoned underground conduit must have all conductors removed.

ITEM 620 - ELECTRICAL CONDUCTORS

Provide 10-amp time delay fuses.

ITEM 624 – GROUND BOXES

Aggregate for fill under the box will be crushed, have a maximum size of 2 in., minimum size of ½ in., and requirements per Item 302 are waived.

ITEM 628 – ELECTRICAL SERVICES

Contact the utility company upon execution of contract and prior to the pre-construction meeting to make arrangements for all work and materials provided by the utility company. Contact jerry@co.hays.tx.us for account approval and information. Accounts shall be placed in the name of Hays County.

ITEM 666 - RETROREFLECTORIZED PAVEMENT MARKINGS

Notify the Engineer at least 24 hr. before beginning work.

The center-to-center minimum width for double yellow solid stripes must be 18 in. for all roadways.

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.

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.

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.

SECTION 13
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 GENERAL REQUIRMENTS AND COVENANTS

ITEM 416	DRILLED SHAFT FOUNDATIONS 405, 420, 421, 423, 427, 440, 448
ITEM 432	RIPRAP 247, 420, 421, 431, 440
ITEM 500	MOBILIZATION
ITEM 502	BARRICADES, SIGNS AND TRAFFIC HANDLING
ITEM 506	TEMPORARY EROSION, SEDIMENTATION, AND ENVIRONMENTAL CONTROLS 161, 432, 556
ITEM 610	ROADWAY ILLUMINATION ASSEMBLIES 416, 421, 432, 441, 442, 445, 449, 614, 616, 618, 620, 622, 624, 628
ITEM 618	CONDUIT 400, 476
ITEM 620	ELECTRICAL CONDUCTORS 610, 628
ITEM 624	GROUND BOXES 302, 420, 421, 432, 440, 618, 620
ITEM 628	ELECTRICAL SERVICES 441, 445, 449, 618, 620, 627, 656
ITEM 666	REFLECTORIZED PAVEMENT MARKINGS 316, 502, 662, 677, 678
ITEM 672	RAISED PAVEMENT MARKERS 677, 678

SPECIAL SPECIFICATIONS:

SS6056
SS6185

SPECIAL PROVISIONS:

WAGE RATES (See Section 8)

SP000-002L
SP000-003L
SP000-004L
SP000-005L
SP000-241L
SP000-394L
SP000-1243L
SP002-009L
SP420-001

SP506-001L
SP656-001
SP006-030L
SP007-011L
SP009-011L
SP247-003
SP302-003
SP316-002
SP421-010
SP440-004
SP441-004
SP442-001
SP448-001
SP449-002
SP502-008
SP666-007
SP6185-002
FHWA-1273

HAYS COUNTY SPECIAL PROVISIONS

None

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 Items 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 local governments to modify Items 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 its 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

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.

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

Local Government General Requirements and Covenants

Item 1L

Abbreviations and Definitions



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.

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

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. Bidder. An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed Contract.

- 3.21. 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.
- 3.22. 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.
- 3.23. Brush Blasting. Sweeping lightly with an abrasive blast to remove loose material.
- 3.24. 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.
- 3.25. Certificate of Insurance. A form approved by the Owner covering insurance requirements stated in the Contract.
- 3.26. Change Order. Written order to the Contractor detailing changes to the specified work, item quantities or any other modification to the Contract.
- 3.27. Concrete Construction Joint. A joint formed by placing plastic concrete in direct contact with concrete that has attained its initial set.
- 3.28. Concrete Repair Manual. TxDOT manual specifying methods and procedures for concrete repair as an extension of the standard specifications.
- 3.29. ConcreteWorks®. TxDOT-owned software for concrete heat analysis. Software is available on the TxDOT's website.
- 3.30. Construction Contract. A Contract entered under State law for the construction, reconstruction, or maintenance of a segment of the Owner's transportation system.
- 3.31. 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.
- 3.32. 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.
- 3.33. 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.
- 3.34. Contract Time. The number of days specified for completion of the work, including authorized additional working days.
- 3.35. 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.
- 3.36. 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.
- 3.37. 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.

- 3.38. Control Point. An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.
- 3.39. Cross-Sections. Graphic representations of the original ground and the proposed facility, at right angles to the centerline or base line.
- 3.40. 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.")
- 3.41. Cycle. The activity necessary for performing the specified work within the right of way project limits once.
- 3.42. Daily Road-User Cost. Damages based on the estimated daily cost of inconvenience to the traveling public resulting from the work.
- 3.43. Date of Written Authorization. Date of the written Notice to Proceed authorizing the Contractor to begin work.
- 3.44. 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.
- 3.45. Detour. A temporary traffic route around a closed portion of a road.
- 3.46. 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.
- 3.47. Departmental Material Specifications. Reference specifications for various materials published by TxDOT's Construction Division with a DMS-XXXXX numbering system.
- 3.48. 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.
- 3.49. 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.
- 3.50. Divided Highway. A highway with separate roadways intended to move traffic in opposite directions.
- 3.51. Easement. A real property right acquired by one party to use land belonging to another party for a specified purpose.
- 3.52. Engineer. The Professional Engineer licensed in Texas who represents the interests of the Owner.
- 3.53. 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.
- 3.54. Expressway. A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.
- 3.55. 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.

- 3.56. Force Account. Payment for directed work based on the actual cost of labor, equipment, and materials furnished with markups for project overhead and profit.
- 3.57. Freeway. An expressway with full control of access.
- 3.58. 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).
- 3.59. 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.
- 3.60. High-Pressure Water Blasting. Water blasting with pressures between 5,000 and 10,000 psi.
- 3.61. 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.
- 3.62. 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.
- 3.63. 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.
- 3.64. 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.
- 3.65. 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.
- 3.66. Intelligent Transportation System. An integrated system that uses video and other electronic detection devices to monitor traffic flows.
- 3.67. 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.
- 3.68. 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.
- 3.69. Joint Venture. Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid form.

- 3.70. 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.
- 3.71. Letting. The receipt, opening, tabulation, and determination of the apparent low Bidder.
- 3.72. Letting Official. The Owner representative empowered by the Owner to officially receive bids and close the receipt of bids at a letting.
- 3.73. 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.
- 3.74. 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.
- 3.75. Local Street or Road. A street or road primarily for access to residence, business, or other abutting property.
- 3.76. Low-Pressure Water Blasting. Water blasting with pressures between 3,000 and 5,000 psi.
- 3.77. 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.
- 3.78. Manual of Testing Procedures. Department manual outlining test methods and procedures maintained by the Materials and Tests Division.
- 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. The offer from the Bidder submitted on the prescribed form, including addenda issued, giving unit bid prices for performing the work described in the plans and Specifications.
- 3.106. Proposal Form. The form printed and sent to the Bidder by the Owner or printed by the Bidder from the Owner's bidding system.
- 3.107. Proposal Guaranty. The security furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.
- 3.108. Quality Assurance. Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.
- 3.109. Quality Control. Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.
- 3.110. Ramp. A section of highway for the primary purpose of making connections with other highways.
- 3.111. Referee Tests. Tests requested to resolve differences between Contractor and Owner test results. The referee laboratory is the Owners .
- 3.112. Regular Item. A bid item contained in the bid documents and not designated as an additive alternate or replacement alternate bid item.
- 3.113. Rental Rate Blue Book for Construction Equipment. Publication containing equipment rental rates.
- 3.114. Replacement Alternate. A bid item identified on the bid documents that a Bidder may substitute for a specific regular item of work.
- 3.115. Responsive Bid. A bid that meets all requirements of the advertisement and the bid documents for acceptance.
- 3.116. Right of Way. A general term denoting land or property devoted to transportation purposes.
- 3.117. 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.
- 3.118. Road Master. A railroad maintenance official in charge of a division of railway.
- 3.119. 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.
- 3.120. Roadway. The portion of the highway (including shoulders) used by the traveling public.
- 3.121. Sandblasting, Dry. Spraying blasts of pressurized air combined with sand.
- 3.122. Sandblasting, Wet. Spraying blasts of pressurized water combined with sand.
- 3.123. 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.
- 3.124. Shot Blasting. Spraying blasts of pressurized air combined with metal shot.
- 3.125. Sidewalk. Portion of the right of way constructed exclusively for pedestrian use.
- 3.126. Slurry Blasting. Spraying blasts of pressurized air combined with a mixture of water and abrasive media.

- 3.127. Special Provisions. Additions or revisions to these standard specifications or special specifications.
- 3.128. Special Specifications. Supplemental specifications applicable to the Contract not covered by these standard specifications.
- 3.129. 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."
- 3.130. 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.
- 3.131. State. The State of Texas.
- 3.132. State Holiday. A holiday authorized by the State Legislature excluding optional state holidays and not listed in Section 1L.3.85., "National Holidays." A list of state holidays can be found on the TxDOT's website.
- 3.133. Station. A unit of measurement consisting of 100 horizontal feet.
- 3.134. 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.
- 3.135. 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.
- 3.136. 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.
- 3.137. 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.
- 3.138. 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.
- 3.139. 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.
- 3.140. 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.
- 3.141. 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.
- 3.142. Surplus Materials. Any debris or material related to the Contract but not incorporated into the work.
- 3.143. 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

- 3.144. Tex –XXX-X. TxDOT material test methods found on TxDOT’s website.
- 3.145. Traffic Lane. The strip of roadway intended to accommodate the forward movement of a single line of vehicles.
- 3.146. Traveled Way. The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.
- 3.147. Truck Owner-Operator. An individual who owns and operates 1 truck for hire.
- 3.148. UT-Bridge. TxDOT-owned software for steel girder erection. Software is available on TxDOT’s website.
- 3.149. UT-Lift. TxDOT-owned software for steel girder erection. Software is available on TxDOT’s website.
- 3.150. 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.
- 3.151. Verification Tests. Tests used to verify accuracy of QC and QA and mixture design testing.
- 3.152. Water-Abrasive Blasting. Spraying blasts of pressurized water combined with abrasive media.
- 3.153. Water Blasting. Spraying blasts of pressurized water of at least 3,000 psi.
- 3.154. Water-Injected Abrasive Blasting. Abrasive blasting with water injected into the abrasive/air stream at the nozzle.
- 3.155. Wholly-Owned Subsidiary. A legal entity owned entirely by the Contractor or subcontractor.
- 3.156. Work. The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract.
- 3.157. 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.

Item 2L

Instructions to Bidders



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.

2. ELIGIBILITY OF BIDDERS

Bidders on this project must be prequalified through TxDOT by meeting the requirements of the Confidential Questionnaire (CQ) or Bidder's Questionnaire (BQ) (select one). Refer to TxDOT's website 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.

3. ISSUING BID DOCUMENTS

<http://www.bidnetdirect.com/hayscounty>
<https://www.sanmarcostx.gov/Bids.aspx>
<http://www.txsmartbuy.com/SP>

Bid Documents may be obtained at

At the time Bid Documents are obtained, Bidder must provide a working e-mail address, so as to receive any addenda or clarification issued by the Owner.

The Owner will not issue bid documents if one or more of the following apply:

- the Bidder is suspended or debarred by the Department or federal agency,
- the Bidder has not fulfilled the requirements for prequalification,
- the Bidder is prohibited from rebidding a specific project due to a bid error on the original bid documents,
- the Bidder failed to enter into a Contract on the original award,
- the Bidder was defaulted or terminated on the original Contract, unless the Owner terminated for convenience, or
- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Owner to participate in the preparation of the plans or specifications on which the bid or Contract is based.

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.

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 by question deadline, January 4, 2024, @ 5:00 pm (CST).

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.

6. PREPARING THE BID

Prepare the proposal form furnished by the Owner. Informational proposal forms printed from the Owner's website will not be accepted.

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 proposal 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,
- the proposal form submitted had the incorrect number of items, or
- all addenda were not acknowledged.

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 at the time and location specified in the advertisement.
- A bid was submitted for the same project by a Bidder or Bidders and one or more of its partners or affiliates.
- The Bidder was not authorized to receive a proposal form under Article 2L.3, "Issuing Bid Documents",
- The Bidder failed to acknowledge receipt of all addenda issued.
- The proposal form was signed by a person who was not authorized to bind the Bidder or Bidders.
- The proposal guaranty did not comply with the requirements contained in this Item.
- The bid was in a form other than the official proposal 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 attend a specified mandatory pre-bid conference.
- The Bidder did not meet the requirements of the technical qualification.
- The Bidder did not include a signed State of Texas Child Support Business Ownership Form.
- The bidder is not prequalified by TxDOT

- The bidder does not meet the Owner's qualification requirements.

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.
- 8.1.1. Proposal Form. Use the electronic proposal form in the Owner's bidding system. 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 proposal form may not contain the special provisions, special specifications, general notes, and other Contract documents. These documents are included by reference.
- 8.1.2. Proposal Guaranty. Provide a bid guaranty in the amount indicated on the proposal form. Use an electronic bid bond. Guaranty checks or printed bid bonds 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.
- 8.1.4. Revising the Proposal Form. Make desired changes as allowed by the Owner's bidding system up until the time and date set for the opening of bids. 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.
- 8.2.1. Proposal Form. Mark all entries in ink. As an alternative to hand writing the unit prices in the proposal form, submit a typed proposal form. A typed proposal form must contain the information in the format shown on the "Example of Bid Prices Submitted by Computer Printout" in the proposal form.
- 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 proposal 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 proposal form must be authorized to bind all joint venture participants.
- If a proposal 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. Proposal Guaranty. Provide a bid guaranty in the amount indicated on the bid documents. Use either an electronic bond or a printed bid bond. An electronic bid bond may be used as the guaranty. Ensure the electronic bid bond meets the requirements of Section 2L.8.1.2., "Proposal Guaranty," and submit the electronic bid bond with the printed bid.
- 8.2.3. Guaranty Check. Hays County does not accept Proposal Guarantees that are paid with checks.
- 8.2.4. 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.
- 8.2.5. Submittal of Bid. Place the completed proposal form and the bid guaranty 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.
- 8.2.6. Revising the Proposal Form. Make desired changes to the proposal form in ink and submit the bid to the Letting Official. The Owner will not make revisions to a bid on behalf of a Bidder.
- 8.2.7. 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.

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.

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 proposal form to determine the official total bid amount, except as provided in Section 2L.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. Additive Alternate Items. The Owner will sum the products of the quantities and the unit prices for the regular items in the proposal form to determine the total bid amount for the base bid. The official total bid amount will be determined by the summation of the base bid plus a pre-determined order of additive alternate items. An estimate of the budgeted amount may be shown on the plans.
- The Contract will identify the base bid work and additive alternate work to be performed. The Owner makes no guarantee that the additive alternate work will be required.
- 10.5.2. 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:
- $$A \quad B1 \quad B2 \quad BX \quad BT$$
- 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.
- 10.5.3. Buy America. Comply with Buy America in accordance with Section 6L.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

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.

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.

Item 3L

Award and Execution of Contract



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 minor technicalities in the best interest of the Owner.

- 1.1. **Award.** The Owner will award the Contract to the low Bidder as determined by Article 2L.10., "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.
- The low bid contains a bid error that satisfies the requirements and criteria in Article 2L.11 "Consideration of Bid Errors."
- 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.

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 proposal guaranty to the Contractor.

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.

4. EXECUTION OF CONTRACT

Provide the following within 15 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

- 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

Type of Insurance	Amount of Coverage
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 on the Owner's form.

- 4.5. **Railroad Documents.** Provide all required documents for satisfaction of railroad requirements for projects that have work which involves railroad right of way. Comply with the requirements of Article 5L.8., "Cooperation With Railroads."

5. FAILURE TO ENTER CONTRACT

If the Contractor fails to comply with all of the requirements in Article 3L.4., "Execution of Contract," the proposal guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Contractor forfeiting the proposal guaranty will not be considered in future bids for the same work unless there has been a substantial change in design of the work.

6. APPROVAL AND EXECUTION OF CONTRACT

The Contract will be approved and signed under authority of the Owner.

7. RETURN OF PROPOSAL GUARANTY

Bid bonds will not be returned.

8. BEGINNING OF WORK

Do not begin work until authorized in writing by the Owner.

Verify all quantities of materials shown on the plans before ordering.

For Contracts with callout work and work orders, the purchase of materials before a work order is issued or without prior written approval of the Engineer is at the Contractor's risk, and the Department is not obligated for the cost of the materials or work to acquire the materials.

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.

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.

Item 4L

Scope of Work



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.

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. The preconstruction conference may be scheduled with the safety preconstruction meeting described in Section 7L.1.2., "Safety Preconstruction Meeting."

- 2.1. **Issue Resolution Process.** An issue is any aspect of the Contract where parties of the Contract do not agree. The individuals identified at the lowest level of the issue escalation ladder will initiate the issue resolution process by escalating any issue that remains unresolved within the time frame outlined in the issue escalation ladder.

Work with the Owner to resolve all issues during the course of the Contract. Refer to Article 4L.7., "Dispute or Claims Procedure," for all unresolved issues.

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 9L.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.

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 9L.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 8L, "Prosecution and Progress."

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.

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 9L.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.

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 Owners's goal is to have a dispute settled by the Engineer before elevating it as a claim.

If a dispute cannot be resolved, initiate the Contract claim procedure by filing a Contract claim after the completion of the Contract or when required for orderly performance of the Contract. Submit the claim to the Owner in accordance with state law.

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 Owner issues notice to the Contractor that they are in default, the date the Owner 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.

Item 5L

Control of the Work



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.

The Engineer may pursue actions against the Contractor, including but not limited to the withholding of payments and suspending the work, for noncompliance of the Contract.

The Engineer may suspend the work without suspending working day charges for noncompliance of the Contract.

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.

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 ¹
	Minor structures	No unless otherwise shown on the plans	No
5. Erection drawings		Yes	No ^{1,2}
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.

Submit shop drawings electronically for the fabrication of structural items.

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.

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. Special provisions govern over plans (including general notes), which govern over standard specifications and special specifications. 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.

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.

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.

7. COOPERATION BETWEEN CONTRACTORS

Cooperate and coordinate with other Contractors working within the limits or adjacent to the limits.

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.

9. CONSTRUCTION SURVEYING

Use Method C 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.

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 4L.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.

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.

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.

The work performed under this Article will not be paid for directly but will be considered subsidiary to Items of the Contract.

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 5L.11., "Final Cleanup."
- 12.1.2. **Final Inspection.** After all work is complete, the Contractor will request a final inspection by the Engineer authorized to accept the work.
- The final inspection will be made as soon as possible, and not later than 10 calendar days after the request. No working day charges will be made between the date of request and final inspection.
- After the final inspection, if the work is satisfactory, the Engineer will notify the Contractor in writing of the final acceptance of the work. If the final inspection finds any work to be unsatisfactory, the Engineer will identify in writing all deficiencies in the work requiring correction. Correct the deficiencies identified. Working day charges will resume if these deficiencies are not corrected within 7 calendar days, unless otherwise authorized by the Engineer. Upon correction, the Engineer will make an inspection to verify that all deficiencies were corrected satisfactorily. The Engineer will provide written notice of the final acceptance.
- 12.1.3. **Final Measurement.** Final measurements and pay quantity adjustments may be made after final acceptance.
- 12.1.4. **Removal of Traffic Control Devices.** Remove construction traffic control devices and advance warning signs upon final acceptance or as directed.

Item 6L

Control of Materials



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 6L.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 (Department Form 1818 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.

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 payments due to the Contractor.

3. MANUFACTURER WARRANTIES

Transfer to the Owner warranties and guarantees required by the Contract or received as part of normal trade practice.

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.

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.

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.

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.

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.

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.

10. HAZARDOUS MATERIALS

Comply with the requirements of Article 7L.11., "Responsibility for 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. 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.

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 Part 61, 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.

DSHS requires that notifications be postmarked at least 10 working days before initiating demolition or renovation of each structure or load bearing member shown on the plans. If the actual demolition, renovation, or removal date is changed or delayed, notify the Engineer in writing of these revised dates in sufficient time to allow for the Owner's notification to DSHS to be postmarked at least 10 days in advance of the work.

Failure to provide the above information may require the temporary suspension of work under Article 8L.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.

- 10.3.1. **Asbestos Removed by Third Party.** At locations where unknown ACM is discovered, the Owner will arrange for abatement by a third party.

- 10.3.2. **Asbestos Removed by the Contractor.** Maintain certification as Asbestos Abatement Contractor by the Texas Department of State Health Services for the duration of the Contract. Provide copies of audits and certification to the Engineer.

- 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.

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.

Item 7L

Legal Relations and Responsibilities



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 4L.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 will make an inspection of the traffic control devices. Comply with the results of the inspection in the prescribed time frame.

- 1.5.1. **Contractor Responsible Person and Alternate.** Designate in writing, a Contractor's Responsible Person (CRP) and an alternate to be the representative of the Contractor who is responsible for taking or directing corrective measures regarding the traffic control. The CRP or alternate must be accessible by phone 24 hr. per day and able to respond when notified. The CRP and alternate must comply with the requirements of Section 7L.1.5.5., "Training."
- 1.5.2. **Flaggers.** Designate in writing, a flagger instructor who will serve as a flagging supervisor and is responsible for training and assuring that all flaggers are qualified to perform flagging duties. Before beginning work, provide a list of flaggers certified to perform flagging duties.
- Provide flaggers as directed. Flaggers must be courteous and able to effectively communicate with the public. When directing traffic, flaggers must dress appropriately, wear high-visibility safety apparel, use flags, signs, stop-slow paddles, and other hand-signaling devices, and follow the flagging procedures in the TMUTCD. Comply with the requirements of Section 7L.1.5.5., "Training."
- 1.5.3. **Law Enforcement Personnel.** Provide uniformed law enforcement personnel with patrol vehicles as directed. Document the work zone traffic services provided in the manner prescribed by the Department. Law enforcement personnel providing work zone traffic services must be trained for the service they perform. Comply with Section 7L.1.5.5., "Training."
- 1.5.4. **Other Work Zone Personnel.** Workers involved with traffic control, including the maintenance of the traffic control, must comply with the requirements of Section 7L.1.5.5., "Training."
- 1.5.5. **Training.** Workers involved with the traffic control must be trained using Department-approved training, except in the case of Section 7L.1.5.4, "Other Work Zone Personnel" who may be trained using Contractor-developed Training in lieu of Department-approved Training.

Provide a copy of the certification of completion to the Engineer, except in the case of Contractor-developed Training. Ensure the certification of completion includes the following:

- name of provider and course title,
- name of participant,
- date of completion, and
- date of expiration.

For Contractor developed-Training, maintain a log of attendees. Make the log available upon request. Ensure the log is legible and includes the following:

- print name and signature of participant,
- name and title of trainer, and
- date of training.

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.

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 7L.6., "Preservation of Cultural and Natural Resources and the Environment."

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.

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.

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.

- 6.7. **Contractor Responsibility.** If the Contractor initiates changes to the Contract and the Owner approves the changes, the Contractor is responsible for obtaining clearances and coordinating with appropriate regulatory agencies.

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.

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.

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.

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.

11. RESPONSIBILITY FOR HAZARDOUS MATERIALS

Comply with the requirements of Article 6L.10., "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.

12. 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.

13. 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.

14. 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.

15. 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.

- 15.1. **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.

- 15.2. **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.

- 15.3. **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.

- 15.4. **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.

16. 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.

- 16.1. **Reimbursable Repair.** Except for damage to appurtenances listed in Section 7L.16.2.1., "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.

- 16.2. **Appurtenances.**

- 16.2.1. **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 7L.16.2.2., "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.

- 16.2.2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7L.16.1., "Reimbursable Repair," to appurtenances (including temporary and permanent crash cushion attenuators and guardrail end treatments).

- 16.3. **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 7L.16.1., "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.

- 16.4. **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 7L.16.1., "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.

- 16.5. **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.
- 16.5.1. **Isolated Work Locations.** For isolated work locations, when all work is completed, including work for Article 5L.11., “Final Cleanup,” the Engineer may relieve the Contractor from responsibility for maintenance.
- 16.5.2. **Work Except for Vegetative Establishment and Test Periods.** When all work for all or isolated work locations has been completed, including work for Article 5L.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.
- 16.5.3. **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.
- 16.5.4. **When Directed by the Engineer.** The Engineer may relieve the Contractor from the responsibility for maintenance when directed.
- 16.6. **Basis of Payment.** When reimbursement for repair work is allowed and performed, payment will be made in accordance with pertinent items or Article 4L.4., “Changes in the Work.”

17. ELECTRICAL REQUIREMENTS

17.1. Definitions.

17.1.1. **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.

- 17.1.2. **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.
- 17.1.3. **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.
- 17.1.4. **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.
- 17.2. **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

“Directly supervised by a licensed electrician” means that a licensed electrician is physically present during all electrical work. “Directly supervised by a licensed electrician or certified person” means that a licensed electrician or certified person is physically present during all electrical work.

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.”

18. PAYROLLS

Ensure that employees, contract labor, and any subcontractor’s employees are paid at least the predetermined wage rates shown on the Contract.

Payroll records must contain the information required by law. As an option, form WH-347, “Payroll” is provided by the U.S. Department of Labor.

Maintain payroll and related records during the course of the Contract and preserve these records for a period of 3 years following the completion of the Contract or as required by law.

18.1. **Minimum Wage Requirements for Federally Funded Contracts.** Comply with the requirements of FHWA-1723, “Required Contract Provisions Federal-Aid Construction Contract.”

Submit payroll records to the Engineer in the manner prescribed by the Owner.

18.2. **Minimum Wage Requirements for State Funded Contracts.** Comply with the requirements of 29 USC 206 unless otherwise shown in the Contract.

Upon request, submit payroll records to the Engineer in the manner prescribed by the Owner.

Item 8L

Prosecution and Progress



1. PROSECUTION OF WORK

Unless otherwise shown in the Contract, begin work within 30 calendar days after the authorization date to begin work as shown on the Notice to Proceed. Prosecute the work continuously to completion within the working days specified. Unless otherwise shown in the Contract documents, work may be prosecuted in concurrent phases if no changes are required in the traffic control plan or if a revised traffic control plan is approved. Notify the Engineer at least 24 hr. before beginning work or before beginning any new operation. Do not start new operations to the detriment of work already begun. Minimize interference to traffic.

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.

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 by the Engineer 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 determined 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 but not limited to copies of cancelled checks, available for inspection by the Owner. Submit payment records upon request. Retain payment records for a period of 3 years 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 payments and suspending the work. This work will not be measured or paid for directly but will be subsidiary to pertinent items.
- 2.4. **Payrolls.** Comply with Article 7L.19., "Payrolls."

3. COMPUTATION OF CONTRACT TIME FOR COMPLETION

The number of working days is established by the Contract. Working day charges will begin as prescribed in Article 8L.1., "Prosecution of Work." Working day charges will continue in accordance with the Contract.

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.

- 3.1. **Working Day Charges.** Working days will be charged in accordance with Section 8L.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.

- 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 8L.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 8L.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 8L.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.

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.

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. **Progress Schedule.** 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 8L.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.

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.

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 8L.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.

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 8L.2., "Subcontracting," and abide by the DBE/HUB/SBE commitments previously approved by the Owner .

No markups as defined in Article 9L.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 4L.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 8L.8., "Termination of the Contract."

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.

Item 9L

Measurement and Payment



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.

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.

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 4L.4., "Changes in the Work."

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 5L.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.

5. PROGRESS PAYMENTS

The Engineer will prepare a monthly estimate of the amount of work performed, including materials in place. Incomplete items of work may be paid at an agreed upon percentage as approved. Payment of the monthly estimate is determined at the Contract item prices less any withholdings or deductions in accordance with the Contract. Progress payments may be withheld for failure to comply with the Contract.

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.

7. PAYMENT FOR EXTRA WORK AND FORCE ACCOUNT METHOD

Payment for extra work directed, performed, and accepted will be made in accordance with Article 4L.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 9L.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 9L.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 9L.7., "Payment for Extra Work and Force Account Method," will be paid for the increase in bond.

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.

9. 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 7L.16., "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.

FINAL PAYMENT

When the Contract has been completed, all work has been approved, final acceptance has been made in accordance with Article 5L.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, including retainage.

Special Specification 6056

Preformed In-Lane (Transverse)/Centerline Rumble Strips



1. DESCRIPTION

Furnish and install preformed in-lane (transverse) or preformed centerline rumble strips as shown on the plans.

2. MATERIALS

Provide rumble strips from manufacturers prequalified by the Department. The Traffic Operations Division maintains a list of prequalified rumble strip manufacturers.

3. CONSTRUCTION

Install the in-lane (transverse) rumble strips in locations shown in the plans. Install centerline rumble strips in the gaps between broken centerline pavement marking stripes as shown in the plans. Install the rumble strips in accordance to manufacturer's recommendations.

4. MEASUREMENT

This Item will be measured transversely by the foot across the roadway on which the rumble strip is installed. Measurement shall include all strips of materials placed across the roadway surface.

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 "Preformed In-Lane (Transverse) Rumble Strips" or "Preformed Centerline Rumble Strips." This price shall be full compensation for all labor, equipment, tools and incidentals necessary to complete the work.

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 000

Nondiscrimination



1. DESCRIPTION

All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Owner, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of Owner's programs or activities.

2. DEFINITION OF TERMS

Where the term "contractor" appears in the following six nondiscrimination clauses, the term "contractor" is understood to include all parties to contracts or agreements with the Owner.

3. NONDISCRIMINATION PROVISIONS

During the performance of this contract, the contractor agrees as follows:

- 3.1. **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 3.2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 3.4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Owner or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- 3.5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Owner shall impose such contract sanctions as it, the Owner may determine to be appropriate, including, but not limited to:
- withholding of payments to the contractor under the contract until the contractor complies, and/or
 - cancellation, termination or suspension of the contract, in whole or in part.
- 3.6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs (3.1) through (3.6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Owner may direct as a means of enforcing such provisions including sanctions for non-compliance: provided, however that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Special Provision to Item 000

Certification of Nondiscrimination in Employment



1. GENERAL

By signing this proposal, the Bidder certifies that Bidder has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note—The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Special Provision to Item 000

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)



1. GENERAL

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. GOALS

2.1. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

2.2. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area are as follows:

Goals for minority participation in each trade, %	Goals for female participation in each trade, %
See Table 1	6.9

2.3. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals will be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2.4. A Contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each Contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other Contractors and subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

3. SUBCONTRACTING

The Contractor must provide written notification to the Owner within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation pending concurrence of the Owner in the award. The notification will list the names,

address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

4. COVERED AREA

As used in this special provision, and in the Contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

5. REPORTS

The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1
Goals for Minority Participation

County	Participation, %	County	Participation, %
Anderson	22.5	Chambers	27.4
Andrews	18.9	Cherokee	22.5
Angelina	22.5	Childress	11.0
Aransas	44.2	Clay	12.4
Archer	11.0	Cochran	19.5
Armstrong	11.0	Coke	20.0
Atascosa	49.4	Coleman	10.9
Austin	27.4	Collin	18.2
Bailey	19.5	Collingsworth	11.0
Bandera	49.4	Colorado	27.4
Bastrop	24.2	Comal	47.8
Baylor	11.0	Comanche	10.9
Bee	44.2	Concho	20.0
Bell	16.4	Cooke	17.2
Bexar	47.8	Coryell	16.4
Blanco	24.2	Cottle	11.0
Borden	19.5	Crane	18.9
Bosque	18.6	Crockett	20.0
Bowie	19.7	Crosby	19.5
Brazoria	27.3	Culberson	49.0
Brazos	23.7	Dallam	11.0
Brewster	49.0	Dallas	18.2
Briscoe	11.0	Dawson	19.5
Brooks	44.2	Deaf Smith	11.0
Brown	10.9	Delta	17.2
Burleson	27.4	Denton	18.2
Burnet	24.2	DeWitt	27.4
Caldwell	24.2	Dickens	19.5
Calhoun	27.4	Dimmit	49.4
Callahan	11.6	Donley	11.0
Cameron	71.0	Duval	44.2
Camp	20.2	Eastland	10.9
Carson	11.0	Ector	15.1
Cass	20.2	Edwards	49.4
Castro	11.0	Ellis	18.2

County	Participation, %	County	Participation, %
El Paso	57.8	Kenedy	44.2
Erath	17.2	Kent	10.9
Falls	18.6	Kerr	49.4
Fannin	17.2	Kimble	20.0
Fayette	27.4	King	19.5
Fisher	10.9	Kinney	49.4
Floyd	19.5	Kleberg	44.2
Foard	11.0	Knox	10.9
Fort Bend	27.3	Lamar	20.2
Franklin	17.2	Lamb	19.5
Freestone	18.6	Lampasas	18.6
Frio	49.4	LaSalle	49.4
Gaines	19.5	Lavaca	27.4
Galveston	28.9	Lee	24.2
Garza	19.5	Leon	27.4
Gillespie	49.4	Liberty	27.3
Glasscock	18.9	Limestone	18.6
Goliad	27.4	Lipscomb	11.0
Gonzales	49.4	Live Oak	44.2
Gray	11.0	Llano	24.2
Grayson	9.4	Loving	18.9
Gregg	22.8	Lubbock	19.6
Grimes	27.4	Lynn	19.5
Guadalupe	47.8	Madison	27.4
Hale	19.5	Marion	22.5
Hall	11.0	Martin	18.9
Hamilton	18.6	Mason	20.0
Hansford	11.0	Matagorda	27.4
Hardeman	11.0	Maverick	49.4
Hardin	22.6	McCulloch	20.0
Harris	27.3	McLennan	20.7
Harrison	22.8	McMullen	49.4
Hartley	11.0	Medina	49.4
Haskell	10.9	Menard	20.0
Hays	24.1	Midland	19.1
Hemphill	11.0	Milam	18.6
Henderson	22.5	Mills	18.6
Hidalgo	72.8	Mitchell	10.9
Hill	18.6	Montague	17.2
Hockley	19.5	Montgomery	27.3
Hood	18.2	Moore	11.0
Hopkins	17.2	Morris	20.2
Houston	22.5	Motley	19.5
Howard	18.9	Nacogdoches	22.5
Hudspeth	49.0	Navarro	17.2
Hunt	17.2	Newton	22.6
Hutchinson	11.0	Nolan	10.9
Irion	20.0	Nueces	41.7
Jack	17.2	Ochiltree	11.0
Jackson	27.4	Oldham	11.0
Jasper	22.6	Orange	22.6
Jeff Davis	49.0	Palo Pinto	17.2
Jefferson	22.6	Panola	22.5
Jim Hogg	49.4	Parker	18.2
Jim Wells	44.2	Parmer	11.0
Johnson	18.2	Pecos	18.9
Jones	11.6	Polk	27.4
Karnes	49.4	Potter	9.3
Kaufman	18.2	Presidio	49.0
Kendall	49.4	Randall	9.3

County	Participation, %	County	Participation, %
Rains	17.2	Reagan	20.0
Real	49.4	Throckmorton	10.9
Red River	20.2	Titus	20.2
Reeves	18.9	Tom Green	19.2
Refugio	44.2	Travis	24.1
Roberts	11.0	Trinity	27.4
Robertson	27.4	Tyler	22.6
Rockwall	18.2	Upshur	22.5
Runnels	20.0	Upton	18.9
Rusk	22.5	Uvalde	49.4
Sabine	22.6	Val Verde	49.4
San Augustine	22.5	Van Zandt	17.2
San Jacinto	27.4	Victoria	27.4
San Patricio	41.7	Walker	27.4
San Saba	20.0	Waller	27.3
Schleicher	20.0	Ward	18.9
Scurry	10.9	Washington	27.4
Shackelford	10.9	Webb	87.3
Shelby	22.5	Wharton	27.4
Sherman	11.0	Wheeler	11.0
Smith	23.5	Wichita	12.4
Somervell	17.2	Wilbarger	11.0
Starr	72.9	Willacy	72.9
Stephens	10.9	Williamson	24.1
Sterling	20.0	Wilson	49.4
Stonewall	10.9	Winkler	18.9
Sutton	20.0	Wise	18.2
Swisher	11.0	Wood	22.5
Tarrant	18.2	Yoakum	19.5
Taylor	11.6	Young	11.0
Terrell	20.0	Zapata	49.4
Terry	19.5	Zavala	49.4

Special Provision to Item 000

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)



1. GENERAL

1.1. As used in these specifications:

- "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- "Minority" includes:
 - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

1.2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it will physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

1.3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the equal employment opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

1.4. The Contractor will implement the specific affirmative action standards provided in Section 1.7.1. through Section 1.7.16. of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing Contracts in geographical areas where they do not have a Federal or federally assisted construction Contract will apply the minority and female goals established for the geographical area where the Contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The

Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- 1.5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women will excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 1.6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- 1.7. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The Contractor will document these efforts fully, and will implement affirmative action steps at least as extensive as the following:
 - 1.7.1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 1.7.2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - 1.7.3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this will be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - 1.7.4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
 - 1.7.5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor will provide notice of these programs to the sources compiled under 7b above.
 - 1.7.6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - 1.7.7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other

employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- 1.7.8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- 1.7.9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 1.7.10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- 1.7.11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- 1.7.12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- 1.7.13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- 1.7.14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
- 1.7.15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- 1.7.16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 1.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 7.1. through Section 7.16.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 7.1. through Section 7.16. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation will not be a defense for the Contractor's noncompliance.
- 1.9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor

may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- 1.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 1.11. The Contractor will not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
- 1.12. The Contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.
- 1.13. The Contractor, in fulfilling its obligations under these specifications, will implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
- 1.14. The Contractor will designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records must at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- 1.15. Nothing herein provided will be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- 1.16. In addition to the reporting requirements set forth elsewhere in this Contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, will submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the included instructions.

Special Provision 000

Cargo Preference Act Requirements in Federal Aid Contracts



1. DESCRIPTION

All recipients of federal financial assistance are required to comply with the U.S. Department of Transportation's (DOT) Cargo Preference Act Requirements, 46 CFR Part 381, Use of United States-Flag Vessels.

This requirement applies to material or equipment that is acquired specifically for a Federal-aid highway project. It is not applicable to goods or materials that come into inventories independent of a Federal Highway Administration (FHWA) funded contract.

When oceanic shipments are necessary for materials or equipment acquired for a specific Federal-aid construction project, the contractor agrees to:

- Utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- Furnish a legible copy of a rated, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of 46 CFR Part 381 Section 7, "Federal Grant, Guaranty, Loan and Advance of Funds Agreements," within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, to both the Engineer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- Insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Special Provision to Item 000

Disadvantaged Business Enterprise in Federal-Aid Contracts



1. DESCRIPTION

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted Contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted Contracts.

2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

- 2.1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of Contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this Contract as follows.

The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A, and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this Contract.

The Contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

The requirements of this Special Provision must be physically included in any subcontract.

By signing the Contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment.

2.2. Definitions.

- 2.2.1. **Administrative Reconsideration.** A process by which the low bidder may request reconsideration when the Department determines the good faith effort (GFE) requirements have not been met.

- 2.2.2. **Commercially Useful Function (CUF).** A CUF occurs when a DBE has the responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing, and supervising the work.

- 2.2.3. **Disadvantaged Business Enterprise (DBE).** A for-profit 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.

- 2.2.4. **DBE Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge, and

in which the DBE is responsible for a distinct, clearly defined portion of the work of the Contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

- 2.2.5. **DOT.** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- 2.2.6. **Federal-Aid Contract.** Any Contract between the Owner and a Contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.7. **Good Faith Effort.** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- 2.2.8. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website:
<http://www.census.gov/eos/www/naics/>.
- 2.2.9. **Race-Conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- 2.2.10. **Race-Neutral DBE Participation.** Any participation by a DBE through customary competitive procurement procedures.
- 2.2.11. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on a Contract may be counted toward achievement of the assigned DBE Contract goal.
- 2.3. **Contractor's Responsibilities.**
 - 2.3.1. **DBE Liaison Officer.** Designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
 - 2.3.2. **Compliance Tracking System (CTS).** This Contract is subject to Contract compliance tracking. Contractors and DBEs are required to provide any noted and requested Contract compliance-related data to the Owner. This includes, but is not limited to, commitments, payments, substitutions, and good faith efforts. Contractors and DBEs are responsible for responding by any noted response date or due date to any instructions or request for information by the Owner.
 - 2.3.3. **Apparent Low Bidder.** The apparent low bidder must submit DBE commitments to satisfy the DBE goal or submit good faith effort Form 2603 and supporting documentation demonstrating why the goal could not be achieved, in whole or part, no later than 5 calendar days after bid opening. The means of transmittal and the risk of timely receipt of the information will be the bidder's responsibility and no extension of the 5-calendar-day timeframe will be allowed for any reason.
 - 2.3.4. **DBE Contractor.** A DBE Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. In the event a DBE subcontracts to a non-DBE, that information must be reported monthly.
 - 2.3.5. **DBE Committal.** Only those DBEs certified by the TUCP are eligible to be used for goal attainment. The Directory can be accessed at the following Internet address:
<https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.

A DBE must be certified on the day the commitment is considered and at time of subcontract execution. It is the Contractor's responsibility to ensure firms identified for participation are approved certified DBE firms.

The Bidder is responsible to ensure that all submittals are checked for accuracy. Any and all omissions, deletions, and/or errors that may affect the end result of the commitment package are the sole liabilities of the bidder.

Commitments in excess of the goal are considered race-neutral commitments.

- 2.3.6. **Good Faith Effort Requirements.** A Contractor who cannot meet the Contract goal, in whole or in part, must make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

- 2.3.6.1. **Administrative Reconsideration.** If the Owner determines that the apparent low bidder has failed to satisfy the good faith efforts requirement, the Owner will notify the Bidder of the failure and will give the Bidder an opportunity for administrative reconsideration.

The Bidder must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Owner.

If a reconsideration request is timely received, the reconsideration decision will be made by the Owner's DBE liaison officer or, if the DBE liaison officer took part in the original determination that the Bidder failed to satisfy the good faith effort requirements, an Owner employee who holds a senior leadership position and reports directly to the executive officer, and who did not take part in the original determination will act as an administrative hearing officer. The Bidder may provide written documentation or argument concerning whether the assigned DBE contract goal was met or whether adequate good faith efforts were made to meet the Contract goal.

The DBE liaison or other Owner employee making the reconsideration determination may request a meeting with the Bidder to discuss whether the goal commitments were met or whether adequate good faith efforts were made to obtain the commitments to meet the Contract goal.

The meeting must be held within 7 days of the date of the request submitted under this section. If the Bidder is unavailable to meet during the 7-day period, the reconsideration decision will be made on the written information provided by the Bidder.

The Owner will provide to the Bidder a written decision that explains the basis for finding that the Bidder did not meet the Contract goal or did not make adequate good faith efforts to meet the Contract goal, within 7 days of the date of the notice issued in this section.

The reconsideration decision is final and not subject to administrative appeal.

- 2.3.7. **Determination of DBE Participation.** The work performed by the DBE must be reasonably construed to be included in the work area and NAICS work code identified by the Contractor in the approved commitment.

Participation by a DBE on a Contract will not be counted toward DBE goals until the amount of the participation has been paid to the DBE.

Payments made to a DBE that was not on the original commitment may be counted toward the Contract goal if that DBE was certified as a DBE before the execution of the subcontract and has performed a Commercially Useful Function.

The total amount paid to the DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its Contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE.

DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the Contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of the DBE's subcontract, the DBE firm may complete the work and the DBE firm's participation will be counted toward the Contract goal. If the DBE firm is decertified before the DBE firm has signed a subcontract, the Contractor is obligated to replace the ineligible DBE firm or demonstrate that it has made good faith efforts to do so.

The Contractor may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

The Contractor may count only 60% of its expenditure to a DBE regular dealer. According to 49 CFR 26.55(e)(2)(i), a DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. A long-term lease with a third-party transportation company is not eligible for 60% goal credit.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site.

A Contractor may count toward its DBE goal a portion of the total value of the Contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the Contract performed by the DBE.

- 2.3.8. **Commercially Useful Function.** It is the Contractor's obligation to ensure that each DBE used on federal-assisted contracts performs a commercially useful function on the Contract.

The Owner will monitor performance during the Contract to ensure each DBE is performing a CUF.

Under the terms established in 49 CFR 26.55, a DBE performs a CUF when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

With respect to material and supplies used on the Contract, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Owner will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the Owner will presume that the DBE is not performing a CUF.

If the Owner determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible participation. The denial period of time may occur before or after a determination has been made by the Owner.

In case of the denial of credit for non-performance, the Contractor will be required to provide a substitute DBE to meet the Contract goal or provide an adequate good faith effort when applicable.

- 2.3.8.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before the Owner makes a final finding that no CUF has been performed by a DBE, the Owner will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal.

- 2.3.9. **Joint Check.** The use of joint checks between a Contractor and a DBE is allowed with Owner approval. To obtain approval, the Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Owner.

The Owner will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the Contract goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny and may result in the lack of participation towards the Contract goal requirement if DBE independence cannot be established.

Joint checks will not be allowed simply for the convenience of the Contractor.

If the proper procedures are not followed or the Owner determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the Contract goal requirement, and the Contractor will need to make up the difference elsewhere on the project.

- 2.3.10. **DBE Termination and Substitution.** No DBE named in the commitment submitted under Section 2.3.5. will be terminated for convenience, in whole or part, without the Owner's approval. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Unless consent is provided, the Contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Contractor, prior to submitting its request to terminate, must first give written notice to the DBE of its intent to terminate and the reason for the termination. The Contractor will copy the Owner on the Notice of Intent to terminate.

The DBE has 5 calendar days to respond to the Contractor's notice and will advise the Contractor and the Owner of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Owner should not approve the prime Contractor's request for termination.

The Owner may provide a shorter response time if required in a particular case as a matter of public necessity.

The Owner will consider both the Contractor's request and DBE's stated position prior to approving the request. The Owner may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. If the Owner does not approve the request, the Contractor must continue to use the committed DBE firm in accordance with the Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the Contractor seeks to terminate, reduce, or substitute a DBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the DBE firm was engaged.

When a DBE subcontractor is terminated, make good faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established Contract goal, the work that the original DBE was to have performed under the Contract.

Submit the completed Form 2228, "DBE Termination Substitution Request," within seven (7) days, which may be extended for an additional 7 days if necessary at the request of the Contractor. The Owner will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

- 2.3.11. **Reports and Records.** By the 15th of each month and after work begins, report payments to meet the DBE goal and for DBE race-neutral participation on projects with or without goals. These payment reports will be required until all DBE subcontracting or material supply activity is completed. Negative payment reports are required when no activity has occurred in a monthly period.

Notify the Owner if payment to any DBE subcontractor is withheld or reduced.

Before receiving final payment from the Owner, the Contractor must indicate a final payment on the compliance tracking system. The final payment is a summary of all payments made to the DBEs on the project.

All records must be retained for a period of 3 years following completion of the Contract work, and must be available at reasonable times and places for inspection by authorized representatives of the Owner, Texas Department of Transportation or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

- 2.3.12. **Failure to Comply.** If the Owner determines the Contractor has failed to demonstrate good faith efforts to meet the assigned goal, the Contractor will be given an opportunity for reconsideration by the Owner.

A Contractor's failure to comply with the requirements of this Special Provision will constitute a material breach of this Contract. In such a case, the Owner reserves the right to terminate the Contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor; or to secure a refund, not as a penalty but as liquidated damages, to the Owner or such other remedy or remedies as the Owner deems appropriate.

- 2.3.13. **Investigations.** The Owner may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBEs and complainants using DBE Subcontractors to meet the Contract goal, are required to cooperate fully and promptly with compliance reviews, investigations, and other requests for information.

2.3.14.

Falsification and Misrepresentation. If the Owner determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Owner to be unallowable, or if the Contractor engages in repeated violations, falsification, or misrepresentation, the Owner may:

- refuse to count any fraudulent or misrepresented DBE participation;
- withhold progress payments to the Contractor commensurate with the violation;
- refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
- seek any other available contractual remedy.

Special Provision to Item 000

Schedule of Liquidated Damages



The dollar amount of daily contract administration Liquidated Damages per Working Day is \$ 750.00

In addition to the amount shown above, the Liquidated Damages will be increased by the amount shown in Item 8 of the General Notes for Road User Cost (RUC), when applicable.

Special Provision to Item 2L

Instructions to Bidders



Item 2L, "Instructions to Bidders," 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 2L.3., "Issuing Bid Documents," second paragraph, is supplemented by the following.

The Owner will not issue a proposal form if one or more of the following apply:

- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2L.13., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project.

Article 2L.7., "Nonresponsive Bid," is supplemented by the following:

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- the Bidder failed to submit a DBE commitment as specified in Article 2L.13., "Disadvantaged Business Enterprise (DBE)."

Article 2L.13., "Disadvantaged Business Enterprise (DBE)," is added.

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, the apparent low bidder will be deemed nonresponsive and the proposal guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Owner may recommend:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the new apparent low Bidder submits DBE information within one calendar day of notification by the Owner.

If the new apparent low Bidder is unable to submit the required DBE information within one calendar day:

- the new apparent low Bidder will not be deemed nonresponsive,
- the Bidder's guaranty will not be forfeited,
- the Owner will reject all bids, and
- the Bidder will remain eligible to receive future proposals for the same project.

Special Provision to Item 42

Concrete Substructure



Item 420, "Concrete Substructures" of the Standard Specifications is amended with respect to the clause cited below. No other clauses or requirements of this Item are waived or changed.

Article 42 .6., "Payment." The first paragraph is 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 the class of concrete and element identified and by the special designation when appropriate. This price is full compensation for furnishing, hauling, and mixing concrete materials; furnishing, bending, fabricating, splicing, welding and placing the required reinforcement; clips, blocks, metal spacers, ties, wire, or other materials used for fastening reinforcement in place; placing, finishing, and curing concrete; mass placement controls; applying ordinary surface finish; furnishing and placing drains, metal flashing strips, and expansion-joint material; excavation, subgrade preparation; and forms and falsework, equipment, labor, tools, and incidentals.

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 voided and replaced with the following.

1. DESCRIPTION

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) in the plans and the Texas Pollutant Discharge Elimination System (TPDES) General Permit TXR150000.

2. MATERIALS

Furnish materials in accordance with the following:

- Item 161, "Compost"
- Item 432, "Riprap"
- Item 556, "Pipe Underdrains"

2.1. Rock Filter Dams.

2.1.1. **Aggregate.** Furnish aggregate with hardness, durability, cleanliness, and resistance to crumbling, flaking, and eroding acceptable to the Owner. Provide the following:

- Types 1, 2, and 4 Rock Filter Dams. Use 3 to 6 in. aggregate.
- Type 3 Rock Filter Dams. Use 4 to 8 in. aggregate.

2.1.2. **Wire.** Provide minimum 20 gauge galvanized wire for the steel wire mesh and tie wires for Types 2 and 3 rock filter dams. Type 4 dams require:

- a double-twisted, hexagonal weave with a nominal mesh opening of 2-1/2 in. × 3-1/4 in.;
- minimum 0.0866 in. steel wire for netting;
- minimum 0.1063 in. steel wire for selvages and corners; and
- minimum 0.0866 in. for binding or tie wire.

2.1.3. **Sandbag Material.** Furnish sandbags meeting Section 506.2.8., "Sandbags," except that any gradation of aggregate may be used to fill the sandbags.

2.2. **Temporary Pipe Slope Drains.** Provide corrugated metal pipe, polyvinyl chloride (PVC) pipe, flexible tubing, watertight connection bands, grommet materials, prefabricated fittings, and flared entrance sections that conform to the plans. Recycled and other materials meeting these requirements are allowed if approved.

Furnish concrete in accordance with Item 432, "Riprap."

2.3. **Temporary Paved Flumes.** Furnish asphalt concrete, hydraulic cement concrete, or other comparable non-erodible material that conforms to the plans. Provide rock or rubble with a minimum diameter of 6 in. and a maximum volume of 1/2 cu. ft. for the construction of energy dissipaters.

- 2.4. **Construction Exits.** Provide materials that meet the details shown on the plans and this Section.
- 2.4.1. **Rock Construction Exit.** Provide crushed aggregate for long- and short-term construction exits. Furnish aggregates that are clean, hard, durable, and free from adherent coatings such as salt, alkali, dirt, clay, loam, shale, soft or flaky materials, and organic and injurious matter. Use 4- to 8-in. aggregate for Type 1. Use 2- to 4-in. aggregate for Type 3.
- 2.4.2. **Timber Construction Exit.** Furnish No. 2 quality or better railroad ties and timbers for long-term construction exits, free of large and loose knots and treated to control rot. Fasten timbers with nuts and bolts or lag bolts, of at least 1/2 in. diameter, unless otherwise shown on the plans or allowed. Provide plywood or pressed wafer board at least 1/2 in. thick for short-term exits.
- 2.4.3. **Foundation Course.** Provide a foundation course consisting of flexible base, bituminous concrete, hydraulic cement concrete, or other materials as shown on the plans or directed.
- 2.5. **Embankment for Erosion Control.** Provide rock, loam, clay, topsoil, or other earth materials that will form a stable embankment to meet the intended use.
- 2.6. **Pipe.** Provide pipe outlet material in accordance with Item 556, "Pipe Underdrains," and details shown on the plans.
- 2.7. **Construction Perimeter Fence.**
- 2.7.1. **Posts.** Provide essentially straight wood or steel posts that are at least 60 in. long. Furnish soft wood posts with a minimum diameter of 3 in., or use nominal 2 × 4 in. boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 × 1-1/5 in. Furnish T- or L-shaped steel posts with a minimum weight of 0.5 lb. per foot.
- 2.7.2. **Fence.** Provide orange construction fencing as approved.
- 2.7.3. **Fence Wire.** Provide 11 gauge or larger galvanized smooth or twisted wire. Provide 16 gauge or larger tie wire.
- 2.7.4. **Flagging.** Provide brightly-colored flagging that is fade-resistant and at least 3/4 in. wide to provide maximum visibility both day and night.
- 2.7.5. **Staples.** Provide staples with a crown at least 1/2 in. wide and legs at least 1/2 in. long.
- 2.7.6. **Used Materials.** Previously used materials meeting the applicable requirements may be used if approved.
- 2.8. **Sandbags.** Provide sandbag material of polypropylene, polyethylene, or polyamide woven fabric with a minimum unit weight of 4 oz. per square yard, a Mullen burst-strength exceeding 300 psi, and an ultraviolet stability exceeding 70%.

Use natural coarse sand or manufactured sand meeting the gradation given in Table 1 to fill sandbags. Filled sandbags must be 24 to 30 in. long, 16 to 18 in. wide, and 6 to 8 in. thick.

Table 1
Sand Gradation

Sieve #	Retained (% by Weight)
4	Maximum 3%
100	Minimum 80%
200	Minimum 95%

Aggregate may be used instead of sand for situations where sandbags are not adjacent to traffic. The aggregate size shall not exceed 3/8 in.

- 2.9. **Temporary Sediment Control Fence.** Provide a net-reinforced fence using woven geo-textile fabric. Logos visible to the traveling public will not be allowed.
- 2.9.1. **Fabric.** Provide fabric materials in accordance with DMS-6230, "Temporary Sediment Control Fence Fabric."
- 2.9.2. **Posts.** Provide essentially straight wood or steel posts with a minimum length of 48 in., unless otherwise shown on the plans. Furnish soft wood posts at least 3 in. in diameter, or use nominal 2 × 4 in. boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 × 1-1/2 in. Furnish T- or L-shaped steel posts with a minimum weight of 1.3 lb. per foot.
- 2.9.3. **Net Reinforcement.** Provide net reinforcement of at least 12-1/2 gauge galvanized welded wire mesh, with a maximum opening size of 2 × 4 in., at least 24 in. wide, unless otherwise shown on the plans.
- 2.9.4. **Staples.** Provide staples with a crown at least 3/4 in. wide and legs 1/2 in. long.
- 2.9.5. **Used Materials.** Use recycled material meeting the applicable requirements if approved.
- 2.10. **Biodegradable Erosion Control Logs.**
- 2.10.1. **Core Material.** Furnish core material that is biodegradable or recyclable. Use compost, mulch, aspen excelsior wood fibers, chipped site vegetation, agricultural rice or wheat straw, coconut fiber, 100% recyclable fibers, or any other acceptable material unless specifically called out on the plans. Permit no more than 5% of the material to escape from the containment mesh. Furnish compost meeting the requirements of Item 161, "Compost."
- 2.10.2. **Containment Mesh.** Furnish containment mesh that is 100% biodegradable, photodegradable, or recyclable such as burlap, twine, UV photodegradable plastic, polyester, or any other acceptable material.
- Furnish biodegradable or photodegradable containment mesh when log will remain in place as part of a vegetative system.
- Furnish recyclable containment mesh for temporary installations.
- 2.10.3. **Size.** Furnish biodegradable erosion control logs with diameters shown on the plans or as directed. Stuff containment mesh densely so logs do not deform.

3. CONSTRUCTION

- 3.1. **Contractor Responsibilities.** Implement the Owner's Storm Water Pollution Prevention Plan (SWP3) for the project in accordance with the plans and specifications, TPDES General Permit TXR150000, and as directed by the Owner. Develop and implement an SWP3 for project-specific material supply plants within and outside of the Owner'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.
- 3.2. **General.**
- 3.2.1. **Phasing.** Implement control measures in the area to be disturbed before beginning construction, or as directed. Limit the disturbance to the area shown on the plans or as directed. If, in the opinion of the Owner, the Contractor cannot control soil erosion and sedimentation resulting from construction operations, the Owner will limit the disturbed area to that which the Contractor is able to control. Minimize disturbance to vegetation.
- 3.2.2. **Maintenance.** Immediately correct ineffective control measures. Implement additional controls as directed. Remove excavated material within the time requirements specified in the applicable storm water permit.

- 3.2.3. **Stabilization.** Stabilize disturbed areas where construction activities will be temporarily stopped in accordance with the applicable storm water permit. Establish a uniform vegetative cover. The project will not be accepted until a 70% density of existing adjacent undisturbed areas is obtained, unless otherwise shown on the plans. When shown on the plans, the Owner may accept the project when adequate controls are in place that will control erosion, sedimentation, and water pollution until sufficient vegetative cover can be established.
- 3.2.4. **Finished Work.** Upon acceptance of vegetative cover, remove and dispose of all temporary control measures, temporary embankments, bridges, matting, falsework, piling, debris, or other obstructions placed during construction that are not a part of the finished work, or as directed.
- 3.2.5. **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 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 as described in the TPDES General Permit TXR150000. Utilize 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.
- 3.3. **Installation, Maintenance, and Removal Work.** Perform work in accordance with the SWP3, according to manufacturers' guidelines, and in accordance with the TPDES General Permit TXR150000. 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 Owner. . If a device ceases to function as intended, repair or replace the device or portions thereof as necessary. Remove sediment, debris, and litter. When approved, sediments may be disposed of within embankments, or in the right of way in areas where the material will not contribute to further siltation. Dispose of removed material in accordance with federal, state, and local regulations.
- Remove devices upon approval or as directed. Finish-grade and dress the area upon removal. Stabilize disturbed areas in accordance with the permit, and as shown on the plans or directed. Materials removed are considered consumed by the project. Retain ownership of stockpiled material and remove it from the project when new installations or replacements are no longer required.
- 3.3.1. **Rock Filter Dams for Erosion Control.** Remove trees, brush, stumps, and other objectionable material that may interfere with the construction of rock filter dams. Place sandbags as a foundation when required or at the Contractor's option.
- Place the aggregate to the lines, height, and slopes specified, without undue voids for Types 1, 2, 3, and 5. Place the aggregate on the mesh and then fold the mesh at the upstream side over the aggregate and secure it to itself on the downstream side with wire ties, or hog rings for Types 2 and 3, or as directed. Place rock filter dams perpendicular to the flow of the stream or channel unless otherwise directed. Construct filter dams according to the following criteria unless otherwise shown on the plans:
- 3.3.1.1. **Type 1 (Non-reinforced).**
- 3.3.1.1.1. **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.
- 3.3.1.1.2. **Top Width.** At least 2 ft.
- 3.3.1.1.3. **Slopes.** No steeper than 2:1.
- 3.3.1.2. **Type 2 (Reinforced).**

- 3.3.1.2.1. **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.
- 3.3.1.2.2. **Top Width.** At least 2 ft.
- 3.3.1.2.3. **Slopes.** No steeper than 2:1.
- 3.3.1.3. **Type 3 (Reinforced).**
 - 3.3.1.3.1. **Height.** At least 36 in. measured vertically from existing ground to top of filter dam.
 - 3.3.1.3.2. **Top Width.** At least 2 ft.
 - 3.3.1.3.3. **Slopes.** No steeper than 2:1.
- 3.3.1.4. **Type 4 (Sack Gabions).** Unfold sack gabions and smooth out kinks and bends. Connect the sides by lacing in a single loop–double loop pattern on 4- to 5-in. spacing for vertical filling. Pull the end lacing rod at one end until tight, wrap around the end, and twist 4 times. Fill with stone at the filling end, pull the rod tight, cut the wire with approximately 6 in. remaining, and twist wires 4 times.

Place the sack flat in a filling trough, fill with stone, connect sides, and secure ends as described above for horizontal filling.

Lift and place without damaging the gabion. Shape sack gabions to existing contours.
- 3.3.1.5. **Type 5.** Provide rock filter dams as shown on the plans.
- 3.3.2. **Temporary Pipe Slope Drains.** Install pipe with a slope as shown on the plans or as directed. Construct embankment for the drainage system in 8-in. lifts to the required elevations. Hand-tamp the soil around and under the entrance section to the top of the embankment as shown on the plans or as directed. Form the top of the embankment or earth dike over the pipe slope drain at least 1 ft. higher than the top of the inlet pipe at all points. Secure the pipe with hold-downs or hold-down grommets spaced a maximum of 10 ft. on center. Construct the energy dissipaters or sediment traps as shown on the plans or as directed. Construct the sediment trap using concrete or rubble riprap in accordance with Item 432, "Riprap," when designated on the plans.
- 3.3.3. **Temporary Paved Flumes.** Construct paved flumes as shown on the plans or as directed. Provide excavation and embankment (including compaction of the subgrade) of material to the dimensions shown on the plans unless otherwise indicated. Install a rock or rubble riprap energy dissipater, constructed from the materials specified above, to a minimum depth of 9 in. at the flume outlet to the limits shown on the plans or as directed.
- 3.3.4. **Construction Exits.** Prevent traffic from crossing or exiting the construction site or moving directly onto a public roadway, alley, sidewalk, parking area, or other right of way areas other than at the location of construction exits when tracking conditions exist. Construct exits for either long- or short-term use.
 - 3.3.4.1. **Long-Term.** Place the exit over a foundation course as required. Grade the foundation course or compacted subgrade to direct runoff from the construction exits to a sediment trap as shown on the plans or as directed. Construct exits with a width of at least 14 ft. for one-way and 20 ft. for two-way traffic for the full width of the exit, or as directed.
 - 3.3.4.1.1. **Type 1.** Construct to a depth of at least 8 in. using crushed aggregate as shown on the plans or as directed.
 - 3.3.4.1.2. **Type 2.** Construct using railroad ties and timbers as shown on the plans or as directed.
 - 3.3.4.2. **Short-Term.**

- 3.3.4.2.1. **Type 3.** Construct using crushed aggregate, plywood, or wafer board. This type of exit may be used for daily operations where long-term exits are not practical.
- 3.3.4.2.2. **Type 4.** Construct as shown on the plans or as directed.
- 3.3.5. **Earthwork for Erosion Control.** Perform excavation and embankment operations to minimize erosion and to remove collected sediments from other erosion control devices.
- 3.3.5.1. **Excavation and Embankment for Erosion Control Features.** Place earth dikes, swales, or combinations of both along the low crown of daily lift placement, or as directed, to prevent runoff spillover. Place swales and dikes at other locations as shown on the plans or as directed to prevent runoff spillover or to divert runoff. Construct cuts with the low end blocked with undisturbed earth to prevent erosion of hillsides. Construct sediment traps at drainage structures in conjunction with other erosion control measures as shown on the plans or as directed.

Create a sediment basin, where required, providing 3,600 cu. ft. of storage per acre drained, or equivalent control measures for drainage locations that serve an area with 10 or more disturbed acres at one time, not including offsite areas.
- 3.3.5.2. **Excavation of Sediment and Debris.** Remove sediment and debris when accumulation affects the performance of the devices, after a rain, and when directed.
- 3.3.6. **Construction Perimeter Fence.** Construct, align, and locate fencing as shown on the plans or as directed.
- 3.3.6.1. **Installation of Posts.** Embed posts 18 in. deep or adequately anchor in rock, with a spacing of 8 to 10 ft.
- 3.3.6.2. **Wire Attachment.** Attach the top wire to the posts at least 3 ft. from the ground. Attach the lower wire midway between the ground and the top wire.
- 3.3.6.3. **Flag Attachment.** Attach flagging to both wire strands midway between each post. Use flagging at least 18 in. long. Tie flagging to the wire using a square knot.
- 3.3.7. **Sandbags for Erosion Control.** Construct a berm or dam of sandbags that will intercept sediment-laden storm water runoff from disturbed areas, create a retention pond, detain sediment, and release water in sheet flow. Fill each bag with sand so that at least the top 6 in. of the bag is unfilled to allow for proper tying of the open end. Place the sandbags with their tied ends in the same direction. Offset subsequent rows of sandbags 1/2 the length of the preceding row. Place a single layer of sandbags downstream as a secondary debris trap. Place additional sandbags as necessary or as directed for supplementary support to berms or dams of sandbags or earth.
- 3.3.8. **Temporary Sediment-Control Fence.** Provide temporary sediment-control fence near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the fence into erosion-control measures used to control sediment in areas of higher flow. Install the fence as shown on the plans, as specified in this Section, or as directed.
- 3.3.8.1. **Installation of Posts.** Embed posts at least 18 in. deep, or adequately anchor, if in rock, with a spacing of 6 to 8 ft. and install on a slight angle toward the runoff source.
- 3.3.8.2. **Fabric Anchoring.** Dig trenches along the uphill side of the fence to anchor 6 to 8 in. of fabric. Provide a minimum trench cross-section of 6 × 6 in. Place the fabric against the side of the trench and align approximately 2 in. of fabric along the bottom in the upstream direction. Backfill the trench, then hand-tamp.
- 3.3.8.3. **Fabric and Net Reinforcement Attachment.** Attach the reinforcement to wooden posts with staples, or to steel posts with T-clips, in at least 4 places equally spaced unless otherwise shown on the plans. Sewn vertical pockets may be used to attach reinforcement to end posts. Fasten the fabric to the top strand of reinforcement by hog rings or cord every 15 in. or less.

- 3.3.8.4. **Fabric and Net Splices.** Locate splices at a fence post with a minimum lap of 6 in. attached in at least 6 places equally spaced unless otherwise shown on the plans. Do not locate splices in concentrated flow areas.

Requirements for installation of used temporary sediment-control fence include the following:

- fabric with minimal or no visible signs of biodegradation (weak fibers),
- fabric without excessive patching (more than 1 patch every 15 to 20 ft.),
- posts without bends, and
- backing without holes.

- 3.3.9. **Biodegradable Erosion Control Logs.** Install biodegradable erosion control logs near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the biodegradable erosion control logs into the erosion measures used to control sediment in areas of higher flow. Install, align, and locate the biodegradable erosion control logs as specified below, as shown in plans or as directed.

Secure biodegradable erosion control logs in a method adequate to prevent displacement as a result of normal rain events, prevent damage to the logs, and to the satisfaction of the Owner such that flow is not allowed under the logs. Temporarily removing and replacing biodegradable erosion logs as to facilitate daily work is allowed at the Contractor's expense.

- 3.3.10. **Vertical Tracking.** Perform vertical tracking on slopes to temporarily stabilize soil. Provide equipment with a track undercarriage capable of producing a linear soil impression measuring a minimum of 12 in. long × 2 to 4 in. wide × 1/2 to 2 in. deep. Do not exceed 12 in. between track impressions. Install continuous linear track impressions where the 12 in. length impressions are perpendicular to the slope. Vertical tracking is required on projects where soil disturbing activities have occurred unless otherwise approved.

4. MEASUREMENT

- 4.1. **Rock Filter Dams.** Installation or removal of rock filter dams will be measured by the foot or by the cubic yard. The measured volume will include sandbags, when used.
- 4.1.1. **Linear Measurement.** When rock filter dams are measured by the foot, measurement will be along the centerline of the top of the dam.
- 4.1.2. **Volume Measurement.** When rock filter dams are measured by the cubic yard, measurement will be based on the volume of rock computed by the method of average end areas.
- 4.1.2.1. **Installation.** Measurement will be made in final position.
- 4.1.2.2. **Removal.** Measurement will be made at the point of removal.
- 4.2. **Temporary Pipe Slope Drains.** Temporary pipe slope drains will be measured by the foot.
- 4.3. **Temporary Paved Flumes.** Temporary paved flumes will be measured by the square yard of surface area. The measured area will include the energy dissipater at the flume outlet.
- 4.4. **Construction Exits.** Construction exits will be measured by the square yard of surface area.
- 4.5. **Earthwork for Erosion and Sediment Control.**
- 4.5.1. **Equipment and Labor Measurement.** Equipment and labor used will be measured by the actual number of hours the equipment is operated and the labor is engaged in the work.
- 4.5.2. **Volume Measurement.**

- 4.5.2.1. **In Place.**
- 4.5.2.1.1. **Excavation.** Excavation will be measured by the cubic yard in its original position and the volume computed by the method of average end areas.
- 4.5.2.1.2. **Embankment.** Embankment will be measured by the cubic yard in its final position by the method of average end areas. The volume of embankment will be determined between:
- the original ground surfaces or the surface upon that the embankment is to be constructed for the feature and
 - the lines, grades and slopes of the accepted embankment for the feature.
- 4.5.2.2. **In Vehicles.** Excavation and embankment quantities will be combined and paid for under "Earthwork (Erosion and Sediment Control, In Vehicle)." Excavation will be measured by the cubic yard in vehicles at the point of removal. Embankment will be measured by the cubic yard in vehicles measured at the point of delivery. Shrinkage or swelling factors will not be considered in determining the calculated quantities.
- 4.6. **Construction Perimeter Fence.** Construction perimeter fence will be measured by the foot.
- 4.7. **Sandbags for Erosion Control.** Sandbags will be measured as each sandbag or by the foot along the top of sandbag berms or dams.
- 4.8. **Temporary Sediment-Control Fence.** Installation or removal of temporary sediment-control fence will be measured by the foot.
- 4.9. **Biodegradable Erosion Control Logs.** Installation or removal of biodegradable erosion control logs will be measured by the foot along the centerline of the top of the control logs.
- 4.10. **Vertical Tracking.** Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.

5. PAYMENT

The following will not be paid for directly but are subsidiary to pertinent Items:

- erosion-control measures for Contractor project-specific locations (PSLs) inside and outside the right of way (such as construction and haul roads, field offices, equipment and supply areas, plants, and material sources);
- removal of litter, unless a separate pay item is shown on the plans;
- repair to devices and features damaged by Contractor operations;
- added measures and maintenance needed due to negligence, carelessness, lack of maintenance, and failure to install permanent controls;
- removal and reinstallation of devices and features needed for the convenience of the Contractor;
- finish grading and dressing upon removal of the device; and
- minor adjustments including but not limited to plumbing posts, reattaching fabric, minor grading to maintain slopes on an erosion embankment feature, or moving small numbers of sandbags.

Stabilization of disturbed areas will be paid for under pertinent Items.

Furnishing and installing pipe for outfalls associated with sediment traps and ponds will not be paid for directly but is subsidiary to the excavation and embankment under this Item.

- 5.1. **Rock Filter Dams.** 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 as follows:

5.1.1. **Installation.** Installation will be paid for as “Rock Filter Dams (Install)” of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

5.1.2. **Removal.** Removal will be paid for as “Rock Filter Dams (Remove).” This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.

When the Owner directs that the rock filter dam installation or portions thereof be replaced, payment will be made at the unit price bid for “Rock Filter Dams (Remove)” and for “Rock Filter Dams (Install)” of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

5.2. **Temporary Pipe Slope Drains.** 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 “Temporary Pipe Slope Drains” of the size specified. This price is full compensation for furnishing materials, removal and disposal, furnishing and operating equipment, labor, tools, and incidentals.

Removal of temporary pipe slope drains will not be paid for directly but is subsidiary to the installation Item. When the Owner directs that the pipe slope drain installation or portions thereof be replaced, payment will be made at the unit price bid for “Temporary Pipe Slope Drains” of the size specified, which is full compensation for the removal and reinstallation of the pipe drain.

Earthwork required for the pipe slope drain installation, including construction of the sediment trap, will be measured and paid for under “Earthwork for Erosion and Sediment Control.”

Riprap concrete or stone, when used as an energy dissipater or as a stabilized sediment trap, will be measured and paid for in accordance with Item 432, “Riprap.”

5.3. **Temporary Paved Flumes.** 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 “Temporary Paved Flume (Install)” or “Temporary Paved Flume (Remove).” This price is full compensation for furnishing and placing materials, removal and disposal, equipment, labor, tools, and incidentals.

When the Owner directs that the paved flume installation or portions thereof be replaced, payment will be made at the unit prices bid for “Temporary Paved Flume (Remove)” and “Temporary Paved Flume (Install).” These prices are full compensation for the removal and replacement of the paved flume and for equipment, labor, tools, and incidentals.

Earthwork required for the paved flume installation, including construction of a sediment trap, will be measured and paid for under “Earthwork for Erosion and Sediment Control.”

5.4. **Construction Exits.** Contractor-required construction exits from off right of way locations or on-right of way PSLs will not be paid for directly but are subsidiary to pertinent Items.

The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” for construction exits needed on right of way access to work areas required by the Owner will be paid for at the unit price bid for “Construction Exits (Install)” of the type specified or “Construction Exits (Remove).” This price is full compensation for furnishing and placing materials, excavating, removal and disposal, cleaning vehicles, labor, tools, and incidentals.

When the Owner directs that a construction exit or portion thereof be removed and replaced, payment will be made at the unit prices bid for “Construction Exit (Remove)” and “Construction Exit (Install)” of the type specified. These prices are full compensation for the removal and replacement of the construction exit and for equipment, labor, tools, and incidentals.

Construction of sediment traps used in conjunction with the construction exit will be measured and paid for under "Earthwork for Erosion and Sediment Control."

5.5. **Earthwork for Erosion and Sediment Control.**

- 5.5.1. **Initial Earthwork for Erosion and Sediment Control.** 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 "Excavation (Erosion and Sediment Control, In Place)," "Embankment (Erosion and Sediment Control, In Place)," "Excavation (Erosion and Sediment Control, In Vehicle)," "Embankment (Erosion and Sediment Control, In Vehicle)," or "Earthwork (Erosion and Sediment Control, In Vehicle)."

This price is full compensation for excavation and embankment including hauling, disposal of material not used elsewhere on the project; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor, tools, and incidentals.

Sprinkling and rolling required by this Item will not be paid for directly, but will be subsidiary to this Item.

- 5.5.2. **Maintenance Earthwork for Erosion and Sediment Control for Cleaning and Restoring Control Measures.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid under a Contractor Force Account Item from invoice provided to the Owner.

This price is full compensation for excavation, embankment, and re-grading including removal of accumulated sediment in various erosion control installations as directed, hauling, and disposal of material not used elsewhere on the project; excavation for construction of erosion-control features; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor, tools, and incidentals.

Earthwork needed to remove and obliterate 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.

- 5.6. **Construction Perimeter Fence.** 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 "Construction Perimeter Fence." This price is full compensation for furnishing and placing the fence; digging, fence posts, wire, and flagging; removal and disposal; and materials, equipment, labor, tools, and incidentals.

Removal of construction perimeter fence will be not be paid for directly but is subsidiary to the installation Item. When the Owner directs that the perimeter fence installation or portions thereof be removed and replaced, payment will be made at the unit price bid for "Construction Perimeter Fence," which is full compensation for the removal and reinstallation of the construction perimeter fence.

- 5.7. **Sandbags for Erosion Control.** Sandbags will be paid for at the unit price bid for "Sandbags for Erosion Control" (of the height specified when measurement is by the foot). This price is full compensation for materials, placing sandbags, removal and disposal, equipment, labor, tools, and incidentals.

Removal of sandbags will not be paid for directly but is subsidiary to the installation Item. When the Owner directs that the sandbag installation or portions thereof be replaced, payment will be made at the unit price bid for "Sandbags for Erosion Control," which is full compensation for the reinstallation of the sandbags.

- 5.8. **Temporary Sediment-Control Fence.** 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 as follows:

- 5.8.1. **Installation.** Installation will be paid for as "Temporary Sediment-Control Fence (Install)." This price is full compensation for furnishing and operating equipment finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.
- 5.8.2. **Removal.** Removal will be paid for as "Temporary Sediment-Control Fence (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- 5.9. **Biodegradable Erosion Control Logs.** 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 as follows:
- 5.9.1. **Installation.** Installation will be paid for as "Biodegradable Erosion Control Logs (Install)" of the size specified. This price is full compensation for furnishing and operating equipment finish backfill and grading, staking, proper disposal, labor, materials, tools, and incidentals.
- 5.9.2. **Removal.** Removal will be paid for as "Biodegradable Erosion Control Logs (Remove)." This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.
- 5.10. **Vertical Tracking.** Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.

Special Provision to Item 656

Foundations for Traffic Control Devices



Item 656, "Foundations for Traffic Control Devices" 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 3. Construction., the first paragraph is supplemented by the following:

Ensure the top of the foundation and anchor bolts meet specified requirements in relation to the final grade.

Special Provision to Item 006

Control of Materials



Item 6, “Control of Materials” 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 1.1, “Buy America,” The section is removed and replaced by the following:

Comply with the latest provisions of Build America, Buy America Act (BABA Act) of the Bipartisan Infrastructure Law which restricts funds being made available from Federal financial assistance programs unless all the iron products, steel products, manufactured products, and construction materials used in the project are produced in the United States. Use steel or iron products, manufactured products, or construction materials produced in the United States except when:

- a waiver exists exempting the material from Buy America compliance,
- 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 an alternate item for a foreign source product and the Contract is awarded based on the alternate item, or
- the materials are temporarily installed.

For construction materials submit a notarized original of TxDOT Construction Material Buy America Certification Form (Department Form 2806) with the proper attachments for verification of compliance. Form 2806 is not required for materials classified as manufactured products.

Construction Materials are classified as an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- Non-ferrous metals,
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables),
- Glass (including optic glass)
- Lumber, or
- Drywall.

Details shown on the plans provide additional clarification on Buy America requirements for this project. Refer to the Buy America Material Classification Sheet for clarification on material categorization, located at: <https://www.txdot.gov/business/resources/materials/buy-america-material-classification-sheet.html>.

For steel or iron materials submit a notarized original of the FORM D-9-USA-1 (Department Form 1818) with the proper attachments for verification of compliance. For steel or iron materials the manufacturing process includes any process that modifies the chemical content, physical shape or size, or final finish of a product. The manufacturing process begins with initial melting and mixing and continues through fabrication (cutting, drilling, welding, bending, etc.) and coating (paint, galvanizing, epoxy, etc.).

Special Provision to Item 7L

Legal Relations and Responsibilities



Item 7L, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below.

Section 1.5.2., "Flaggers," the first paragraph is voided and replaced by the following:

- 1.5.2 **Flaggers.** Designate in writing, a flagger instructor who will serve as a flagging supervisor and is responsible for training and assuring that all flaggers are qualified to perform flagging duties. Certify to the Engineer that all flaggers will be trained and make available upon request a list of flaggers trained to perform flagging duties.

Section 1.5.5., "Training," is voided and replaced by the following:

- 1.5.5 **Training.** Train workers involved with the traffic control using Department-approved training as shown on the "Traffic Control Training" Material Producer List.

Coordinate enrollment, pay associated fees, and successfully complete Department-approved training or Contractor-developed training. Training is valid for the period prescribed by the provider. Except for law enforcement personnel training, refresher training is required every 4 yr. from the date of completion unless otherwise specified by the course provider. The Engineer may require training at a frequency instead of the period prescribed based on the Department's needs. Training and associated fees will not be measured or paid for directly but are considered subsidiary to pertinent Items.

Certify to the Engineer that workers involved in traffic control and other work zone personnel have been trained and make available upon request a copy of the certification of completion to the Engineer. Ensure the following is included in the certification of completion:

- name of provider and course title,
- name of participant,
- date of completion, and
- date of expiration.

Where Contractor-developed training or a Department-approved training course does not produce a certification, maintain a log of attendees. Make the log available upon request. Ensure the log is legible and includes the following:

- printed name and signature of participant,
- name and title of trainer, and
- date of training.

- 1.5.5.1. **Contractor-developed Training.** Develop and deliver Contractor-developed training meeting the minimum requirements established by the Department. The outline for this training must be submitted to the Engineer for approval at the preconstruction meeting. The CRP or designated alternate may deliver the training instead of the Department-approved training. The work performed and materials furnished to develop and deliver the training will not be measured or paid for directly but will be considered subsidiary to pertinent Items.

- 1.5.5.1.1. **Flagger Training Minimum Requirements.** A Contractor's certified flagging instructor is permitted to train other flaggers.

1.5.5.1.2.

Optional Contractor-developed Training for Other Work Zone Personnel. For other work zone personnel, the Contractor may provide training meeting the curriculum shown below instead of Department-approved training.

Minimum curriculum for Contractor-provided training is as follows:

Contractor-developed training must provide information on the use of personnel protection equipment, occupational hazards and health risks, and other pertinent topics related to traffic management. The type and amount of training will depend on the job duties and responsibilities. Develop training applicable to the work being performed. Develop training to include the following topics.

- The Life You Save May Be Your Own (or other similar company safety motto).
- Purpose of the training.
 - It's the Law.
 - To make work zones safer for workers and motorists.
 - To understand what is needed for traffic control.
 - To save lives including your own.
- Personal and Co-Worker Safety.
 - **High Visibility Safety Apparel.** Discuss compliant requirements; inspect regularly for fading and reduced reflective properties; if night operations are required, discuss the additional and appropriate required apparel in addition to special night work risks; if moving operations are underway, discuss appropriate safety measures specific to the situation and traffic control plan.
 - **Blind Areas.** A blind area is the area around a vehicle or piece of construction equipment not visible to the operators, either by line of sight or indirectly by mirrors. Discuss the "Circle of Safety" around equipment and vehicles; use of spotters; maintain eye contact with equipment operators; and use of hand signals.
 - **Runovers and Backovers.** Remain alert at all times; keep a safe distance from traffic; avoid turning your back to traffic and if you must then use a spotter; and stay behind protective barriers, whenever possible. Note: It is not safe to sit on or lean against a concrete barrier, these barriers can deflect four plus feet when struck by a vehicle.
 - Look out for each other, warn co-workers.
 - Be courteous to motorists.
 - Do not run across active roadways.
 - Workers must obey traffic laws and drive courteously while operating vehicles in the work zones.
 - Workers must be made aware of company distracted driving policies.
- **Night Time Operations.** Focus should be placed on projects with a nighttime element.
- **Traffic Control Training.** Basics of Traffic Control.
 - Identify work zone traffic control supervisor and other appropriate persons to report issues to when they arise.
 - Emphasize that work zone traffic control devices must be in clean and in undamaged condition. If devices have been hit but not damaged, put back in their correct place and report to traffic control supervisor. If devices have been damaged, replace with new one and report to traffic control supervisor. If devices are dirty, faded or have missing or damaged reflective tape clean or replace and report to traffic control supervisor. Show examples of non-acceptable device conditions. Discuss various types of traffic control devices to be used and where spacing requirements can be found.
 - **Channelizing Devices and Barricades with Slanted Stripes.** Stripes are to slant in the direction you want traffic to stay or move to; demonstrate this with a device.
 - **Traffic Queuing.** Workers must be made aware of traffic queuing and the dangers created by it. Workers must be instructed to immediately notify the traffic control supervisor and other supervisory personnel if traffic is queuing beyond advance warning sign and devices or construction limits.

- **Signs.** Signs must be straight and not leaning. Report problems to the traffic control supervisor or other as designated for immediate repair. Covered signs must be fully covered. If covers are damaged or out of place, report to traffic control supervisor or other as designated.

Special Provision to Item 9L

Measurement and Payment



Item 9, "Measurement and Payment" 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 7.1.4.3., "Standby Equipment Costs," is voided and replaced by the following:

7.1.4.3. **Standby Equipment Costs.** Payment for standby equipment will be made in accordance with Section 9L.7.1.4., "Equipment," except that the 15% markup will not be allowed and that:

Section 7.1.4.3.1., "Contractor-Owned Equipment," is voided and replaced by the following:

7.1.4.3.1. **Contractor-Owned Equipment.** For Contractor-owned equipment:

- Standby will be paid at 50% of the monthly Equipment Watch rate after the regional and age adjustment factors have been applied. Operating costs will not be allowed. Calculate the standby rate as follows.

Standby rate = (FHWA hourly rate - operating costs) × 50%
- If an hourly rate is needed, divide the monthly *Equipment Watch* rate by 176.
- No more than 8 hr. of standby will be paid during a 24-hr. day period, nor more than 40 hr. per week.
- Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

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 ¹	Tex-117-E, Part II	6
Compressive Strength ²	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.

Special Provision to Item 302

Aggregates for Surface Treatments



Item 302, "Aggregates for Seal Coats," 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., "Aggregate." Tables 2 and 3 are voided and replaced by the following.

Table 2
Aggregate Gradation Requirements (Cumulative % Retained¹)

Sieve	Aggregate Gradation Requirements (Cumulative % Retained)								
	Grade								
	1	2	3S²	3		4S²	4	5S²	5
				Non-Lightweight	Lightweight				
1"	-	-	-	-	-	-	-	-	-
7/8"	0-2	0	-	-	-	-	-	-	-
3/4"	20-35	0-2	0	0	0	-	-	-	-
5/8"	85-100	20-40	0-5	0-5	0-2	0	0	-	-
1/2"	-	80-100	55-85	20-40	10-25	0-5	0-5	0	0
3/8"	95-100	95-100	95-100	80-100	60-80	60-85	20-40	0-5	0-5
1/4"	-	-	-	95-100	95-100	-	-	65-85	-
#4	-	-	-	-	-	95-100	95-100	95-100	50-80
#8	99-100	99-100	99-100	98-100	98-100	98-100	98-100	98-100	98-100

1. Round test results to the nearest whole number.
2. Single-size gradation.

Table 3
Aggregate Quality Requirements

Property	Test Method	Requirement ¹	
		Minimum	Maximum
SAC	AQMP	As shown on the plans	
Deleterious Material ² , %	Tex-217-F , Part I	-	2.0
Decantation, %	Tex-406-A	-	1.5
Flakiness Index, %	Tex-224-F	-	17
Gradation	Tex-200-F , Part I	Table 2 Requirements	
Los Angeles Abrasion, %	Tex-410-A	-	35
Magnesium Sulfate Soundness, 5 Cycle, %	Tex-411-A	-	25
Micro-Deval Abrasion, %	Tex-461-A	Note 3	
Coarse Aggregate Angularity ⁴ , 2 Crushed Faces, %	Tex-460-A , Part I	85	-
Additional Requirements for Lightweight Aggregate			
Dry Loose Unit Wt., lb./cu. ft.	Tex-404-A	35	60
Pressure Slaking, %	Tex-431-A	-	6.0
Freeze-Thaw Loss, %	Tex-432-A	-	10.0
Water Absorption, 24hr., %	Tex-433-A	-	12.0

1. Material requirements are listed below, unless otherwise shown on the plans.
2. Not required for lightweight aggregate.
3. Used to estimate the magnesium sulfate soundness loss in accordance with Section 2.1.1.
4. Only required for crushed gravel.

Section 2.1.1., “Micro-Deval Abrasion,” is added.

The Engineer will perform a minimum of one Micro-Deval abrasion test in accordance with [Tex-461-A](#) for each coarse aggregate source per project that has a Rated Source Soundness Magnesium (RSSM) loss value greater than 15 as listed in the BRSQC. 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 by the Engineer. The Engineer may require additional testing before granting approval.

Section 2.2., “Precoating.” The third paragraph is voided and replaced by the following.

The Engineer retains the right to remove precoat material from aggregate samples in accordance with [Tex-210-F](#), or as recommended by the Construction Division, and test the aggregate to verify compliance with Table 2 and Table 3 requirements. Gradation testing may be performed with precoat intact.

Section 2.3., “Sampling,” is added.

Personnel who conduct sampling and witnessing of sampling must be certified by the Department-approved certification program. Supply the Engineer with a list of certified personnel and copies of their current certificates before beginning construction 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.”

The Engineer will sample aggregate from stockpiles located at the production site, intermediate distribution site, or project location in accordance with [Tex-221-F](#), Section 3.2.3. The Engineer will split each sample into 2 equal portions in accordance with [Tex-200-F](#), Section 3.3, and label these portions “Engineer” and “Contractor” or “Supplier.” Witness the sampling and splitting, and take immediate possession of the samples labeled “Contractor” or “Supplier”.

Section 2.4., “Reporting and Responsibilities,” is added.

The Engineer will provide test results to the Contractor and Supplier within 10 working days from the date the stockpile was sampled for sources listed on the Department’s Bituminous Rated Source Quality Catalog (BRSQC), unless otherwise directed. The Engineer will provide test results for the LA Abrasion ([Tex-410-A](#)) and Magnesium Sulfate Soundness ([Tex-411-A](#)) tests within 30 calendar days for sources not listed on the BRSQC, or for sources not meeting the requirements of Section 2.1.1., “Micro-Deval Abrasion.” The Engineer will report to the other party within 24 hours when any test result does not meet the requirements listed in Table 2 or Table 3.

Special Provision to Item 316

Seal Coat



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 421

Hydraulic Cement Concrete



Item 421, "Hydraulic Cement Concrete" 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 421.2., "**Materials,**" the second sentence of the first paragraph is voided and replaced by the following.

Provide aggregates from sources listed in the Department's Concrete Rated Source Quality Catalog (CRSQC).

Article 421.2.2., Supplementary Cementing Materials (SCM), is voided and replaced with the following.

Supplementary Cementing Materials (SCM).

- Fly Ash. Furnish fly ash, Modified fly ash (MFA), and Ground Bottom Ash (GBA) conforming to [DMS-4610](#), "Fly Ash."
- Slag Cement. Furnish Slag Cement conforming to [DMS-4620](#), "Slag Cement."
- Silica Fume. Furnish silica fume conforming to [DMS-4630](#), "Silica Fume."
- Metakaolin. Furnish metakaolin conforming to [DMS-4635](#), "Metakaolin."

Article 421.3.1.3., "**Agitators and Truck and Stationary Mixers,**" the first paragraph is voided and replaced by the following.

Provide stationary and truck mixers capable of combining the ingredients of the concrete into a thoroughly mixed and uniform mass and capable of discharging the concrete so that the requirements of [Tex-472-A](#) are met.

Article 421.3.1.3., "**Agitators and Truck and Stationary Mixers,**" is supplemented with the following.

Truck mixers with automated water and chemical admixture measurement and slump and slump flow monitoring equipment meeting the requirement of ASTM C 94 will be allowed. Provide data every 6 mo. substantiating the accuracy of slump, slump flow, temperature, water, and chemical admixture measurements. The slump measured by the automated system must be within 1 in. of the slump measured in accordance with [Tex-415-A](#). The concrete temperature measured by the automated system must be within 1°F of concrete temperature measured in accordance with [Tex-422-A](#). The Engineer will not use the automated measurements for acceptance.

Article 421.4.2, “Mix Design Proportioning,” Table is voided and replaced by the following.

Table
Concrete Classes

Class of Concrete	Design Strength, ¹ Min f'_c (psi)	Max w/cm Ratio	Coarse Aggregate Grades ^{2,3,4}	Cement Types	Mix Design Options	Exceptions to Mix Design Options	General Usage ⁵
A	3,000	0.60	1–4, 8	I, II, I/II, IL, IP, IS, IT, V	1, 2, 4, & 7	When the cementitious material content does not exceed 520 lb./cu. yd., any fly ash listed in the MPL may be used at a cement replacement of 20% to 50%.	Curb, gutter, curb & gutter, conc. retards, sidewalks, driveways, back-up walls, anchors, non-reinforced drilled shafts
B	2,000	0.60	2–7				Riprap, traffic signal controller foundations, small roadside signs, and anchors
C ⁶	3,600	0.45	1–6	I, II, I/II, IP, IL, IS, IT, V	1–8		Drilled shafts, bridge substructure, traffic rail, culverts except top slab of direct traffic culverts, headwalls, wing walls, inlets, manholes, traffic barrier
E	3,000	0.50	2–5	I, II, I/II, IL, IP, IS, IT, V	1–8	When the cementitious material content does not exceed 520 lb./cu. yd., any fly ash listed in the MPL may be used at a cement replacement of 20% to 50%.	Seal concrete
F ⁶	Note ⁷	0.45	2–5	I, II, I/II, IP, IL, IS, IT, V			Railroad structures; occasionally for bridge piers, columns, bents, post-tension members
H ⁶	Note ⁷	0.45	3–6	I, II, I/II, III, IP, IL, IS, IT, V	1–4, 8	Mix design options 1-8 allowed for cast-in-place concrete and the following precast elements unless otherwise stated in the plans: <ul style="list-style-type: none"> ■ Bridge Deck Panels, ■ Retaining Wall Systems, ■ Coping, ■ Sound Walls, ■ Wall Columns, ■ Traffic Rail, ■ Traffic Barrier, ■ Long/Arch Span Culverts, and ■ precast concrete products included in Items 462, 464, and 465. Do not use Type III cement in mass placement concrete. Up to 20% of blended cement may be replaced with listed SCMs when Option 4 is used for precast concrete. Options 6, & 7 allowed for cast-in-place Class H concrete.	Precast concrete, post-tension members
S ⁶	4,000	0.45	2–5	I, II, I/II, IP, IL, IS, IT, V	1–8		Bridge slabs, top slabs of direct traffic culverts, approach slabs
P	See Item 360, “Concrete Pavement.”	0.50	2–3	I, II, I/II, IL, IP, IS, IT, V	1–8	When the cementitious material content does not exceed 520 lb./cu. yd., any fly ash listed in the MPL may be used at a cement replacement of 20% to 50%.	Concrete pavement

Class of Concrete	Design Strength, ¹ Min f'_c (psi)	Max w/cm Ratio	Coarse Aggregate Grades ^{2,3,4}	Cement Types	Mix Design Options	Exceptions to Mix Design Options	General Usage ⁵
CO ⁶	4,600	0.40	6	I, II, I/II, IP, IL, IS, IT, V	1-8		Bridge deck concrete overlay
LMC ⁶	4,000	0.40	6-8				Latex-modified concrete overlay
SS ⁶	3,600	0.45	4-6		1-8	Use a minimum cementitious material content of 658 lb./cu. yd. of concrete. Limit the alkali loading to 4.0 lbs./cu. yd. or less when using option 7.	Slurry displacement shafts, underwater drilled shafts
⁶	Note ⁷	0.40	Note ⁷	I, II, I/II, III IP, IL, IS, IT, V	1-8		Note ⁷
HES	Note ⁷	0.45	Note ⁷	I, IL, II, I/II, III		Mix design options do not apply. 700 lb. of cementitious material per cubic yard limit does not apply.	Concrete pavement, concrete pavement repair
"X" (HPC) _{6,8,9}	Note ¹⁰	0.45	Note ¹⁰	I, II, I/II, III IP, IL, IS, IT, V	1-4, & 8	Maximum fly ash replacement for Option 3 may be increased to 50%. Up to 20% of a blended cement may be replaced with listed SCMs for Option 4. Do not use Option 8 for precast concrete.	
"X" (SRC) _{6,8,9}	Note ¹⁰	0.45	Note ¹⁰	I/II, II, IP, IL, IS, IT, V	1-4, & 7	When using fly ash, only use fly ashes allowed for SRC as listed in the Fly Ash MPL. Type III-MS may be used where allowed. Type I and Type III cements may be use when fly ashes allowed for SRC as listed in the Fly Ash MPL are used, and with a maximum w/cm of 0.40. Up to 20% of blended cement may be replaced with listed SCMs when Option 4 is used for precast concrete. Use Option 7 for precast concrete where allowed.	

- Design strength must be attained within 56 days.
- Do not use Grade 1 coarse aggregate except in massive foundations with 4 in. minimum clear spacing between reinforcing steel bars, unless otherwise permitted. Do not use Grade 1 aggregate in drilled shafts.
- Use Grade 8 aggregate in extruded curbs unless otherwise approved.
- Other grades of coarse aggregate maybe used in non-structural concrete classes when allowed by the Engineer.
- For information only.
- Structural concrete classes.
- As shown on the plans or specified.
- "X" denotes class of concrete shown on the plans or specified.
- (HPC): High Performance Concrete, (SRC): Sulfate Resistant Concrete.
- Same as class of concrete shown on the plans.

Article 421.4.2.2., "Aggregates," is supplemented by the following.

Use the following equation to determine if the aggregate combination meets the sand equivalency requirement when blending fine aggregate or using an intermediate aggregate:

$$\frac{(SE_1 \times P_1) + (SE_2 \times P_2) + (SE_{ia} \times P_{ia})}{100} \geq 80\%$$

where:

- S₁ sand equivalency (%) of fine aggregate 1
 S₂ sand equivalency (%) of fine aggregate 2
 S_{ia} sand equivalency (%) of intermediate aggregate passing the 3/8 in. sieve
 P₁ percent by weight of fine aggregate 1 of the fine aggregate blend
 P₂ percent by weight of fine aggregate 2 of the fine aggregate blend
 P_{ia} percent by weight of intermediate aggregate passing the 3/8 in. sieve

Article 421.4.2.3., **Chemical Admixtures**,” the second paragraph is voided and replaced with the following.

Use a 30% calcium nitrite solution when a corrosion-inhibiting admixture is required. Dose the admixture at the rate of gallons of admixture per cubic yard of concrete shown on the plans. Use set retarding admixtures, as needed, to control setting time to ensure concrete containing corrosion inhibiting admixtures remain workable for the entire duration of the concrete placement. Perform setting time testing and slump loss testing during trial batch testing.

Article 421.4.2.5., **“Slump,”** the second paragraph is voided and not replaced. Table 9 is voided and replaced with below:

Table 9
Placement Slump Requirements

General Usage	Placement Slump Range, ^{1,2} in.
Walls (over 9 in. thick), caps, columns, piers	3 to 7
Bridge slabs, top slabs of direct traffic culverts, approach slabs, concrete overlays, latex-modified concrete for bridge deck overlays	3 to 6
Inlets, manholes, walls (less than 9 in. thick), bridge railing, culverts, concrete traffic barrier, concrete pavement (formed)	4 to 6
Precast concrete	4 to 9
Underwater concrete placements	6 to 8-1/2
Drilled shafts, slurry displaced and underwater drilled shafts	See Item 416, “Drilled Shaft Foundations.”
Curb, gutter, curb and gutter, concrete retards, sidewalk, driveways, seal concrete, anchors, riprap, small roadside sign foundations, concrete pavement repair, concrete repair	As approved

1. Maximum slump values may be increase above these values shown using chemical admixtures, provided the admixture treated concrete has the same or lower water-to-cementitious ratio and does not exhibit segregation or excessive bleeding. Request approval to increase slump limits in advance for proper evaluation by the Engineer.
2. For fiber reinforced concrete, perform slump before addition of fibers.

Article 421.4.2.6., **“Mix Design Options”**, is voided and replaced with the following.

Option 1. Replace cement with at least the minimum dosage listed in the Fly Ash MPL for the fly ash used in the mixture. Do not replace more than 50% of the cement with fly ash.

Option 2. Replace 35% to 50% of the cement with slag cement.

Option 3. Replace 35% to 50% of the cement with a combination of fly ash, slag cement, MFA, metakaolin, or at least 3% silica fume; however, no more than 35% may be fly ash, and no more than 10% may be silica fume.

Option 4. Use Type IP, Type IS, or Type IT cement as allowed in Table 8 for each class of concrete. Up to 10% of a Type IP, Type IS, or Type IT cement may be replaced with fly ash, slag cement, or silica fume. Use no more than 10% silica fume in the final cementitious material mixture if the Type IT cement contains silica fume, and silica fume is used to replace the cement.

Option 5. Option 5 is left intentionally blank.

Option 6. Use a lithium nitrate admixture at a minimum dosage determined by testing conducted in accordance with Tex-471-A. Before use of the mix, provide an annual certified test report signed and sealed by a licensed professional engineer, from a laboratory on the Department's MPL, certified by the Construction Division as being capable of testing according to Tex-471-A.

Option . Ensure the total alkali contribution from the cement in the concrete does not exceed 3.5 lb. per cubic yard of concrete when using hydraulic cement not containing SCMs calculated as follows:

$$\text{lb. alkali per cu. yd.} = \frac{(\text{lb. cement per cu. yd.}) \times (\% \text{ Na}_2\text{O equivalent in cement})}{100}$$

In the above calculation, use the maximum cement alkali content reported on the cement mill certificate.

Option . Use Table 10 when deviating from Options 1–3 or when required by the Fly Ash MPL. Perform required testing annually and submit results to the Engineer. Laboratories performing ASTM C1260, ASTM C1567, and ASTM C1293 testing must be listed on the Department's MPL. Before use of the mix, provide a certified test report signed and sealed by a licensed professional engineer demonstrating the proposed mixture conforms to the requirements of Table 10.

Provide a certified test report signed and sealed by a licensed professional engineer, when HPC is required, and less than 20% of the cement is replaced with SCMs, demonstrating ASTM C1202 test results indicate the permeability of the concrete is less than 1,500 coulombs tested immediately after either of the following curing schedules:

- Moisture cure specimens 56 days at 73°F.
- Moisture cure specimens 7 days at 73°F followed by 21 days at 100°F.

Table 1
Option Testing and Mix Design Requirements

Scenario	ASTM C126 Result		Testing Requirements for Mix Design Materials or Prescriptive Mix Design Options
	Mix Design Fine Aggregate	Mix Design Coarse Aggregate	
A	0.10%	0.10%	Determine the dosage of SCMs needed to limit the 14-day expansion of each aggregate ¹ to 0.10% when tested individually in accordance with ASTM C1567.
B	≤ 0.10%	≤ 0.10%	Use the minimum replacement listed in the Fly Ash MPL, or When Option 8 is listed on the MPL, use a minimum of 40% fly ash with a maximum CaO ² content of 25%, or Use any ternary combination which replaces 35% to 50% of cement.
	≤ 0.10%	ASTM C1293 1 yr. Expansion ≤ 0.04%	Use a minimum of 20% of any fly ash; or Use any ternary combination which replaces 20% to 50% of cement.
C	≤ 0.10%	0.10%	Determine the dosage of SCMs needed to limit the 14-day expansion of coarse and intermediate ¹ aggregate to 0.10% when tested individually in accordance with ASTM C1567.
D	0.10%	≤ 0.10%	Use the minimum replacement listed in the Fly Ash MPL, or When Option 8 is listed on the MPL, use a minimum of 40% fly ash with a maximum CaO ² content of 25%, or Use any ternary combination which replaces 35% to 50% of cement.
	0.10%	ASTM C1293 1 yr. Expansion ≤ 0.04%	Determine the dosage of SCMs needed to limit the 14-day expansion of each fine aggregate to 0.10% when individually tested in accordance with ASTM C1567.

1. Intermediate size aggregates will fall under the requirements of mix design coarse aggregate.
2. Average the CaO content from the previous ten values as listed on the test certificate.

Article 421.4.2. ., “**Optimized Aggregate Gradation (OAG) Concrete,**” the first sentence of the first paragraph is voided and replaced by the following.

The gradations requirements in Table 4 and Table 6 do not apply when OAG concrete is specified or used by the Contractor unless otherwise shown on the plans.

The fineness modulus for fine aggregate listed in Table 5, does not apply when OAG Concrete is used,

Article 421.4.6.2., **Delivering Concrete,**” the third paragraph is supplemented by the following.

When truck mixers are equipped with automated water or chemical admixture measurement and slump or slump flow monitoring equipment, the addition of water or chemical admixtures during transit is allowed. Reports generated by this equipment must be submitted to the Engineer daily.

Article 421.4.6.2., **“Delivering Concrete,”** the fifth paragraph is voided and replaced with the following. Begin the discharge of concrete delivered in truck mixers within the times listed in Table 14. Concrete delivered after these times, and concrete that has not begun to discharge within these times will be rejected

Article 421.4. .3., **“Testing of Fresh Concrete,”** is voided and replaced with the following.

Testing Concrete. The Engineer, unless specified in other Items or shown on the plans, will test the fresh and hardened concrete in accordance with the following methods:

- Slump. [Tex-415-A](#);
- Air Content. [Tex-414-A](#) or [Tex-416-A](#);
- Temperature. [Tex-422-A](#);
- Making and Curing Strength Specimens. [Tex-447-A](#);
- Compressive Strength. [Tex-418-A](#);
- Flexural Strength. [Tex-448-A](#); and
- Maturity. [Tex-426-A](#).

Flexural strength and maturity specimens will not be made unless specified in other items or shown on the plans.

Concrete with slump less than minimum required after all addition of water withheld will be rejected, unless otherwise allowed by the Engineer. Concrete with slump exceeding maximum allowed may be used at the contractor's option. If used, Engineer will make, test, and evaluate strength specimens as specified in Article 421.5., “Acceptance of Concrete.” Acceptance of concrete not meeting air content or temperature requirements will be determined by Engineer. Fresh concrete exhibiting segregation and excessive bleeding will be rejected.

Article 421.4.8.3.1. “Job-Control Testing,” is voided and not replaced.

Special Provision to Item 440

Reinforcement for Concrete



Item 440, "Standard Specification Title" 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 440.2., "Materials" is supplemented with the following:

- 2.14. Provide zinc-coated, hot-dip galvanized Class I or II steel reinforcement conforming to ASTM A767, Grades 60 or 75 when shown on the plans and as allowed.
- 2.15. Provide continuously hot-dip galvanized reinforcement (CGR) conforming to ASTM A1094 steel reinforcement, Grades 60 or 75 when shown on the plans and as allowed.

Article 440.2.5., "Weldable Reinforcing Steel" is supplemented with the following:

All welding operations must be performed prior to hot-dip galvanizing.

Article 440.2.8., "Mechanical Couplers" is supplemented with the following:

Provide hot-dipped or mechanically galvanized couplers when splicing galvanized reinforcing or continuously galvanized reinforcing.

Article 440.2.11., "Low-Carbon, Chromium Reinforcing Steel." The first sentence is voided and replaced by the following:

Provide deformed steel bars conforming to ASTM A1035, Grade 100, Type CS when low-carbon, chromium reinforcing steel is required on the plans. Type CM will only be permitted if specified on the plans.

Article 440.3.1., "Bending" is supplemented with the following:

Do not bend hot-dip galvanized reinforcement. Only minor positioning adjustments are permitted.

Bending of continuously galvanized reinforcement is permitted after galvanizing.

Article 440.3.5, "Placing" the following will be added to paragraph four.

Use Class 1 or 1A supports with continuously galvanized reinforcing. Provide epoxy or plastic-coated tie wires and clips for use with epoxy coated reinforcing steel.

Article 440.3.6.3., "Repairing Coating" is supplemented with the following:

Repair damaged galvanized surfaces in accordance with Article 445.3.5.2. "Repair Processes."

Special Provision to Item 44

Steel Structures



Item 441, Steel Structures 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 44 . . . , Approve Electrodes and Flux-Electrode Combinations, is voided and replaced with the following:

Use only electrodes and flux-electrode combinations conforming to AWS A5 specifications, and pertinent classifications for the applicable welding processes. When requested, submit a current Certificate of Conformance (COC) containing all test results as required by the applicable AWS A5 specification and welding code. Provide proof of Buy America compliance for welding consumables when requested. For bridge main member fabrication, submit the COC annually.

Section 44 . . . , High-Strength Bolts, is revised and replaced by the following:

Use fasteners that meet Item 447, Structural Bolting. Use galvanized fasteners on field connections of bridge members when ASTM A325-Grade A325 bolts are specified, and steel is painted.

Section 44, Plants, The second and third paragraphs are voided and replaced with the following:

Fabrication plants that produce the following non-bridge steel members must be approved in accordance with DMS-73.0, Steel Non-Bridge Member Fabrication Plant Qualification.

- Item 610, Roadway Illumination Poles
- Item 613, High Mast Illumination Poles
- Item 614, High Mast Rings and Support Assemblies
- Item 650, Overhead Sign Support Structures
- Item 654, Sign Ways
- Item 606, Traffic Signal Poles
- Special Specification 6064, Intelligent Transportation System (ITS) Poles.

The Materials and Tests Division (MTD) maintains a list of approved non-bridge fabrication plants on the Department MP that produce these members.

Section 44, Erection Drawings, the third paragraph is voided and replaced with the following:

Perform erection engineering evaluation of the structural adequacy and stability of constructing the bridge system for each step of the steel erection.

Section 44, Nondestructive Testing, is voided and replaced with the following:

Personnel performing NDT must be qualified in accordance with the applicable AWS code and the employer's written Practice. Level III personnel who qualifies Level I and Level II technicians must be certified by ASNT for which the NDT Level III is qualified. In addition, NDT technicians must pass hands-on tests that MTD administers. This will remain current provided they continue to perform testing on Department materials as evidenced by test reports requiring their signature. A technician who fails any of the hands-on tests must wait 3 mo. or as approved otherwise before retesting. Qualification to perform NDT will be revoked when the technician's employment is terminated or when the technician goes 6 mo. without performing a test on a Department project. The technician must pass a new hands-on test to be re-certified. Testing of similar weld joints for non-Department projects may be considered by the engineer instead of re-testing provided enough documentation is submitted with the signature of the project engineer. These requirements also apply to testing agencies, and individual third-party contractors.

Section 444., Welding Procedure Specification Qualification Testing, is voided and replaced by the following:

For fabricators qualified in accordance with DMS-7370, DMS-730, or DMS-7395, laboratories performing procedure qualification testing for welding procedure specifications (WPSs) must be accredited by a nationally recognized agency that performs testing in accordance with ISO International Electrotechnical Commission (IEC) 17025 in the mechanical field of testing.

Section 44, Material Identification, is amended to include the following paragraph:

Low-stress stencil marks must have a radius instead of a sharp point. Acceptable stencils include dot, vibration, and rounded-stencils. Label these stencils so that they are easily distinguishable from other stencils that are not low-stress.

Section 444., Flange Fitting, the last sentence is voided and replaced with the following:

Minor jacking that does not deform the material will be permitted.

Section 44, Magnetic Particle Testing, is voided and replaced with the following:

Use alternating current (AC) when using the yoke method unless otherwise approved. Welds may be further evaluated with half-wave rectified DC for subsurface indications. Centerline cracking may be detected with aluminum prod method when approved.

Section 44, Hammering, is added to state the following:

Do not perform hammering on any portion of the member that causes the material to permanently deform. Avoid damage to the material by measures such as use of brass or aluminum hammers or by padding the area to be hammered.

Section 44, Shop Painting, is amended to include with the following paragraph:

Measure the anchor profile after blast cleaning at random locations along the thermal cut surfaces. If specified anchor profile is not achieved over the entire flame cut surface, grind the edges and re-blast to achieve the required anchor pattern.

Section 44, Handling and Storage of Materials, The second sentence of the second paragraph is replaced by the following:

Keep materials clean and avoid damaging of the applied coating.

Special Provision to Item 442

Metal for Structures



Item 442, "Metal for Structures" of the Standard Specifications is amended with respect to the clause cited below. No other clauses or requirements of this Item are waived or changed.

Section 442.2.1.3.3., "Fasteners." The first sentence of the first paragraph is replaced by the following:

Fasteners. Provide high-strength bolts that meet ASTM F3125-Grade A325 unless otherwise shown on the plans.

Section 442.2.1.3.3., "Fasteners." The third paragraph is deleted and not replaced.

Special Provision to Item 44

Structural Field Welding



Item 44, Structural Field Welding 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 44.01, Materials, the third paragraph is voided and replaced with the following:

Use only electrodes and flux-electrode combinations conforming to AWS A5 specifications and pertinent classifications for the applicable welding processes. When requested, submit a current Certificate of Conformance (COC) containing acceptable wording indicating Buy America compliance and all tests required by the applicable AWS specifications and welding codes. Tests must be conducted on electrodes of the same class, size, and brand and manufactured by the same process and with the same materials as the electrodes to be furnished.

Special Provision to Item 449

Anchor Bolts



Item 449, "Anchor Bolts" of the Standard Specifications is amended with respect to the clause cited below. No other clauses or requirements of this Item are waived or changed.

Section 449.2.1., "Bolts and Nuts." Table 1 is replaced by the following:

Table 1 Bolt and Nut Standards		
Specified Anchor Bolt Category	Bolt Standards	Nut Standards
Mild steel	ASTM A307 Gr. A, F1554 Gr. 36, or A36	ASTM A563
Medium-strength, mild steel	ASTM F1554 Gr. 55 with supplementary requirement S1	ASTM A194 Gr. 2 or A563 Gr. D or better
High-strength steel	ASTM F3125-Grade A325 or ASTM A449 ¹	ASTM A194 or A563, heavy hex
Alloy steel	ASTM A193 Gr. B7 or F1554 Gr. 105	ASTM A194 Gr. 2H or A563 Gr. DH, heavy hex

1. If headed bolts are specified, ASTM A449 bolts must be heavy hex head.

Section 449.3.3.1, "Anchor Bolt Thread Lubricant Coating," The first sentence of the first paragraph is voided and replaced by the following.

Coat anchor bolt threads before installing nuts with an electrically conducting lubricant compound described in Section 449.3.3.2.1., "Definitions," for traffic signal poles, roadway illumination poles, high mast illumination poles, intelligent transportation system poles, overhead sign support structures, and steel electrical service supports.

Section 449.3.3.2, "Anchor Bolt Tightening Procedure," The first sentence of the first paragraph is voided and replaced by the following.

Tighten anchor bolts for traffic signal poles, shoe base and concrete traffic barrier base roadway illumination poles, high mast illumination poles, intelligent transportation system poles, and overhead sign support structures in accordance with this Section.

Special Provision to Item 0

Barricades, Signs and Traffic Handling



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 0 . ., "Description," is supplemented by the following:

Temporary work-zone (T) 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 (MAS). Such devices manufactured on or before this date and successfully tested to NC RP Report 350 or the 2009 edition of MAS 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 MAS -2016 compliant T traffic control devices are not approved, or are not self-certified after the December 31, 2019, date. In such case, devices that meet NC RP-350 or MAS -2009 may be used regardless of the manufacture date.

Such T 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 or one 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

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 2.02, Glass Traffic Beads. The first paragraph is voided and replaced by the following:

urnish drop-on glass beads in accordance with DMS- 290, Glass Traffic Beads, or as approved. urnish 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. urnish Type II beads for work zone pavement markings and transverse markings or symbols.

Section 4.02, Type I Markings, is supplemented by the following:

4.02.02 Spot Striping. Perform spot striping on a callout basis with a minimum callout quantity as shown on the plans.

Section 4.02, Type II Markings, is supplemented by the following:

4.02.02 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 m² lx)
- Yellow markings: 175 mcd m² 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 4.02, 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 4.02, 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. . . , Portable Retroreflector 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 strip 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 strip 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. . 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 . 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.

Special Provision to Special Specification 6185

Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)



Item 6185, "Truck Mounted Attenuator (TMA) and Trailer Attenuator (TA)" 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 4. "Measurement", is voided and replaced by the following:

- 4.1. **Truck Mounted Attenuator/Trailer Attenuator (Stationary).** This Item will be measured by the day. TMA/TAs must be set up in a work area and operational before a calendar day can be considered measureable. 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 or by the day. The time begins once the TMA/TA is ready for operation at the predetermined site and stops when notified by the Engineer. When measurement by the hour is specified, a minimum of 4 hr. will be paid each day for each operating TMA/TA used in a mobile operation. When measurement by the day is specified, a day will be measured for each TMA/TA set up and operational on the worksite.

APPENDIX A
QUALITY ASSURANCE PROGRAM
FOR CONSTRUCTION PROJECTS



Quality Assurance Program for Design-Bid-Build Projects

May 2018

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Appendix F – Archived Versions

SECTION 1 - INTRODUCTION

1.1 Overview

The Texas Department of Transportation (TxDOT) established the Quality Assurance Program (QAP) for Design-Bid-Build (D-B-B) 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 conforms to the criteria in 23 CFR 637 B. It 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 the Construction Division's Materials and Pavements Section (CST/M&P) Administration at 512/506-5808.

SECTION 2 - ACCEPTANCE PROGRAM

2.1 Overview

Materials incorporated into any highway construction project are subject to verification sampling and testing, as well as quality control (QC) sampling and testing when required by the specifications.

2.2 Sampling and Testing Frequency and Location

Verification sampling and testing will be performed at the location and frequency established in the Department's [*Guide Schedule of Sampling and Testing for Design-Bid-Build \(DBB\) Projects*](#) (DBB Guide Schedule) or specifications specific to each project.

2.3 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](#) – Technician Qualification Program and [Section 7](#) – Laboratory Qualification Program and will be evaluated under the Independent Assurance Program, as described in [Section 3](#) of this document.

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.

2.4 Dispute Resolution

When QC test results are used in the acceptance decision, the CST/M&P central laboratory or an accredited independent laboratory approved by CST/M&P will perform the referee testing. The referee laboratory decision will be final.

SECTION 3 - INDEPENDENT ASSURANCE PROGRAM

3.1 Overview

The Independent Assurance (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 3 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
Prior to performing acceptance sampling and testing	Qualification required under Section 6 and Section 7 of this OAP.
Within 12 months after Observation and Qualification, not to exceed 15 months	Within 48 months after Observation and Qualification, not to exceed 51 months. (Only required for ACI, which has a 5-year certification cycle)
Within 24 months after Observation and Qualification, not to exceed 27 months	
Within 36 months of Qualification. (Only required for certifications issued by TxDOT or TXAPA with a 3-year cycle)	
Within 36 months after Observation and Qualification, not to exceed 39 months. (Only required for ACI, which has a 5-year certification cycle)	

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.

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.

Qualification is again required under [Section 6](#) and [Section 7](#) of this QAP.

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

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

within 60 months of qualification (Only required for certifications issued by ACI with a 5-year cycle)

Qualification is again required under [Section 6](#) and [Section 7](#) 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 Testing Equipment

CST/M&P will qualify district laboratory testing equipment used for acceptance sampling and testing, in accordance with Section 7 – Laboratory Qualification Program. Any non-TxDOT commercial laboratory used for acceptance sampling and testing must be accredited in accordance with Section 7.3 – Laboratory Qualification Responsibility.

CST/M&P may designate the district laboratory to qualify commercial laboratory testing equipment, used for acceptance sampling and testing, in accordance with corresponding calibration test procedures. CST/M&P or TxDOT district laboratory may hire a third-party entity to perform calibration/verification in accordance with corresponding calibration test procedures.

The qualifying authority will qualify testing equipment in accordance with the following guidelines.

- A. Frequency for qualifying sampling and testing equipment must not exceed 1 year.
- B. Calibration/verification is required whenever the laboratory or equipment is moved.

The qualifying authority will evaluate any equipment used to perform verification and/or QC sampling and testing in making an acceptance decision. This evaluation includes calibration checks and split or proficiency sample tests. The Department test procedures referenced in Section 7.5 – Calibration Standards and Frequencies for Laboratory Equipment give the requirements for, and frequency of, equipment calibrations.

3.4 Testing Personnel

CST/M&P will qualify district and commercial laboratory personnel performing IA activities, in accordance with Section 6 – Technician Qualification Program.

CST/M&P may designate a district laboratory to qualify other Department personnel and accredited commercial laboratory personnel performing IA activities. When a district qualifies commercial laboratory personnel, they must notify CST/M&P in writing.

Individuals performing IA activities will be other than those performing verification or QC testing.

IA personnel will evaluate any individual performing verification or QC sampling and testing. This evaluation includes observations and split or proficiency sample testing.

3.5 Comparing Test Results

Comparison of the split sample test results can be used in the event equipment and 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.

3.6 Annual Report of IA Program Results

CST/M&P 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:

- A. Number of sampling and testing personnel evaluated by the systems approach IA testing;
- B. Number of IA evaluations found to meet tolerances in [Appendix B](#);
- C. Number of IA evaluations found to not meet tolerances in [Appendix B](#); and
- D. Summary of any significant system-wide corrective actions taken.

SECTION 4 - MATERIALS CERTIFICATION

4.1 Overview

The TxDOT District Area Engineer or Director of Construction will submit a materials certification letter, conforming in substance to the examples shown in Appendix D or E, as applicable.

For projects with federal oversight, submit the materials certification letter (Appendix D) to the FHWA division administrator, with a copy to CST/M&P.

For non-federal oversight projects, submit the material certification letter (Appendix E) to the TxDOT District Engineer, with a copy to CST/M&P.

Either letter must be submitted at final acceptance of the project.

SECTION 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:

- A. Verification sampling and testing;
- B. QC sampling and testing;
- C. IA testing; or
- D. Referee testing.

SECTION 6 - TECHNICIAN QUALIFICATION PROGRAM

6.1 Purpose

This program provides uniform statewide procedures for technician qualification to ensure that tests 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 \(Aggregates and Concrete\)](#)
- [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.

NOTE: 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 Construction Division, Materials and Pavements (CST/M&P) Section 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:

- A. CST/M&P personnel;
- B. Qualified district materials engineer/laboratory supervisor (except as noted below);

- C. Qualified district laboratory personnel who have been authorized by the district materials engineer/laboratory supervisor to qualify others; and
- D. Department-approved entities such as the Texas Asphalt Pavement Association (TXAPA) and the American Concrete Institute (ACI). Certifications received from these institutions may be used to satisfy the written exam and observation part of the Technician Qualification Program.

NOTE: Each district laboratory will maintain a minimum of one individual qualified by CST/M&P or its designated agent, for each test procedure performed within the district. In order to perform testing and qualify district personnel for TxDOT concrete test methods, at least one individual from the district laboratory must have the corresponding ACI Field and Strength certifications issued by CST/M&P.

6.5 Required Certifications for Commercial Laboratory and Contractor 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:

- A. [ACI Concrete Field Testing Technician – Grade I;](#)
- B. [ACI Concrete Strength Testing Technician;](#)
- C. [TXAPA HMA Level 1A – Plant Production Specialist;](#)
- D. [TXAPA HMA Level 1B – Roadway Specialist;](#)
- E. [TXAPA HMA Level 2 – Mix Design Specialist;](#)
- F. [TXAPA SB 101 – Property Specialist;](#)
- G. [TXAPA SB 102 – Field Specialist;](#)
- H. [TXAPA SB 103 – Materials Analysis Specialist;](#)
- I. [TXAPA SB 201 – Strength Specialist;](#)
- J. [TXAPA SB 202 – Compressive Strength 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:

- A. District laboratory personnel who have been authorized by CST/M&P to perform technician qualifications; and
- B. CST/M&P personnel.

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.

In addition to successful performance of a test method, the individual must pass a written examination (minimum score of 80%) administered by an authorized evaluator. An individual

failing the written examination may request a retest. The retest must be scheduled and administered within 30 days of notification of failure.

Under unique circumstances, the qualification authority may grant a verbal examination upon request. The reason(s) for requesting a verbal examination must be presented and documented prior to the individual being 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/supervisor stating that the technician has received additional training. CST/M&P 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.

In addition, the individual must participate in split/proficiency samples administered by the qualifying authority to validate the qualification. CST/M&P determines the qualifying authority for the split/proficiency sample.

Unless otherwise stated, qualification of an individual is valid for not more than 3 years, after which the individual must be re-qualified. Under the IA system approach, annual split/proficiency evaluations will be required as specified in Section 3.2 – Required Frequencies and Activities. Failure to satisfactorily complete annual split or proficiency testing may result in certification revocation.

6.7 Provisional Certifications

In the event the required certifications listed in the Section 6.5 cannot be readily obtained due to course availability, schedule conflicts, or other extenuating circumstances, provisional certifications administered by CST/M&P or TxDOT's district laboratory will be allowed, per the following stipulations:

- A. Provisional certifications must be approved by CST/M&P or TxDOT district laboratory supervisor;
- B. Provisional certifications will be valid for one month after the TXAPA and ACI examination dates; and
- C. The candidate must show evidence of having enrolled in the required ACI or TXAPA course.

6.8 Documentation

CST/M&P and the district materials engineer/laboratory supervisor are responsible for maintaining documentation of all individuals qualified under their authority who perform required tests for acceptance of materials. TxDOT's SiteManager will be the official system of record for qualified/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 SiteManager and

may be printed/signed at the district's discretion. Documentation to be maintained in SiteManager, as an attachment, for all qualified personnel includes:

- A. Copies of certificates issued by ACI and TXAPA; or
- B. Copies of certificates issued by CST/M&P or TxDOT district laboratory, if issued; and
- C. Quality Assurance Test (QAT) report with clear identification of technician's name, qualifier's name, score, and date taken; and
- D. Original performance examinations 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;

Documentation retention will be for the life of the qualification, as detailed in the State of Texas Records Retention Schedule.

Results of annual proficiency testing administered by CST/M&P or TXAPA will be stored in their respective central repositories. Annual split sample evaluations should be stored in SiteManager.

6.9 Disqualification

Accusations of misconduct by testing technicians are made to the responsible TxDOT district representative and reported to CST/M&P. Table 2 defines the 3 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	<p>Violation of the trust placed in the certified technician including, but not limited to, acts such as:</p> <ul style="list-style-type: none"> • Falsification of records; • Being aware of improprieties in sampling, testing, and/or production by others and not reporting them to appropriate supervisors involved in the project; • Re-sampling and/or retesting without awareness and consent of appropriate supervisors involved in the project; and/or

CST/M&P will investigate accusations of misconduct with the assistance of the responsible district. CST/M&P may impose penalties ranging from a written reprimand to a permanent revocation of the certification, contingent upon the findings of the investigation.

Any technician found guilty of breach of trust will have his/her certification permanently revoked. Any technician with a revoked certification will be removed from the project and will not be allowed to be employed on any TxDOT project statewide.

SECTION 7 - LABORATORY QUALIFICATION PROGRAM

7.1 Purpose

This program provides uniform statewide procedures to ensure that laboratory facilities and equipment are qualified for the performance of required sampling and testing methods.

7.2 Laboratories to be Qualified

All laboratories performing sampling and testing for TxDOT require qualification. These include, but are not limited to the following:

- A. Construction Division, Materials & Pavements (CST/M&P) central laboratory;
- B. District laboratories;
- C. Area/project laboratories (including field laboratories at hot mix and concrete plants);
- D. CST/M&P field laboratories; and
- E. Commercial laboratories.

7.3 Laboratory Qualification Responsibility

CST/M&P central laboratory will be accredited under the AASHTO Accreditation Program (AAP).

CST/M&P is responsible for overseeing the statewide laboratory qualification program and for accrediting district laboratories. At the district level, the district laboratory will be the qualifying authority for area office and commercial laboratories, only in the areas for which the district laboratory is accredited. When a district qualifies a commercial laboratory, they must notify CST/M&P in writing and submit a copy of the laboratory qualification certificate. A directory of all TxDOT-qualified laboratories is available at <https://www.txdot.gov/inside-txdot/division/construction/laboratory-directory.html>.

7.4 Qualification Process

The laboratory qualifying authority will use Form 2682, "Quality System Inspection – Commercial Laboratory," to document the following:

- A. Identify the scope of testing to be performed;
- B. Verify that test methods used to perform tests are available and current;

- C. Document that the laboratory has the required equipment to perform the tests;
- D. Check the calibration/verification records for each piece of equipment, to include:
 - 1. Description of equipment;
 - 2. Identification of any traceable standard used;

3. Frequency of calibration;
 4. Date of calibration;
 5. Date of last calibration;
 6. Date of next calibration;
 7. Calibrating technician;
 8. Procedure used to calibrate/verify equipment; and
 9. Detailed results of calibration; and
- E. 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. Laboratories performing acceptance sampling and testing should use results from TxDOT's 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.

NOTE: Project/field laboratories performing Tex-113-E, Tex-117-E, and Tex-242-F tests must be an approved laboratory from TxDOT's MPL.

Laboratories are qualified every 3 years, at a minimum, although accreditation is an ongoing process. Calibration/verification is required whenever laboratory or equipment is moved.

Random audits of laboratory calibration records may be performed at the sole discretion of the qualifying authority.

7.5 Calibration Standards and Frequencies for Laboratory Equipment

The standards for calibration and the frequencies for laboratory equipment calibrations 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, verifying, and certifying equipment and devices.

7.6 Non-Compliance

A laboratory that does not meet all of the above requirements is subject to disqualification. 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. CST/M&P or the TxDOT district laboratory responsible for the certification/audit will immediately notify all applicable Area Offices of non-conformance for those test methods.

7.7 Documentation

The qualifying authority is responsible for verifying that laboratories are qualified to perform sampling and testing. Documentation will be required to be kept by the qualifying authority and the qualified laboratory. Calibration records will be maintained for a minimum of 10 years. Upon satisfactory completion of the laboratory qualification process, the qualifying authority will issue a certificate within 14 days covering the scope of testing in which the laboratory has been qualified, with a copy to CST/M&P.

Laboratory qualification documentation to be maintained by the qualifying authority includes:

- A. Availability and calibration/verification records for each piece of equipment,
- B. Personnel qualified/certified to perform required testing, and
- C. Copy of laboratory qualification certificate issued.

7.8 Dispute Resolution

The next higher qualification authority will resolve disputes concerning calibration and verification of equipment. For disputes that cannot be resolved at the district level, CST/M&P will be the final authority.

Appendix A Acronyms and Definitions

The following terms and definitions are referenced in this document and have the meanings set forth below.

AAP	AASHTO Accreditation Program (AASHTO re:source and CCRL)
AASHTO	American Association of State Highway Transportation Officials
ACI	American Concrete Institute
AQMP	Aggregate Quality Monitoring Program
CCRL	Concrete and Cement Reference Laboratory
CE&I	Construction Engineering and Inspection
CFR	Code of Federal Regulations
CST/M&P	Construction Division, Materials and Pavements Section
CMEC	Construction Materials Engineering Council
FHWA	Federal Highway Administration
HMA	Hot-Mix Asphalt
IA	Independent Assurance
L-A-B	Laboratory Accreditation Bureau
MPL	Material Producer List
QAP	Quality Assurance Program
QAT	Quality Assurance Test
QC	Quality Control
	Texas Asphalt Pavement Association
TxDOT	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, and/or production by others and not reporting them to appropriate supervisors involved in the project; re-sampling and/or retesting without awareness and consent of appropriate supervisors involved in the project; and/or manipulating compensation and/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:

<http://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 2 or more laboratories and/or personnel. The test results are compared to assure that the laboratories and/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

Split Sample Tolerance Limits

Laboratory Testing Procedures and Tolerance Limits

Test Procedure	Description	Tolerance
Tex-104-E	Liquid Limit of Soils	15% of mean ¹
Tex-105-E	Plastic Limit of Soils	15% of mean ¹
Tex-106-E	Plasticity Index of Soils	20% of mean ¹
Tex-107-E	Bar Linear Shrinkage of Soils	± 2%
Tex-110-E	Particle Size Analysis of Soils, Part I	> No. 4 sieve: ± 5% points
		≤ No. 4 sieve: ± 3% points
Tex-113-E	Moisture-Density Relationship of Base Materials	Density ± 2.0 PCF
		Moisture Content ± 0.5%
Tex-117-E	Triaxial Compression for Disturbed Soils and Base Materials, Part II	Strength ± 15 psi
		Moisture Content ± 0.5%
Tex-200-F	Asphaltic Concrete Combined Aggregate	>5/8" sieve: ± 5.0% points (individual % retained)
		≤5/8" sieve-No. 200: ± 3.0% (individual % retained)
		Passing No. 200: ± 1.6% points
Tex-206-F	Compacting Test Specimens of Bituminous Mixtures	± 1.0% laboratory-molded density in accordance with Tex-207-F
Tex-207-F	Determining Density of Compacted Bituminous Mixtures	Laboratory-Molded Density: ± 1.0%
		Laboratory-Molded Bulk Specific Gravity: ± 0.020
		In-place air voids (cores): ± 1.0%
Tex-227-F	Theoretical Maximum Specific Gravity of Bituminous Mixtures	± 0.020

Tex-236-F	Asphalt Content of Asphalt Paving Mixtures by the Ignition Method	$\pm 0.3\%$
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Test Procedure	Description	Tolerance
Tex-418-A	Compressive Strength of Cylindrical Concrete Specimens	17% of mean ¹ (4 × 8" specimen)
		14% of mean ¹ (6 × 12" specimen)

1. 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}

Thomas L. Smith

Independent Assurance Program Manager
Construction (CST) Division

Texas Department of Transportation
125 East 11th Street

Austin, TX 78701

RE: Annual Report of Independent Assurance (IA) Program Results – {Project Name} Dear Mr.

Smith:

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}.

Independent Assurance Program Results – {Year}	
IA Activities	{Project Name}
1. Number of personnel evaluated under system approach	
2. Number of IA evaluations meeting tolerance	
3. Number of IA evaluations not meeting tolerance	
4. <u>Corrective actions</u> :	

Appendix C

cc: Brett Haggerty, P.E.
Materials and Pavements Section Director
TxDOT – Construction Division

Appendix D

Materials Certification Example Letter for Projects with Federal Oversight

{Date}

Al Alonzi

FHWA Texas Division Administration
FHWA Texas Division Office

300 East 8th Street
Austin, TX 78701

RE: Materials Certification Letter

Project: SH Contract No.:
 CSJ:
 HWY:
 County:
 Federal-Aid Project No.:

Dear Mr. Alonzi:

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.

Both the Acceptance and Verification results were evaluated by an independent assurance sampling and testing program, the results of which were submitted to FHWA by the department in the Annual Report of Independent Assurance Program Results and independent of this materials certification.

- ☐ 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.

Appendix D

Sincerely,

{TxDOT District Area Engineer or Director of Construction}, P.E.

{Title}

cc: Brett Haggerty, P.E.

Materials and Pavements Section Director
TxDOT, Construction Division

Appendix E Materials Certification Example Letter for Projects with Non-Federal Oversight

{Date}

{TxDOT District Engineer}

{Title}

RE: Materials Certification Letter

Project: SH Contract No.:
CSJ:
HWY:
County:

Dear Mr. {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.

Both the Acceptance and Verification results were evaluated by an independent assurance sampling and testing program, the results of which were submitted to CST in the Annual Report of Independent Assurance Program Results and independent of this materials certification.

- ☐ 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,

{TxDOT District Area Engineer or Director of Construction}, P.E.

Appendix E

{Title}

cc: Brett Haggerty, P.E.
Materials and Pavements Section Director
TxDOT, Construction Division.

Appendix F Archived Versions

The following archived versions of this document are available.

- Effective January 2016–April 2018:
ftp://ftp.dot.state.tx.us/pub/txdot-info/cst/qap_dbb_0116.pdf

APPENDIX B
GUIDE SCHEDULE OF SAMPLING AND TESTING

GUIDE SCHEDULE OF SAMPLING & TESTING FOR DESIGN-BID-BUILD (DBB) PROJECTS

MAY 2016



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 that 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 Guide Schedule, should be performed at a frequency necessary to provide adequate confidence that materials meet specifications.

NOTE: For projects subject to FHWA construction oversight activities, use the "[Letter of Certification of Materials Used](#)" to document reasons for material acceptance when a test fails. For all other projects, document the justification and explanation for acceptance of materials that fail project tests in the project file.

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-mixed 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.

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)
EMBANKMENT (CUTS & FILLS)	Liquid Limit (A)	Tex-104-E	Materials with PI ≤ 15: 10,000 CY
	Plasticity Index (A)	Tex-106-E	
	Gradation	Tex-110-E	During stockpiling operations, from completed stockpile, or project site (B)
	Moisture/Density	Tex-114-E	
	In-place Density (A)	Tex-115-E	Fill: each 5,000 CY min. 1 per lift.
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)

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.

RETAINING WALL (SELECT BACKFILL)	Gradation	Tex-110-E	During stockpiling operations, from completed stockpile, or project site (B)	Each 5,000 CY	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.
	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.

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

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	
RETAINING WALL (SELECT BACKFILL) (continued)	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.
	In-place Density (A)	Tex-115-E	As designated 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.
	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	
UNTREATED BASE COURSES	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.
	Wet Ball Mill (A)	Tex-116-E	From completed stockpile at the source (E)	Each 20,000 CY	As required by the plans. Sample in accordance with Tex-400-A.

This is a guide for minimum sampling and testing.

	Strength (A)	Tex-117-E	From completed stockpile at the source (E)	Each 20,000 CY	<p>Testing frequency may need to be increased for high material variability or when test results approach specification limits.</p> <p>As required by the plans. 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.</p> <p>Sample in accordance with Tex-400-A.</p>
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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			REMARKS
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	
UNTREATED BASE COURSES	In-place Density (A)	Tex-115-E	As designated 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 designated by the Engineer	Each 3,000 CY	Not required where survey grade control documents compliance.
	Organic Content	Tex-148-E	As designated by the Engineer	1 per 500 linear 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.
TREATED SUBGRADE AND BASE COURSES	Sulfate Content	Tex-145-E	As designated by the Engineer	1 per 500 linear feet or 5,000 CY	Sample in accordance with Tex-100-E. Required for existing subgrade material and material imported from a borrow source. Soil survey and geologic maps may be used to determine sampling locations.
	Liquid Limit (A)	Tex-104-E	During stockpiling operations, from completed stockpile, or windrow (B)	Each 5,000 CY	Sample in accordance with Tex-100-E. When central mix site or plant is used, windrow sampling may be waived. 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	

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.

NEW BASE MATERIAL	Gradation (A)	Tex-110-E	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	As required by the plans. 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	NEW BASE MATERIAL	Strength (A)	Tex-117-E	From completed stockpile at the source (E)	Each 20,000 CY
	LIME	Compliance with DMS-6350	Tex-600-J	Commercial Lime Slurry: each 200 tons of lime Carbide Lime Slurry: each 100 tons of lime	As required by the plans. 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.
	CEMENT	Compliance with DMS-4600		Railroad car, truck, or cement bins	Sample in accordance with Tex-400-A. Verify the source is listed on the current Material Producer List for Lime . 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.
	FLY ASH MATERIAL	Compliance with DMS-4615		Project samples at location designated 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.
					Verify the source is listed on the current Material Producer List for Fly Ash . Only materials from CST/M&P 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)
					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.

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.

COMPLETE MIXTURE	Soil-Cement Testing Soil-Lime Testing	Tex-120-E, Part II, or Tex-121-E, Part II	From roadway windrow after treatment (E)	Each 20,000 CY	<p>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 prior to the project, this test may be waived.</p> <p>Sample in accordance with Tex-100-E.</p>

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

MATERIAL OR PRODUCT		TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
				LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (F)	
TREATED SUBGRADE AND BASE COURSES	COMPLETE MIXTURE	Soil-Cement Testing Soil-Lime Testing	Tex-120-E, Part I, Tex-121-E, Part I, or Tex-127-E	From roadway windrow after 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 discretion of Engineer. Sample in accordance with Tex-100-E.
		In-place Density (A)	Tex-115-E	As designated 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 designated by the Engineer	Each 3,000 CY	Not required where survey grade control documents are used for compliance
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

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.

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
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).
C	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

D	<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">• 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.• 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.
E	<p>The Engineer will sample from the completed stockpile at the source and test prior to placement.</p>
F	<p>Each test performed that is based on a quantity of material is considered "or fraction thereof" for calculating number of tests.</p>

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE IA – ASPHALT STABILIZED BASE (Plant Mix)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	
AGGREGATE	Gradation (A)	Tex-200-F, Part I	During stockpiling operations, from completed stockpile, or prior to mixing	Each 5,000 CY	Sample in accordance with Tex-400-A.
	Liquid Limit (A)	Tex-104-E	During stockpiling operations, from completed stockpile, or prior to 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 prior to mixing	Each 5,000 CY	
	Wet Ball Mill or L. A. Abrasion (A)	Tex-116-E or Tex-410-A	During stockpiling operations, from completed stockpile, or prior to mixing	Each 20,000 CY	When L. A. Abrasion is specified, tests are not required when the published value of the source, as listed on the current Material Producer List for BRSQC , meets the project specifications. Sample in accordance with Tex-400-A. (B)
	Coarse Aggregate Angularity (A)	Tex-460-A, Part I	During stockpiling operations, from completed stockpile, or prior to mixing	1 per project, per source	Not required for crushed stone sources. Sample in accordance with Tex-400-A.
	Sand Equivalent	Tex-203-F	Hot aggregate bins, feeder belt, or stockpile	1 per project, per source	When designated by the Engineer, test may be run on combined aggregates when multiple sources are used. Sample in accordance with Tex-400-A.
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)	On projects requiring less than 50 tons, material from CST/M&P approved sources may be accepted on the basis of Producer's Certification without sampling.

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.
Quick Lime: 1 per project

RECLAIMED ASPHALT PAVEMENT (RAP), and RECYCLED AGGREGATE	Decantation	Tex-217-F, Part II	During stockpiling operations, from completed stockpile, or prior to mixing	Each 10,000 CY	Sample in accordance with Tex-400-A.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE IA – ASPHALT STABILIZED BASE (Plant Mix)					
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	
RECYCLED ASPHALT SHINGLES (RAS)	Decantation	Tex-217-F, Part III	During stockpiling operations, from completed stockpile, or prior to mixing	Each 10,000 CY	Sample in accordance with Tex-400-A.
ASPHALT BINDER	Compliance with Item 300 – Binder and Tack Coat		Sampled, tested and preapproved by CST/M&P. Take project samples when designated by the Engineer.	1 each for binder and tack coat per project, per grade, per source	Test at least one sample taken from the project. Sample tack coat at the distributor on the roadway in accordance with Tex-500-C, Part III. Sample binder at hot mix plant in accordance with Tex-500-C, Part II. Binder should arrive on the project pre-approved. If not pre-approved, sample binder before use.
COMPLETE MIXTURE	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 asphalt content correlation factors 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 designated 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 designated by the Engineer (C, D)	Each 2,500 CY (3,000 tons) or days production	Not required for ordinary compaction or when air void requirements are waived. Sample in accordance with Tex-222-F.

TABLE IA – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
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Testing frequency may need to be increased for high material variability or when test results approach specification limits.

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">• 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.
D	Each test performed that is based on a quantity of material is considered "or fraction thereof" for calculating number of tests.

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)	One each 1,000 CY	Rate may be reduced to one 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 20,000 CY	Verify the published value of the source, as listed on the current Material Producer List for BRSQC , meets the project specifications. If not, sample and test at 1 per 20,000 CY prior to use. Sample in accordance with Tex-221-F. (B)
	Magnesium Soundness (A)	Tex-411-A	Stockpile	1 per 20,000 CY	Verify the published value of the source, as listed on the current Material Producer List for BRSQC , meets the project specifications. If not, sample and test at 1 per 20,000 CY prior to use. Sample in accordance with Tex-221-F. (B)
	Surface Aggregate Classification (A)	Tex-612-J, Tex-411-A	Stockpile	1 per 20,000 CY	Verify the published value of the source, as listed on the current Material Producer List for BRSQC , meets the project specifications. If not, sample and test at 1 per 20,000 CY prior to 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.

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. Only required for crushed gravel.				
Coarse Aggregate Angularity	Tex-460-A	Stockpile	1 per 20,000 CY	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.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE II – SEAL COAT

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING (C)	FREQUENCY OF SAMPLING (D)	
	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 BRSQC . Submit sample to CST/M&P for Soundness and L.A. Abrasion testing when results differ by more than 3% points, unless otherwise directed by the Engineer. Sample in accordance with Tex-221-F.
	White Rock Count	Tex-220-F	Stockpile		Required only for Limestone Rock Asphalt. Not required when CST/M&P 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 CST/M&P provides inspection at the plant. Sample in accordance with Tex-221-F.
PRECOATED AGGREGATE	Asphalt Content	Tex-236-F	Stockpile	Frequency as directed by the Engineer when a target value is specified	Sample in accordance with Tex-221-F.
ASPHALT	Compliance with Item 300		Sampled, tested, and preapproved by CST/M&P. Take project samples when designated by the Engineer from the distributor or transport.	1 per project, per grade, per source	Sample in accordance with Tex-500-C. Binder should arrive on the project pre-approved. If not pre-approved, sample binder before use.

TABLE II – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
B	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.
C	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"> 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.

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.

D

Each test performed that is based on a quantity of material is considered "or fraction thereof" for calculating number of tests.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

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
COARSE AGGREGATE		Decantation (B)	Tex-406-A	From stockpile at concrete plant	Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		Sieve Analysis (A) (B)	Tex-401-A		Each 1,000 CY of concrete (each source)	Sample in accordance with Tex-400-A. Test combined aggregate when used.
		Deleterious Materials (B)	Tex-413-A		1 per project or as necessary for control	Sample in accordance with Tex-400-A.
		Los Angeles Abrasion (A) (B)	Tex-410-A		Two, each source	Verify the value of the source, as listed on the current Material Producer list for CRSQC, meets the project specifications. If not, sample and submit to CST/M&P for testing prior to use in accordance with Tex-499-A. Sample in accordance with Tex-400-A. (C)
		5-cycle Magnesium Sulfate Soundness (A) (B)	Tex-411-A		Two, each source	Verify the value of the source, as listed on the current CRSQC, meets the project specifications. (C)
MINERAL AGGREGATE		Sand Equivalent (B)	Tex-203-F	From stockpile at concrete plant	1 per project or as necessary for control	Sample in accordance with Tex-400-A. Test combined aggregate when used.
		Organic Impurities (B)	Tex-408-A		1 per project, per source	Sample in accordance with Tex-400-A.
		Sieve Analysis (A) (B)	Tex-401-A		Each 1,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
		Fineness Modulus (B)	Tex-402-A		1 per project or as necessary for control	Sample in accordance with Tex-400-A. Test combined aggregate when used. Test to confirm material variability when strength values are in question.
		Deleterious Material (B)	Tex-413-A		1 per project or as necessary for control	Sample in accordance with Tex-400-A. Test to confirm material variability when strength values are in question.

This is a guide for minimum sampling and testing.

SILICA FUME	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 CST/M&P for testing prior to use in accordance with Tex-499-A. Sample in accordance with Tex-400-A. (C)
	Compliance with DMS-4630 (A)		1 per project, per class of concrete (For each type and brand)	Sample in accordance with Tex-320-D.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE III – HYDRAULIC CEMENT CONCRETE – STRUCTURAL (Classes: C, F, H, S, CO, K, LMC, or SS)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING (D)	FREQUENCY OF SAMPLING (E)	
METAKAOLIN	Compliance with DMS-4635 (A)		Railroad car, truck or silos	1 per project, per class of concrete (For each type and brand)	
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 CST/M&P 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				Sample in accordance with Tex-500-C. Verify the source is listed on the Material Producer List for Joint Sealers . If not, sample and test prior to use in accordance with DMS-6310. (C)
CURING COMPOUND	Compliance with DMS-4650		Sampled at jobsite; tested by CST/M&P. See remarks.	When requested by CST	Only products listed on the Material Producer List for Concrete Curing Compounds will be allowed. When sample is requested by CST, sample in accordance with Tex-718-I. Ensure container has been agitated and mixed prior to 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 CST/M&P approved sources listed on the Material Producer Lists for Reinforcing Steel Mills and Seven Wire Steel Strand will be allowed. (C)
MECHANICAL COUPLERS	Compliance with DMS-4510	Tex-743-I	Sampled at jobsite; Tested by CST/M&P	3 couplers per lot (500 couplers) for each type, model, bar size and grade	Only materials from CST/M&P approved sources listed on the Material Producer List for Mechanical Couplers will be allowed. (C)
LATEX	Compliance with DMS-4640 for concrete chemical admixtures		Sampled at jobsite.	Min. of 1 test per project	Sample in accordance with Tex-321-E.

This is a guide for minimum sampling and testing.

EPOXY	Compliance with DMS-6100, unless otherwise specified	Sampled at jobsite if not pre-approved by CST/M&P.	1 per batch or shipment	Testing frequency may need to be increased for high material variability or when test results approach specification limits. Verify the source is listed on the Material Producer List for Epoxies and Adhesives. If not, sample and test prior to use in accordance with DMS-6100. Sample in accordance with Tex-734-I. (C)
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Testing frequency may need to be increased for high material variability or when test results approach specification limits.

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)
CONCRETE	Compressive Strength (A)	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. 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. If the average value of the 2 cylinders tested at 7 days meets the minimum design strength listed in Item 421 Table 8, the 2 remaining cylinders are not required to be tested.
CONCRETE	Slump	Tex-415-A	At point of concrete placement	Sample in accordance with Tex-407-A. Perform slump and temperature tests on the same load from which strength test specimens are made.
	Entrained Air (A)	Tex-416-A or Tex-414-A		Perform entrained air test only when entrained air concrete is specified in the plans.
	Temperature of Concrete (A)	Tex-422-A		Check temperature of every load for bridge slabs and mass concrete placements. Contractor's required testing will be in accordance with specification requirements for the appropriate specification item #.
	Slab Thickness and Depth of Reinforcement	Tex-423-A, Part II	During dry run and during concrete placement (Bridge decks and direct traffic culverts)	Min 6–Max 18 locations per span

TABLE III – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
B	These Project Tests may be used for one or more projects being furnished concrete from the same plant during the same period.
C	Attach the corresponding QM test report for SiteManager projects to satisfy project sampling and testing requirements.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

D	<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">• 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.• 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.
E	<p>Each test performed that is based on a quantity of material is considered "or fraction thereof" for calculating number of tests.</p>

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

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 CST/M&P 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-320-D.
METAKAOLIN	Compliance with DMS-4635		Railroad car, truck or silos	1 test per project, per class (for each type and brand)	

TABLE IV – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
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"> 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.
C	Each test performed that is based on a quantity of material is considered "or fraction thereof" for calculating number of tests.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE V – HYDRAULIC CEMENT CONCRETE PAVEMENT (Classes: P or HES)

MATERIAL OR PRODUCT		PROJECT TESTS		REMARKS
		TEST FOR	TEST NUMBER	FREQUENCY OF SAMPLING (D)
COARSE AGGREGATE	Decantation	Tex-406-A	Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
	Sieve Analysis (A)	Tex-401-A	As necessary for control	Sample in accordance with Tex-400-A. Test combined aggregate when used.
	Deleterious Materials	Tex-413-A	Each 20,000 CY of concrete (each source)	Sample in accordance with Tex-400-A.
	L.A. Abrasion (A)	Tex-410-A	From stockpile at concrete plant	Verify the value of the source, as listed on the current CRSQC , meets the project specifications. If not, sample and submit to CST/M&P for testing prior to use in accordance with Tex-499-A.
	5-Cycle Magnesium Sulfate Soundness (A)	Tex-411-A		
MINERAL AGGREGATE	Sand Equivalent	Tex-203-F	From stockpile at concrete plant	Sample in accordance with Tex-400-A. Test combined aggregate when used. No less than one per week's production.
	Organic Impurities	Tex-408-A		Sample in accordance with Tex-400-A.
	Sieve Analysis (A)	Tex-401-A		Sample in accordance with Tex-400-A. Test combined aggregate when used.
	Fineness Modulus (B)	Tex-402-A		Sample in accordance with Tex-400-A.
	Deleterious Material (B)	Tex-413-A	From stockpile at concrete plant	Sample in accordance with Tex-400-A.
	Acid Insoluble (A)	Tex-612-J		Verify the value of the source, as listed on the current CRSQC , meets the project specifications. If not, sample and submit to CST/M&P for testing prior to use in accordance with Tex-499-A.
				Sample in accordance with Tex-400-A. (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.

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 CST/M&P 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).
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Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE V – HYDRAULIC CEMENT CONCRETE PAVEMENT (Classes: P or HES)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING	FREQUENCY OF SAMPLING (D)	
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-320-D.
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-320-D.
JOINT MATERIAL	Compliance with DMS-6310		Sampled at jobsite if not sampled at source by CST/M&P; tested by CST/M&P. 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 Joint Sealers . (C)
CURING COMPOUND	Compliance with DMS-4650		Sampled at jobsite; tested by CST/M&P. See remarks.	When requested by CST	Only products listed on the Material Producer List for Concrete Curing Compounds will be allowed. When sample is requested by CST, sample in accordance with Tex-718-I. Ensure container has been agitated and mixed prior to 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 CST/M&P approved sources listed on the Material Producer List for Reinforcing Steel Mills and Seven Wire Steel Strand will be accepted. (C)
MULTIPLE PIECE TIE BARS	Compliance with DMS-4515	Tex-712-I	Sampled at jobsite if not sampled at source by CST/M&P; tested by CST/M&P. See remarks.	Refer to Tex-711-I for sampling rates	Only materials from CST/M&P approved sources listed on the Material Producer List for Multiple Piece Tie-bars for Concrete Pavements will be allowed. Sample in accordance with Tex-734-I.

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. Verify the source is listed on the Material Producer List for Epoxies and Adhesives. If not, sample and test prior to use in accordance with DMS-6100. Sample in accordance with Tex-734-I. (C)			
EPOXY	Compliance with DMS-6100	Sampled at jobsite if not pre-approved by CST/M&P. See remarks.	1 batch per shipment

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE V – HYDRAULIC CEMENT CONCRETE PAVEMENT (Classes: P or HES)					
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OR TIME OF SAMPLING	FREQUENCY OF SAMPLING (D)	
CONCRETE	Strength (A) (B)	Tex-448-A or Tex-418-A	At point of concrete placement	2 cylinders for every 10 contractor job control tests	<p>Sample in accordance with Tex-407-A.</p> <p>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.</p> <p>Split sample verification testing used when contractor performs job control testing.</p> <p>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.</p> <p>Contractor's required testing will be in accordance with specification requirements for the appropriate specification item #.</p>
	Slump	Tex-415-A			<p>Sample in accordance with Tex-407-A.</p> <p>Slump is not required for slip-formed pavement.</p>
	Entrained Air (A)	Tex-416-A or Tex-414-A	At time and location strength specimens are made	1 test for every 10 contractor job control tests.	<p>Perform slump and temperature tests on the same load from which the strength specimens are made.</p> <p>Perform entrained air test only when entrained air concrete is specified in the plans.</p>
	Temperature	Tex-422-A			Contractor's required testing will be in accordance with specification requirements for the appropriate specification item #.
	Thickness	Tex-423-A	Center of paving machine	Every 500 feet	Methods other than Tex-423-A may be 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.

	Ride Quality Surface 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, CST has contracted with TTI to perform random ride verification at 10% frequency. Results from surface test Type A are not required to be reported.
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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 V – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
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.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VI – ASPHALT CONCRETE 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.)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION (Per Design)	FREQUENCY OF SAMPLING (E)	
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 BRSQC , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to CST/M&P for testing prior to use in accordance with Tex-499-A. (C)
	Magnesium Sulfate Soundness (A)	Tex-411-A		1 per project, per source	
	Surface Aggregate Classification (A)	Tex-499-A		1 per project, per aggregate source	Not required when the Rated Source Soundness Magnesium loss is 15 or less as listed on the current published BRSQC . If testing is required, sample in accordance with Tex-221-F.
	Micro Deval	Tex-461-A		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.
COMBINED AGGREGATE	Sand Equivalent	Tex-203-F	Stockpiles, hot bins or feeder belts	1 each for binder and tack coat per project, per grade, per source	Test a minimum of one sample taken from the project. Sample tack coat at the distributor on the roadway in accordance with Tex-500C, Part III. Sample binder at hot mix plant in accordance with Tex-500-C, Part II. Binder should arrive on the project pre-approved. If not pre-approved, sample binder before use.
ASPHALT BINDER	Compliance with Item 300 Binder & Tack Coat (A)		Sampled, tested and pre-approved by CST/M&P. Project test sampled at the Plant for Binder & Road for Tack Coat	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.
MIX DESIGN	Compliance with applicable specification	Tex-204-F	At source (if not approved)		

TABLE VI – ASPHALT CONCRETE 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.)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		PROJECT INDEPENDENT ASSURANCE TESTS		REMARKS
			LOCATION	FREQUENCY (Per Design)	LOCATION	FREQUENCY	
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.
	Voids in Mineral Aggregates (VMA)	Tex-207-F	Truck Sample Plant Produced (D)	1 per Sublot	Truck	1 per 10 Lots only if compactor is shared by Contractor and State	Sample in accordance with Tex-222-F. Does not apply to Item 342, "Permeable Friction Course." Contractor's required testing will be in accordance with specification requirements for the appropriate specification Item #.
	Gradation (A)	Tex-236-F	Engineer Truck Sample (D)	Minimum 1 per 12 Sublots (E)			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	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, 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	Truck Sample (D)	1 per Sublot 1 per Lot for Item 347	Truck	1 per 10 Lots only if compactor is shared by Contractor and State	Sample in accordance with Tex-222-F. Contractor's required testing will be in accordance with specification requirements for the appropriate specification Item #.

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.

Drain Down Test (A)	Tex-235-F	Engineer Truck Sample	1 per Lot for Item 342		Sample in accordance with Tex-222-F. Not required for Item 341 and Item 344.
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.
Overlay Test	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.

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 – ASPHALT CONCRETE 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.)					
MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION	FREQUENCY (Per Design)	
ROADWAY	In-Place Air Voids (A)	Tex-207-F	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.
ROADWAY	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, CST has contracted with TTI to perform random ride verification at 10% frequency. Results for surface test Type A are not required to be reported.
FABRIC UNDERSEAL	Permeability	Tex-246-F	Roadway	1 per project	Only applies to Items 342, 347, and 348.
	Compliance with DMS-6220		Sampled, tested, and approved by CST/M&P		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 prior to 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 on the Letter of Certification of Materials Used or in the SiteManager Remarks field. This letter is required only for Asphalt Content and/or Gradation when production of complete mixture is suspended as required by QC/QA specifications.
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.

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.

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.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VII – ASPHALT CONCRETE PAVEMENT (Items 334)

(Refer to DMS-9210, "Limestone Rock Asphalt (LRA)," for testing requirements for Item 330.)

MATERIAL OR PRODUCT		PROJECT TESTS			REMARKS
		TEST FOR	TEST NUMBER	LOCATION	FREQUENCY (Per Design) (F)
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 BRSQC , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to CST/M&P for testing prior to use in accordance with Tex-499-A. (D)
	Magnesium Sulfate Soundness (A)	Tex-411-A			
	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 BRSQC , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to CST/M&P for testing prior to 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 Binder & Tack Coat (A) (C)		Sampled, tested and pre-approved by CST/M&P. Project test sampled at the Plant for Binder & Road for Tack Coat	1 each for binder and tack coat per project, per grade, per source	Test a minimum of one sample from production. Sample tack coat at the distributor on the roadway in accordance with Tex-500-C, Part III. Sample binder at hot mix plant in accordance with Tex-500-C, Part II. Binder should arrive on the project pre-approved. If not pre-approved, sample binder before use.
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.
	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.

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.

COMPLETE MIXTURE	Voids in Mineral Aggregates (VMA)	Tex-207-F	Plant Produced Truck Sample (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.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VII – ASPHALT CONCRETE PAVEMENT (Items 334)

(Refer to DMS-9210, "Limestone Rock Asphalt (LRA)," for testing requirements for Item 330.)

		PROJECT TESTS			REMARKS
		TEST FOR	TEST NUMBER	LOCATION	
COMPLETE MIXTURE	Moisture Content	Tex-212-F, Part II	Truck Sample	1 per 5,000 tons	Sample in accordance with Tex-222-F. Performed by CST/M&P 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.
	Ride Quality Test Type B (A)	Tex-1001-S			Engineer may verify Contractor's results for surface test Type B. For traditional design-bid-build TxDOT projects, CST has contracted with TTI to perform random ride verification at 10% frequency. Results from surface test Type A are not required to be reported.
ROADWAY				Final riding surface of travel lanes	

TABLE VII – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field.
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.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VIII – ASPHALT CONCRETE PAVEMENT (Item 340)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION	FREQUENCY	
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 BRSQC , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to CST/M&P for testing prior to use in accordance with Tex-499-A. (C)
	Magnesium Sulfate 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 BRSQC , meets the project specifications. If not, sample in accordance with Tex-221-F and submit to CST/M&P for testing prior to 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 Binder & Tack Coat (A)		Sampled, tested and pre-approved by CST/M&P. Plant for Binder & Road for Tack Coat	1 each for binder and tack coat per project, per grade, per source	Test a minimum of 1 sample taken from the project. Sample tack coat at the distributor on the roadway in accordance with Tex-500-C, Part III. Sample binder at hot mix plant in accordance with Tex-500-C, Part II. Binder should arrive on the project pre-approved. If not pre-approved, sample binder before use.
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.
	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-207-F	Truck Sample Plant Produced (D)	1 per day	Sample in accordance with Tex-222-F.

This is a guide for minimum sampling and testing.

COMPLETE MIXTURE	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.

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE VIII – ASPHALT CONCRETE PAVEMENT (Item 340)

MATERIAL OR PRODUCT		PROJECT TESTS			REMARKS
		TEST FOR	TEST NUMBER	LOCATION	
COMPLETE MIXTURE	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, CST 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 CST/M&P		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 CST/M&P for testing prior to use in accordance with DMS-6220.

TABLE VIII – FOOTNOTES

A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field. This letter is required only for Asphalt Content and/or Gradation when production of complete mixture is suspended as required by QC/QA specifications.
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."

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE IX – MICROSURFACING (Item 350)

MATERIAL OR PRODUCT	TEST FOR	TEST NUMBER	PROJECT TESTS		REMARKS
			LOCATION OF SAMPLING	FREQUENCY (Per Design)	
AGGREGATE	5-Cycle Magnesium Sulfate 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 CST/M&P 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 CST/M&P for testing prior to 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 CST/M&P 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 Binder & Tack Coat (A)		Sampled, tested, and pre-approved by CST/M&P. Project test sampled at the Plant for Binder & Road for Tack Coat	1 each for binder and tack coat per project, per grade, per source	Test a minimum of one sample during production. Sample tack coat at the distributor on the roadway in accordance with Tex-500-C, Part III. Sample binder at microsurfacing machine in accordance with Tex-500-C, Part III. Binder should arrive on the project pre-approved. If not pre-approved, sample binder before use.
	Compliance with DMS-4600				Verify the source is listed on the current Material Producer List for Cement . If not, sample and submit to CST/M&P for testing prior to use in accordance with DMS-4600.
	Asphalt Content	Tex-236-F			Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven using Tex-236-F at a minimum of one per project.

This is a guide for minimum sampling and testing

COMPLETE MIX	Gradation	Tex-200-F, Part II Tex-236-F	During production	1 per day	Sample in accordance with Tex-222-F. Determine correlation factors for ignition oven use at a minimum of one per project.
	<p>Testing frequency may need to be increased for high material variability or when test results approach specification limits.</p>				

Testing frequency may need to be increased for high material variability or when test results approach specification limits.

TABLE IX – FOOTNOTES	
A	When this project acceptance test fails but the product is accepted, document the reasons for acceptance on the Letter of Certification of Materials Used or in the SiteManager Remarks field. This letter is required only for Asphalt Content and/or Gradation when production of complete mixture is suspended as required by QC/QA specifications.
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	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.

APPENDIX D

CONTRACT- FEDERAL AFFIRMATION ATTACHMENTS

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 635 —Construction and Maintenance

Subpart D —General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.410 Buy America requirements.

- (a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.
- (b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:
 - (1) The project either:
 - (i) Includes no permanently incorporated steel or iron materials, or
 - (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.
 - (2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.
 - (3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must
 - (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and
 - (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.
 - (4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c)

- (1) A State may request a waiver of the provisions of this section if;
 - (i) The application of those provisions would be inconsistent with the public interest; or
 - (ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.
 - (2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.
 - (3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.
 - (4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.
 - (5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.
 - (6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the FEDERAL REGISTER for public comment.
 - (7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.
- (d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 635 —Construction and Maintenance

Subpart A —Contract Procedures

Source: 56 FR 37004, Aug. 2, 1991, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.124 Participation in contract claim awards and settlements.

- (a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.
- (b) The FHWA shall be made aware by the State DOT of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. It is expected that State DOTs will diligently pursue the satisfactory resolution of claims within a reasonable period of time. Claims arising on exempt non-NHS projects should be processed in accordance with the State's approved Stewardship Plan.
- (c) When requesting Federal participation, the State DOT shall set forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a State DOT audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the State DOT shall include in its submission a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.
- (d) In those cases where the State DOT receives an adverse decision in an amount more than the State DOT was able to support prior to the decision or settles a claim in an amount more than the State DOT can support, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:
 - (1) The FHWA was consulted and concurred in the proposed course of action;
 - (2) All appropriate courses of action had been considered; and
 - (3) The State DOT pursued the case diligently and in a professional manner.
- (e) Federal funds will not participate:

- (1) If it has been determined that State DOT employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim;
 - (2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and
 - (3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."
- (f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.
- (g) In cases where State DOT's affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

[56 FR 37004, Aug. 2, 1991, as amended at 62 FR 6873, Feb. 14, 1997; 69 FR 7118, Feb. 13, 2004]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 635 —Construction and Maintenance

Subpart A —Contract Procedures

Source: 56 FR 37004, Aug. 2, 1991, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.109 Standardized changed condition clauses.

- (a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project, including construction services contracts of CM/GC projects, approved under 23 U.S.C. 106:

(1) *Differing site conditions.*

- (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if 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, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- (ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
- (iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
- (iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the State DOT's at their option.)

(2) *Suspensions of work ordered by the engineer.*

- (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

- (ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
- (iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
- (iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) *Significant changes in the character of work.*

- (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
- (ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
- (iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- (iv) The term "significant change" shall be construed to apply only to the following circumstances:
 - (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

- (1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

- (2) Where the State transportation department has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State transportation department may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.
- (c) In the case of a design-build project, State DOTs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.
- (d) For ID/IQ projects, State DOTs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses, as appropriate.

[56 FR 37004, Aug. 2, 1991; 57 FR 10062, Mar. 23, 1992, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86943, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

This content is from the eCFR and is authoritative but unofficial.

Title 49 —Transportation

Subtitle A —Office of the Secretary of Transportation

Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

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Appendix A to Part 26

Guidance Concerning Good Faith Efforts

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Uniform Report of DBE Awards or Commitments and Payments
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DBE Business Development Program Guidelines

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Mentor-Protégé Program Guidelines

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Individual Determinations of Social and Economic Disadvantage

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Uniform Certification Application Form

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Personal Net Worth Statement

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, et seq.; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324; 49 U.S.C. 47113, 47123; Sec. 150, Pub. L. 115–254, 132 Stat. 3215.

Source: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

§ 26.3 To whom does this part apply?

- (a) If you are a recipient of any of the following types of funds, this part applies to you:
 - (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat.

107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109–59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112–141, 126 Stat. 405.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102–240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105–178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109–59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112–141, 126 Stat. 405.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

§ 26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

§ 26.7 What discriminatory actions are forbidden?

- (a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.
- (b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

- (a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.
- (b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

- (a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.
- (b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.
- (c) You must create and maintain a bidders list.
 - (1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.
 - (2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:
 - (i) Firm name;
 - (ii) Firm address;
 - (iii) Firm's status as a DBE or non-DBE;
 - (iv) Age of the firm; and
 - (v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million; etc.) rather than requesting an exact figure from the firm.
 - (3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).
- (d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.
- (e) The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

§ 26.13 What assurances must recipients and contractors make?

- (a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- (b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible.

[79 FR 59593, Oct. 2, 2014]

§ 26.15 How can recipients apply for exemptions or waivers?

- (a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

- (b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:
- (1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.
 - (2) Your application must show that—
 - (i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;
 - (ii) Conditions in your jurisdiction are appropriate for implementing the proposal;
 - (iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and
 - (iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.
 - (3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:
 - (i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;
 - (ii) Your level of DBE participation continues to be consistent with the objectives of this part;
 - (iii) There is a reasonable limitation on the duration of your modified program; and
 - (iv) Any other conditions the Secretary makes on the grant of the waiver.
 - (4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

- (a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:
 - (1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

- (2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;
- (3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.

(b)

- (1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).
- (2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.
- (c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 79 FR 59593, Oct. 2, 2014]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

- (a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.
- (b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
 - (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
 - (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.
- (c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- (d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.
- (e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:
- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
 - (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
 - (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What information must you include in your DBE directory?

- (a) In the directory required under § 26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.
- (b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types

of work?

- (a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.
- (b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.
- (c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

- (a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.
- (b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.
 - (1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.
 - (2) During the course of the mentor-protégé relationship, you must:
 - (i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and
 - (ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.
 - (3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.
- (c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

- (a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

- (b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).
- (c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

§ 26.39 Fostering small business participation.

- (a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- (b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:
 - (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
 - (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
 - (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
 - (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
 - (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- (c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

- (a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.
- (b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.
- (c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

- (a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.
- (b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

- (a)
 - (1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.
 - (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.
- (b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.
- (c) **Step 1.** You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.
 - (1) **Use DBE Directories and Census Bureau Data.** Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained

from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

- (2) **Use a bidders list.** Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.
- (3) **Use data from a disparity study.** Use a percentage figure derived from data in a valid, applicable disparity study.
- (4) **Use the goal of another DOT recipient.** If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
- (5) **Alternative methods.** Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) **Step 2.** Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

- (1) There are many types of evidence that must be considered when adjusting the base figure. These include:
 - (i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
 - (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and
 - (iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.
- (2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:
 - (i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;
 - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)

(1)

(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

- (2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.
- (3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).
- (4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.
- (5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:
 - (i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and
 - (ii) Avoid imposing undue burdens on non-DBEs.
- (6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.
- (7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)

- (1) In establishing an overall goal, you must provide for consultation and publication. This includes:
 - (i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must

document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)

(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

- (ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.
- (4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- (5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:
 - (i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;
 - (ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or
 - (iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.
- (d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.49 How are overall goals established for transit vehicle manufacturers?

- (a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.
 - (1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
 - (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
 - (3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).
 - (4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

- (b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.
 - (1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.
 - (i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and
 - (ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.
 - (iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).
 - (2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.
- (c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.
- (d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.
- (e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.
- (f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

§ 26.51 What means do recipients use to meet overall goals?

- (a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.
- (b) Race-neutral means include, but are not limited to, the following:
 - (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
 - (3) Providing technical assistance and other services;
 - (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
 - (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
 - (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
 - (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
 - (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 - (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- (c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.
- (d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.
- (e) The following provisions apply to the use of contract goals:
- (1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.
 - (2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.
 - (3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each

year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

- (4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

- (g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

- (a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:
- (1) Documents that it has obtained enough DBE participation to meet the goal; or
 - (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.
- (b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3)
 - (i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—
 - (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
 - (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.
 - (ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.
- (c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.
- (d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
 - (1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

- (2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
 - (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
 - (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- (e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.
- (f)
- (1)
 - (i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
 - (ii) You must include in each prime contract a provision stating:
 - (A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and
 - (B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
 - (2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.
 - (3) For purposes of this paragraph, good cause includes the following circumstances:
 - (i) The listed DBE subcontractor fails or refuses to execute a written contract;
 - (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
 - (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
 - (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

- (v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (vii) You have determined that the listed DBE subcontractor is not a responsible contractor;
- (vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (vii) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

- (4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.
- (g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.
- (h) You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.
- (i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

- (j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

§ 26.55 How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
 - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

- (6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

- (7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)

- (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
- (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)

- (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of

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

- (4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.
- (f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i)).
- (g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- (h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 79 FR 59595, Oct. 2, 2014]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

- (a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.
- (b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.
- (c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).
- (d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)
- (e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)

- (1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.
 - (2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.
 - (3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.
- (b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.
- (1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.
 - (2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

- (a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE for the purposes of Federal Highway Administration and Federal Transit Administration-assisted work in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.104), over the firm's previous three fiscal years, in excess of \$26.29 million. The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.
- (c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009, as amended at 79 FR 59596, Oct. 2, 2014; 85 FR 80647, Dec. 14, 2020]

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.*

- (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
- (2)
 - (i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.
 - (ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.
 - (iii) In determining an individual's net worth, you must observe the following requirements:
 - (A) Exclude an individual's ownership interest in the applicant firm;
 - (B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.
 - (C) Do not use a contingent liability to reduce an individual's net worth.
 - (D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.
 - (iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other State to which the individual's firm has applied for certification under § 26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.*

(1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)

(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

- (1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
- (2) Whether the income was unusual and not likely to occur in the future;
- (3) Whether the earnings were offset by losses;
- (4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- (5) Other evidence that income is not indicative of lack of economic disadvantage; and
- (6) Whether the total fair market value of the owner's assets exceed \$6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

- (4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) ***Transfers within two years.***

- (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.
- (2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

- (d) ***Individual determinations of social and economic disadvantage.*** Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

[79 FR 59596, Oct. 2, 2014]

§ 26.69 What rules govern determinations of ownership?

- (a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.
- (b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
 - (1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

- (2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
- (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c)

- (1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.
- (2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.
- (3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.
- (4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c): (i) An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

- (d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—
 - (1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

- (2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
 - (1) The owner's expertise must be—
 - (i) In a specialized field;
 - (ii) Of outstanding quality;
 - (iii) In areas critical to the firm's operations;
 - (iv) Indispensable to the firm's potential success;
 - (v) Specific to the type of work the firm performs; and
 - (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—
 - (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - (2) Through inheritance, or otherwise because of the death of the former owner.
- (h)
 - (1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—
 - (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - (ii) Involved in the same or a similar line of business; or
 - (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
 - (2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- (i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:
 - (1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
 - (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- (j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—
 - (1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;
 - (2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
 - (3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59597, Oct. 2, 2014]

§ 26.71 What rules govern determinations concerning control?

- (a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.
- (b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

- (1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - (2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
 - (3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
 - (4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- (c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).
- (d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
- (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - (2) In a corporation, disadvantaged owners must control the board of directors.
 - (3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
- (e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

- (g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
- (i)
 - (1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.
 - (2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.
- (j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- (k)
 - (1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

- (2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:
 - (1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - (2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.
- (m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.
 - (1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.
 - (2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.
 - (3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and

detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

- (4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.
- (o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- (q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011; 79 FR 59597, Oct. 2, 2014]

§ 26.73 What are other rules affecting certification?

(a)

- (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
- (2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)

- (1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

- (2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.
- (c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
- (e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.
 - (1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - (2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by

disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- (g) You must not require a DBE firm to be prequalified as a condition for certification.
- (h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.
- (i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).
 - (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
 - (i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
 - (ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
 - (iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
 - (2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).
 - (3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

- (a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).
 - (1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.
 - (2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.
 - (3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
 - (4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.
 - (5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.
- (b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.
 - (1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.
 - (2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
 - (3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.
- (c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

- (d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- (e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
- (f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.
- (g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.
- (h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

§ 26.83 What procedures do recipients follow in making certification decisions?

- (a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- (b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
- (c)
 - (1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:
 - (i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
 - (ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing
 - (iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

- (iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;
- (v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
- (vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.
- (viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of this part.

- (2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.
- (3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
- (4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

- (e) [Reserved]

- (f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

- (g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

- (h)

- (1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(1) of this part.

- (2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.
- (i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
 - (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
 - (2) You must attach supporting documentation describing in detail the nature of such changes.
 - (3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).
- (j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).
- (k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.
- (l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- (m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's

previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

§ 26.85 Interstate certification.

- (a) This section applies with respect to any firm that is currently certified in its home state.
- (b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.
 - (1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.
 - (2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.
- (c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.
 - (1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see § 26.83(j)) and any notices of changes (see § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.
 - (2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.
 - (3) If you have filed a certification appeal with DOT (see § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.
 - (4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - (i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.
 - (ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.
- (d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

- (1) Within seven days contact State A and request a copy of the site visit review report for the firm (see § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.
- (2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:
 - (i) Evidence that State A's certification was obtained by fraud;
 - (ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;
 - (iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;
 - (iv) The State law of State B requires a result different from that of the State law of State A.
 - (v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.
- (3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.
- (4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.
 - (i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.
 - (ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.
 - (iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.
 - (iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
 - (v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
 - (vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§ 26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)

(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) [Reserved]

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to § 26.89 does not extend this period.

- (d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003; 79 FR 59598, Oct. 2, 2014]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.*

- (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).
- (2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
- (3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

- (b) ***Recipient-initiated proceedings.*** If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.*

- (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
- (2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
- (3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

- (d) ***Hearing.*** When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

- (1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
 - (2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.
 - (3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.
- (e) **Separation of functions.** You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
- (1) Your method of implementing this requirement must be made part of your DBE program.
 - (2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.
 - (3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.*, an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.
- (f) **Grounds for decision.** You may base a decision to remove a firm's eligibility only on one or more of the following grounds:
- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
 - (2) Information or evidence not available to you at the time the firm was certified;
 - (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;
 - (4) A change in the certification standards or requirements of the Department since you certified the firm;
 - (5) Your decision to certify the firm was clearly erroneous;
 - (6) The firm has failed to cooperate with you (see § 26.109(c));
 - (7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see § 26.73(a)(2)); or
 - (8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.
- (g) **Notice of decision.** Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability

of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

(i) **Status of firm during proceeding.**

(1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) **Effects of removal of eligibility.** When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) **Exception:** If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) **Availability of appeal.** When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011; 79 FR 59599, Oct. 2, 2014]

§ 26.88 Summary suspension of certification.

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)

(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).

- (2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
- (c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) of this section if it determines that information available to it is sufficient to warrant immediate suspension.
- (d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- (e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
- (f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
- (g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.
- (h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under § 26.89 of this part, as a constructive decertification.

[79 FR 59599, Oct. 2, 2014]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

- (a)
 - (1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.
 - (2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

- (3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- (b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.
- (c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.
- (d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
- (e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.
- (f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
 - (1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
 - (2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.
 - (3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

- (4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.
- (5) The Department does not uphold your decision based on grounds not specified in your decision.
- (6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
- (7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.
- (8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.
- (g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008; 79 FR 59599, Oct. 2, 2014]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

- (a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.
- (b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:
 - (1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.
 - (2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.
 - (3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

- (4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.
- (5) If the Department affirms your determination, no further action is necessary.
- (c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

- (a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.
- (b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

- (a) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (b) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

- (c) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.
- (d) **Conciliation.**
 - (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
 - (2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.
 - (3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.
 - (4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.
- (e) **Enforcement actions.**
 - (1) Enforcement actions are taken as provided in this subpart.
 - (2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA programs?

- (a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.
- (b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.
- (c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

- (a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
- (b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
- (d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.
- (e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) Availability of records.

- (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.
- (2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

(b) Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

- (d) **Intimidation and retaliation.** If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A.

- (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

- (2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- D.
 - (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.
 - (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E.
 - (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
 - (2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with

its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in § 26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/ COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.
3. Specify the Federal fiscal year (*i.e.*, October 1–September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1–March 31. If this report is due December 1, data should cover April 1–September 30. If the report is due to the FAA, data should cover the entire year.
6. Provide the name and address of the recipient.
7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)–10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)–9(I) are derived in the same way as items 8(A)–8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)–10(B). These fields are unavailable for data entry.

10(C–H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11 –17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The “Non-Minority” category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either “women” OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A–E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18 (A). Provide the total dollar amount paid to all firms performing work on contracts.

18 (B). Provide the total number of contracts where work was performed during the reporting period.

18 (C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18 (D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18 (E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18 (F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

- 19 (A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.
- 19 (B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.
- 19 (C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.
- 19 (D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.
- 19 (E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.
- 20 (A)–20(E). Items 21(A)–21(E) are derived in the same manner as items 19(A)–19(E), except these figures should be based on contracts completed using Race Neutral measures.
- 20 (C). This field is closed.
- 21 (A)–21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
- 21 (C). This field is closed.
- 21 (E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS																				
Please refer to the instructions about the directions on filling out this form																				
1	Contract to (check only one):		[] FFWA		[] FFA		[] PTA-Recipient ID Number													
2	Awarders (FAA Recipients): Grant																			
3	Number (PTA Recipients):																			
4	Period from year in which reporting period falls																			
5	Reporting Period																			
6	Name and address of Recipient:																			
7	Award DBE Goal(s):		Race Conscious Projection		Race Neutral Projection		OVERALL Goal													
Awards/Commitments this Reporting Period																				
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts committed during this reporting period)		A	Total Dollars	B	Total Number	C	Total to DBEs (dollars)	D	Total to DBEs (number)	E	Total to DBEs /Race Conscious (dollars)	F	Total to DBEs/Race Neutral (number)	G	Total to DBEs/Race Neutral (dollars)	H	Total to DBEs/Race Neutral (number)	I	Percentage of total dollars to DBEs
B	BREAKDOWN BY ETHNICITY & GENDER		A	Total to DBE (dollar amount)	B	Men	C	Women	D	Total	E	Total to DBE (number)	F	Men	G	Women	H	Total		
11	Black American																			
12	Hispanic American																			
13	Native American																			
14	Asian-Pacific American																			
15	Subcontinent Asian Americans																			
16	Non-Minority																			
17	TOTAL																			
Payments Made this Period																				
C	PAYMENTS ON ONGOING CONTRACTS (Report activity of ongoing contracts)		A	Total Number of Contracts	B	Total Dollars Paid	C	Total Number of Contracts with DBEs	D	Total Payments to DBE firms	E	Total Number of DBE firms Paid	F	Percent to DBEs						
18	Firms and sub contracts currently in progress																			
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD		A	Number of Contracts Completed	B	Total Dollar Value of Contracts Completed	C	DBE Participation Needed to Meet Goal (Dollars)	D	Total DBE Participation (Dollars)	E	Total DBE Participation (Dollars)	F	Percent to DBEs						
19	Race Conscious																			
20	Race Neutral																			
21	Total																			
22	Completed By:				24. Signature:				25. Phone Number:											

[79 FR 59601, Oct. 2, 2014]

Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

- (A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.
- (B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.
- (C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.
- (D) The business plan should contain at least the following:
 - (1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
 - (2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
 - (3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;
 - (4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
 - (5) Such other information as the recipient may require.
- (E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.
- (F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

- (1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
 - (2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
 - (3) The types of contract opportunities being sought, based on the firm's primary line of business; and
 - (4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.
- (G) Program participation is divided into two stages;
- (1) a developmental stage and
 - (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.
- (H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.
- (I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.
- (J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.
- (K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:
- (1) Profitability;
 - (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
 - (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
 - (4) Ability to obtain bonding;
 - (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
 - (6) Good management capacity and capability.

- (L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.
- (M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

- (A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.
- (B)
 - (1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.
 - (2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.
- (C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

- I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:
 - (A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
 - (B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and
 - (C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.
 - (1) **Education.** Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.
 - (2) **Employment.** Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.
 - (3) **Business history.** The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.
- II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.
- III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical

barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

- (A) **General.** Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
- (B) **Submission of narrative and financial information.**
 - (1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.
 - (2) [Reserved]
- (C) **Factors to be considered.** In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.
- (D) **Transfers within two years.**
 - (1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.
 - (2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.
 - (3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

Appendix F to Part 26—Uniform Certification Application Form



Appendix F

UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$52.47 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): <http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Debarment, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.



**INSTRUCTIONS FOR COMPLETING THE
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
UNIFORM CERTIFICATION APPLICATION**

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

- (1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
- (2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) Enter the primary phone number of your firm.
- (4) Enter a secondary phone number, if any.
- (5) Enter your firm's fax number, if any.
- (6) Enter the contact person's email address.
- (7) Enter your firm's website addresses, if any.
- (8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
- (9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

- (10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
- (11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

- (1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.

- (2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
- (4) State the date each person became a firm owner.
- (5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit." If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or



oral agreement. Provide an explanation of any items shared with other firms in the space provided.

- (2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.
- (3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
 - (a) ever existed under different ownership, a different type of ownership, or a different name;
 - (b) existed as a subsidiary of any other firm;
 - (c) existed as a partnership in which one or more of the partners are/were other firms;
 - (d) owned any percentage of any other firm; and
 - (e) had any subsidiaries of its own.
- (f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

- (1) Enter the full name of the owner.
- (2) Enter his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) Enter his/her home (street) address.
- (5) Indicate this owner's gender.
- (6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.
- (8) Enter the number of years during which this owner has been an owner of your firm.
- (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.
- (10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

- (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
- (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked "Yes," state the name of the other business and this owner's function/title held in that business.

- (3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.
 - (b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.
- (4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).
- (b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.
- (5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.



B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles

State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space

State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space

State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.



Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Contact person and Title: _____ (2) Legal name of firm: _____

(3) Phone #: () _____ - _____ (4) Other Phone #: () _____ - _____ (5) Fax #: () _____ - _____
(6) E-mail: _____ (7) Firm Websites: _____
(8) Street address of firm (No P.O. Box): City: _____ County/Parish: _____ State: _____ Zip: _____
(9) Mailing address of firm (if different): City: _____ County/Parish: _____ State: _____ Zip: _____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?

☐ DBE ☐ ACDBE Names of certifying agencies: _____

© If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states.
Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ____/____/____ State/UCP Member: _____ Date ____/____/____ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

- (a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ☐ Yes ☐ No
(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ☐ Yes ☐ No

If yes, explain the nature of the action. (If you appealed the decision to DOT or another agency, attach a copy of the decision,

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

(2) Applicable NAICS Codes for this line of work include: _____

(3) This firm was established on ____/____/____ (4) I/We have owned this firm since: ____/____/____

(5) Method of acquisition (Check all that apply):

- ☐ Started new business ☐ Bought existing business ☐ Inherited business ☐ Secured concession
☐ Merger or consolidation ☐ Other (explain) _____



(6) Is your firm "for profit"? ☐ Yes ☐ No →
Federal Tax ID# _____

⊗ **STOP!** If your firm is NOT for-profit, then you do NOT
qualify for this program and should not fill out this application.

(7) Type of Legal Business Structure: (check all that apply):

- ☐ Sole Proprietorship ☐ Limited Liability Partnership
☐ Partnership ☐ Corporation
☐ Limited Liability Company ☐ Joint Venture (Identify all JV partners _____)
☐ Applying as an ACDBE ☐ Other, Describe _____

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____ Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. (Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ☐ Yes ☐ No

If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?

☐ Yes ☐ No If Yes, explain _____

(3) At present, or at any time in the past, has your firm:

- (a) Ever existed under different ownership, a different type of ownership, or a different name? ☐ Yes ☐ No
(b) Existed as a subsidiary of any other firm? ☐ Yes ☐ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ☐ Yes ☐ No
(d) Owned any percentage of any other firm? ☐ Yes ☐ No
(e) Had any subsidiaries? ☐ Yes ☐ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ☐ Yes ☐ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).



Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____ (2) Title: _____ (3) Home Phone #: _____
() - _____

(4) Home Address (Street and Number): _____ City: _____ State: _____ Zip: _____
_____ - _____

(5) Gender: ☐ Male ☐ Female

(6) Ethnic group membership (Check all that apply):

- ☐ Black ☐ Hispanic
☐ Asian Pacific ☐ Native American
☐ Subcontinent Asian
☐ Other (specify) _____

(7) U.S. Citizenship:

- ☐ U.S. Citizen
☐ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____

Date acquired: _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	\$ _____
Real Estate	\$ _____
Equipment	\$ _____
Other	\$ _____

Describe how you acquired your business:

- ☐ Started business myself
☐ It was a gift from: _____
☐ I bought it from: _____
☐ I inherited it from: _____
☐ Other: _____

(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) ☐ Yes ☐ No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: (Please attach extra sheets, if needed): _____



Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (Attach separate sheets for each additional owner)

(1) Full Name: _____ (2) Title: _____ (3) Home Phone #: _____
() - _____

(4) Home Address (Street and Number): _____ City: _____ State: _____ Zip: _____

(5) Gender: ☐ Male ☐ Female

(6) Ethnic group membership (Check all that apply)

- ☐ Black ☐ Hispanic
☐ Asian Pacific ☐ Native American
☐ Subcontinent Asian
☐ Other (specify) _____

(7) U.S. Citizenship:

- ☐ U.S. Citizen
☐ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____

Date acquired: _____

(10) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
	Cash	\$ _____
	Real Estate	\$ _____
	Equipment	\$ _____
	Other	\$ _____

Describe how you acquired your business:

- ☐ Started business myself
☐ It was a gift from: _____
☐ I bought it from: _____
☐ I inherited it from: _____
☐ Other: _____

(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) ☐ Yes ☐ No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: (Please attach extra sheets, if needed): _____



Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?

☐ Yes ☐ No If Yes, identify for each:

Person: _____ Title: _____

Business: _____ Function: _____

Person: _____ Title: _____

Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)

☐ Yes ☐ No If Yes, identify for each:

Firm Name: _____ Person: _____

Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

1. (Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).)

A = Always F = Frequently	S = Seldom N = Never	Majority Owner (51% or more)				Minority Owner (49% or less)			
		Name:	Title:	Percent Owned:		Name:	Title:	Percent Owned:	
Sets policy for company direction/scope of operations		A	F	S	N	A	F	S	N
Bidding and estimating		A	F	S	N	A	F	S	N
Major purchasing decisions		A	F	S	N	A	F	S	N
Marketing and sales		A	F	S	N	A	F	S	N
Supervises field operations		A	F	S	N	A	F	S	N
Attend bid opening and lettings		A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)		A	F	S	N	A	F	S	N
Hires and fires management staff		A	F	S	N	A	F	S	N
Hire and fire field staff or crew		A	F	S	N	A	F	S	N
Designates profits spending or investment		A	F	S	N	A	F	S	N
Obligates business by contract/credit		A	F	S	N	A	F	S	N
Purchase equipment		A	F	S	N	A	F	S	N
Signs business checks		A	F	S	N	A	F	S	N

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).

A = Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/Key Personnel			
	Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hires and fires management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designates profits spending or investment	A	F	S	N	A	F	S	N
Obligates business by contract/credit	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Signs business checks	A	F	S	N	A	F	S	N

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) If Yes, describe the nature of the business relationship: _____

C. Inventory: Indicate your firm's inventory in the following categories (Please attach additional sheets if needed):

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				

2. Office Space

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease



3. Storage Space (Provide signed lease agreements for the properties listed)

Street Address

Owned or Leased by
Firm or Owner?

Current Value of Property or Lease

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

E. Financial/Banking Information (Provide bank authorization and signature cards)

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:
Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner.
(Provide copies of signed loan agreements and security agreements).

Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (Attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

H. List current licenses/permits held by any owner and/or employee of your firm
(e.g. contractor, engineer, architect, etc.) (Attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____



I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

<u>Concession Space</u>	<u>Address / Location at Airport</u>	<u>Value of Property or Lease</u>	<u>Fees/Lease Payments Paid to the Airport</u>

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

<u>Name of Concession</u>	<u>Location</u>	<u>Type of Concession</u>	<u>Start Date of Concession</u>



AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed),
swear or affirm under penalty of law that I am
_____ (title) of the applicant firm
_____ and that I

have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract, subcontract, concession lease or sublease, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding \$1.32 million, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise or Airport Concession Disadvantaged Business Enterprise. In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s): (Check all that apply):

☐ Female ☐ Black American ☐ Hispanic American
☐ Native American ☐ Asian-Pacific American
☐ Subcontinent Asian American ☐ Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Signature _____ (DBE/ACDBE Applicant) _____ (Date)

NOTARY CERTIFICATE



UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following **REQUIRED** documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

- ☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- ☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- ☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- ☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Signed loan and security agreements, and bonding forms
- ☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
- ☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- ☐ Licenses, license renewal forms, permits, and haul authority forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- ☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ List of all employees, job titles, and dates of employment.
- ☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (*signed by the state official*)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement(s)
- ☐ Minutes of all stockholders and board of directors meetings

- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.


- ☐ Proof of citizenship
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Audited financial statements (if available)
- ☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
- ☐ Trust agreements held by any owner claiming disadvantaged status
- ☐ Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers

- ☐ List of product lines carried and list of distribution equipment owned and/or leased

[79 FR 59603, Oct. 2, 2014]

Appendix G to Part 26—Personal Net Worth Statement

	U.S. Department of Transportation	Personal Net Worth Statement For DBE/ACDBE Program Eligibility As of _____	OMB APPROVAL NO: EXPIRATION DATE:
<p>This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the Unified Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. Return form to appropriate UCP certifying member, not U.S. DOT.</p>			
Name		Business Phone	
Residence Address (As reported to the IRS) City, State and Zip Code		Residence Phone	
Business Name of Applicant Firm			
Spouse's Full Name (Marital Status: Single, Married, Divorced, Union)			
ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash and Cash Equivalents	\$	Loan on Life Insurance (Complete Section 5)	\$
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	\$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	\$
Brokerage, Investment Accounts	\$	Notes, Obligations on Personal Property (Complete Section 6)	\$
Assets Held in Trust	\$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	\$
Loans to Shareholders & Other Receivables (Complete section 6)	\$	Other Liabilities (Complete Section 8)	\$
Real Estate Excluding Primary Residence (Complete Section 4)	\$	Unpaid Taxes (Complete Section 8)	\$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	\$		
Other Personal Property and Assets (Complete Section 6)	\$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	\$		
Total Assets	\$	Total Liabilities	\$
		NET WORTH	
Section 2. Notes Payable to Banks and Others			
Name of Noteholder(s)	Original Balance	Current Balance	Payment Amount

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).

Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).

	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).

Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and Assets (Use attachments as necessary)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivables				

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)

Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations

Section 8. Other Liabilities and Unpaid Taxes (Describe)**Section 9. Transfer of Assets:** Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes ☐ No ☐ If yes, describe.

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

NOTARY CERTIFICATE:

(Insert applicable state acknowledgment, affirmation, or oath)

Signature (DBE/ACDBE Owner)

Date

In collecting the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a) provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Disadvantaged Business Enterprise (DBE) Program or Airport Concessionaire DBE Programs as defined in 49 C.F.R. Parts 23 and 26. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).



General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds \$1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the \$1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. *Assessor's assessed value for real estate, for example, is not acceptable.* Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of noteholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you

have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized

[79 FR 59617, Oct. 2, 2014]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 633 Required Contract Provisions

Subpart A Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

§ 633.101 Purpose.

§ 633.102 Applicability.

§ 633.103 Regulatory authority.

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Subpart B Federal-Aid Contracts (Appalachian Contracts)

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§ 633.203 Applicability of existing laws, regulations, and directives.

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§ 633.206 Project agreements.

§ 633.207 Construction labor and materials.

§ 633.208 Maintenance.

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§ 633.210 Termination of contract.

§ 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Appendix A to Subpart B of Part 633

Types of Contracts to Which the Civil Rights Act of 1964 Is
Applicable

Appendix B to Subpart B of Part 633

Required Contract Provisions, Appalachian Development
Highway System and Local Access Roads Construction
Contracts

Appendix C to Subpart B of Part 633

Additional Required Contract Provisions, Appalachian
Development Highway System and Local Access Roads
Contracts Other Than Construction Contracts

Appendix D to Subpart B of Part 633

Federal-Aid Proposal Notices

PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Authority: 23 U.S.C. 114 and 315; 49 CFR 1.48.

Source: 52 FR 36920, Oct. 2, 1987, unless otherwise noted.

§ 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to-time be required by law and regulation as conditions of Federal assistance.

§ 633.102 Applicability.

- (a) The required contract provisions and the required proposal notices apply to all Federal-aid construction contracts other than Appalachian construction contracts.
- (b) Form FHWA–1273, “Required Contract Provisions, Federal-aid Construction Contracts,” contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA–1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see § 633.104 for availability of form).
- (c) [Reserved]
- (d) The required contract provisions contained in Form FHWA–1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.
- (e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA–1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA–1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA–1273.
- (f) The State highway agency (SHA) shall include the notices concerning certification of nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA–1273, the SHA may include Form FHWA–1273 in its entirety to meet this requirement.

[52 FR 36920, Oct. 2, 1987, as amended at 69 FR 7118, Feb. 13, 2004]

§ 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA–1273 are requirements of regulations promulgated by the FHWA or other Federal agencies. The authority for each provision will be cited in the text of Form FHWA–1273.

§ 633.104 Availability.

- (a) Form FHWA–1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.
- (b) Current copies of Form FHWA–1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

Authority: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b)(35).

Source: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

§ 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

§ 633.202 Definitions.

- (a) The word *Commission* means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).
- (b) The term *division administrator* means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

§ 633.203 Applicability of existing laws, regulations, and directives.

The provisions of title 23 U.S.C., that are applicable to the construction and maintenance of Federal-aid primary and secondary highways, and which the Secretary of Transportation determines are not inconsistent with the Act, shall apply, respectively, to the development highway system and the local access roads. In addition, the Regulations for the Administration of Federal-aid for Highways (title 23, Code of Federal Regulations) and directives implementing applicable provisions of title 23 U.S.C., where not inconsistent with the Act, shall be applicable to such projects.

§ 633.204 Fiscal allocation and obligations.

- (a) Federal assistance to any project under the Act shall be as determined by the Commission, but in no event shall such Federal assistance exceed 70 per centum of the cost of such a project.
- (b) The division administrator's authorization to proceed with the proposed work shall establish obligation of Federal funds with regard to a particular project.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

§ 633.205 Prefinancing.

- (a) Under the provisions of subsection 201(h) of the Act, projects located on the Appalachian Development Highway System including preliminary engineering, right-of-way, and/or construction may be programed and advanced with interim State financing.
- (b) Program approvals, plans, specifications, and estimates (PS&E) approval, authorizations to proceed, concurrence in award of contracts, and all other notifications to the State of advancement of a project shall include the statement, "There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission."

§ 633.206 Project agreements.

- (a) Project agreements executed for projects under the Appalachian program shall contain the following paragraphs:
 - (1) "For projects constructed under section 201 of the Appalachian Regional Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued thereunder, and policies and procedures promulgated by the Appalachian Regional Commission, and the Federal Highway Administration. Inasmuch as a primary objective of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to the other applicable provisions of title 49, Code of Federal Regulations, part 21, § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof, shall be applicable to all employment practices in connection with this project, and to the State's employment practices with respect to those employees connected with the Appalachian Highway Program."
 - (2) "For projects constructed on a section of an Appalachian development route not already on the Federal-aid Primary System, the State highway department agrees to add the section to the Federal-aid Primary System prior to, or upon completion of, construction accomplished with Appalachian funds."
- (b) For prefinanced projects, the following additional provision shall be incorporated into the project agreement: "Project for Construction on the Appalachian Development Highway System in Advance of the Appropriation of Funds. This project, to be constructed pursuant to subsection 201(h) of the Appalachian Regional Development Act Amendments of 1967, will be constructed in accordance with all procedures and requirements and standards applicable to projects on the Appalachian Development Highway System financed with the aid of Appalachian funds. No obligation of Appalachian funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway department, and approval thereof by the Federal Highway Administration, any Appalachian development highway funds made available to the State by the Appalachian Regional Commission subsequent to the date of this agreement may be used to reimburse the State for the Federal share of the cost of work done on the project."

§ 633.207 Construction labor and materials.

- (a) Construction and materials shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the specific projects.
- (b) The provisions of 23 U.S.C. 324 and of title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d–2000d–4) and the implementing regulations in 49 CFR part 21, including the provisions of § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof relative to employment practices, shall be applicable to all types of contracts listed in appendix A.
- (c) The “Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts,” Form PR–1316 (appendix B), shall be included in all construction contracts awarded under the Act.
- (d) The required contract provisions set forth in Form PR–1317 (appendix C) shall be included in all types of contracts described in appendix A, other than construction contracts.
- (e) In the design and construction of highways and roads under the Act, the State may give special preference to the use of mineral resource materials native to the Appalachian region. The provisions of § 635.409 of this chapter shall not apply to projects under the Act to the extent such provisions are inconsistent with sections 201(d) and (e) of the Act.

[39 FR 35146, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 36204, Aug. 27, 1976]

§ 633.208 Maintenance.

Maintenance of all highway projects constructed under the Act, whether on the development system or local access roads, shall be the responsibility of the State. The State may arrange for maintenance of such roads or portions thereof, by agreement with a local governmental unit.

§ 633.209 Notices to prospective Federal-aid construction contractors.

The State highway department shall include the notices set forth in appendix D in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts.

§ 633.210 Termination of contract.

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner in which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

§ 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Pursuant to regulations of the Environmental Protection Agency (40 CFR part 15) implementing requirements with respect to the Clean Air Act and the Federal Water Pollution Control Act are included in appendix B to this part.

[40 FR 49084, Oct. 21, 1975]

Appendix A to Subpart B of Part 633—Types of Contracts to Which the Civil Rights Act of 1964 Is

Applicable

Section 324 of title 23 U.S.C., the Civil Rights Act of 1964, and the implementing regulations of the Department of Transportation (49 CFR part 21), including the provisions of paragraphs (2)(iii) and (2)(v) of appendix C thereof relative to employment practices, are applicable to the following types of contracts awarded by State highway departments, contractors, and first tier subcontractors, including those who supply materials and lease equipment:

- 1. Construction.
- 2. Planning.
- 3. Research.
- 4. Highway Safety.
- 5. Engineering.
- 6. Property Management.
- 7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:
 - a. Advertising contracts.
 - b. Agreements for economic studies.
 - c. Contracts for surveys and plats.
 - d. Contracts for abstracts of title certificates and title insurance.
 - e. Contracts for appraisal services and expert witness fees.
 - f. Contracts to negotiate for the acquisition of right-of-way.
 - g. Contracts for disposal of improvements and property management services.
 - h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases.
 - i. Contracts for escrow and closing services.

[40 FR 49084, Oct. 21, 1975]

Appendix B to Subpart B of Part 633—Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts

I.	Application.
II.	Employment Preference.
III.	Equal Opportunity: Employment Practices.
IV.	Equal Opportunity: Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment.
V.	Nonsegregated Facilities.
VI.	Payment of Predetermined Minimum Wages.
VII.	Statements and Payrolls.

VIII.	Record of Materials, Supplies and Labor.
IX.	Subletting or Assigning the Contract.
X.	Safety: Accident Prevention.
XI.	False Statements Concerning Highway Projects.
XII.	Implementation of Clean Air Act and Federal Water Pollution Control Act.

I. Application.

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.
4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b):
Section 1, paragraph 2.
Section VI, paragraphs 1, 2, 3, 5 and 8a.
Section VII, paragraphs 1, 5a, 5b and 5d.

II. Employment preference.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the United States Department of Labor wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
2. The contractor shall place a job order with the State Employment Service indicating
 - (a) the classifications of laborers, mechanics and other employees he anticipates will be required to perform the contract work,

- (b) the number of employees required in each classification,
 - (c) the date on which he estimates such employees will be required, and
 - (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill the positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.
5. The contractor shall include the provisions of section II-1 through II-4 in every subcontract for work which is, or reasonably may be, done as on-site work.

III. *Equal opportunity: employment practices.*

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section III and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor 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.

- e. The contractor 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 his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor 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.
- g. The contractor will include the provisions of this section III 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 contractor will take such action with respect to any subcontract or purchase order as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IV. *Equal opportunity selection of subcontractors, procurement of materials, and leasing of equipment.*

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the *contractor*), *agrees as follows:*

- 1. ***Compliance with regulations.*** The contractor shall comply with the provisions of 23 U.S.C. 324 and with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") title 49, Code of Federal Regulations, part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 2. ***Nondiscrimination.*** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices.
- 3. ***Solicitations for subcontracts including procurement of materials and equipment.*** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier, shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. **Information and reports.** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. Cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of provisions.** The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement, as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however, That*, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

V. Nonsegregated facilities.

(Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term *segregated facilities* means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award

of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

VI. *Payment of predetermined minimum wages.*

1. **General.** All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of section VI, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
2. **Classifications —**
 - a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor.
 - b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.
3. **Payment of fringe benefits —**
 - a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.
 - b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: *Provided, however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable

standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Payment of excess wages.** While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.
5. **Apprentices and trainees (Programs of Department of Labor).**
 - a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.
 - b. Trainees, except as provided in 29 CFR 5.15, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway department or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

6. ***Apprentices and trainees (Programs of Department of Transportation).*** Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of section VI, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. ***Withholding for unpaid wages.*** The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

8. ***Overtime requirements.***

a. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 8a.

c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in paragraph 8b.

VII. ***Statements and payrolls.***

1. ***Compliance with Copeland Regulations (29 CFR part 3).*** The contractor shall comply with the Copeland Regulations (29 CFR part 3) of the Secretary of Labor which are herein incorporated by reference.

2. **Weekly statement.** Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, including apprentices and trainees described in section VI, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.
3. **Final labor summary.** The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating for the completed project the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in section VIII, hereof, relative to materials and supplies.
4. **Final certificate.** Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

* * * * *

The undersigned, contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title _____

* * * * *

5. **Payrolls and payroll records –**

- a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to section VI, paragraph 3.b., has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a

plan or program described in section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in section II, paragraph 1.a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)
2. The employee's classification.
3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefits funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.
4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).
5. The itemized deductions made and
6. The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by section VII, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall give information regarding such arrangements.

- f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.
- g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.
- h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.
- i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.
- j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. *Record of materials, supplies and labor.*

- 1. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in section VII, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.
- 2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendant explanations.
- 3. Where subcontracts are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

IX. *Subletting or assigning the contract.*

- 1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as *Specialty Items* may be performed by subcontract and the amount of any such *Specialty Items* so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.
 - a. ***His own organization*** shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.
 - b. ***Specialty items*** shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
- 2. In addition to the 50 percent requirements set forth in paragraph 1 above, the contractor shall furnish

- (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and
 - (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.
- 3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
- 4. Any items that have been selected as *Specialty Items* for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.
- 5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by
 - (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and
 - (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

X. *Safety: Accident prevention.*

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (title 29, Code of Federal Regulations, part 1926, formerly part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

XI. *False statements concerning highway projects.*

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a

violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

* * * * *

Notice to All Personnel Engaged on Federal-Aid Highway Projects

Title 18 U.S.C., section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

XII. Implementation of Clean Air Act and Federal Water Pollution Control Act (applicable to contracts and subcontracts which exceed \$100,000).

1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR part 15), is listed not on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR part 15.20.
2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph XII in every subcontract which exceeds \$100,000, and further agrees to take such action as Government may direct as a means of enforcing such requirements.

[40 FR 49084, Oct. 21, 1975]

Appendix C to Subpart B of Part 633—Additional Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Contracts Other Than Construction Contracts

Equal Opportunity: Employment Practices and Selection of Subcontractors, Suppliers of Materials, and Lessors of Equipment

During the performance of this contract, the contractor agrees as follows:

1. *Compliance with regulations.*

The contractor will comply with the provisions of 23 U.S.C. 324 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

2. *Employment practices*

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities and treatment of employees. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, or national origin.
- c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representative of the contractor's commitments under the employment practices provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. *Selection of subcontractors, procurement of materials and leasing of equipment.*

- a. The contractor, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

- b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. ***Information and reports.***

The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. ***Incorporation of provisions.***

The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however, That*, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

6. ***Sanctions for noncompliance.***

In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination or suspension of the contract in whole or in part.

[40 FR 49088, Oct. 21, 1975]

Appendix D to Subpart B of Part 633—Federal-Aid Proposal Notices

Notices to Prospective Federal-Aid Construction Contractors

I. ***Certification of nonsegregated facilities.***

- (a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

- (b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.
- (c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

Notice to Prospective Subcontractors and Material Suppliers of Requirement for Certification of Nonsegregated Facilities

- (a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.
- (b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- (c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. *Implementation of Clean Air Act.*

- (a) By signing this bid, the bidder will be deemed to have stipulated as follows:
 - (1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

- (2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 635 —Construction and Maintenance

Subpart D —General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.407 Use of materials made available by a public agency.

- (a) Contracts for highway projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definite finding by the State transportation department and concurred in by the FHWA Division Administrator, that it is in the public interest to require the contractor to use material furnished by the State transportation department or from sources designated by the State transportation department. In cases such as this, the FHWA does not expect mutual sharing of costs unless the State transportation department receives a related credit from another agency or political subdivision of the State. Where such a credit does accrue to the State transportation department, it shall be applied to the Federal-aid project involved. The designation of a mandatory material source may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State transportation department proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not participate in the increase even if the designation would conserve other public funds.
- (b) The provisions of paragraph (a) of this section will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that have been investigated by the State transportation department and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in paragraph (a) of this section.
- (c) Federal funds may participate in the cost of specifications materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in § 635.114 of this chapter.
- (d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State transportation department and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federation participation will be limited to the unit cost of such material to the State transportation department.

- (e) When the State transportation department or another public agency owns or has control over the source of a local natural material the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to
 - (1) the cost of the material to the State transportation department or other public agency; or
 - (2) the fair and reasonable value of the material, whichever is less. Special cases may arise that will justify Federal participation on a basis other than that set forth above. Such cases should be fully documented and receive advance approval by the FHWA Division Administrator.
- (f) Costs incurred by the State transportation department or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if the source is not used by the contractor.
- (g) The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State transportation department with the concurrence of the FHWA Division Administrator that such placement is the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost.

This content is from the eCFR and is authoritative but unofficial.

Title 41 — Public Contracts and Property Management

Subtitle B — Other Provisions Relating to Public Contracts

Chapter 60 — Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor

Part 60-1 — Obligations of Contractors and Subcontractors

Subpart A — Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

Source: 43 FR 49240, Oct. 20, 1978, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A appear at 85 FR 71570, Nov. 10, 2020.

§ 60-1.8 Segregated facilities.

To comply with its obligations under the Order, a contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term “facilities,” as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

[79 FR 72994, Dec. 9, 2014]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 635 —Construction and Maintenance

Subpart D —General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.411 Culvert and storm sewer material types.

State Departments of Transportation (State DOTs) shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

[84 FR 51028, Sept. 27, 2019]

This content is from the eCFR and is authoritative but unofficial.

Title 23 — Highways

Chapter I — Federal Highway Administration, Department of Transportation

Subchapter G — Engineering and Traffic Operations

Part 635 — Construction and Maintenance

Subpart D — General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

§ 635.417 Convict produced materials.

- (a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:
 - (1) Produced by convicts who are on parole, supervised release, or probation from a prison or
 - (2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.
- (b) **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.

[53 FR 1923, Jan. 25, 1988, as amended at 58 FR 38975, July 21, 1993]

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) 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, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 Federal 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**Hays County Commissioners Court**

Date: 01/30/2024

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Shell

Co-Sponsor:

Commissioner Ingalsbe

Agenda ItemApprove Utility Permits **SHELL/INGALSBE/BORCHERDING****Summary**

TRN-2023-7229-UTL	Spectrum & B Rob propose installing 12,881 LF of fiber optic cable aerial new build on existing poles in the ROW along Old Oaks Ranch Rd., Bohles Rd., and Lone Mountain Rd. (1) 12x8 bucket truck to be alternately stationed adjacent at each pole for 15 to 30 minutes to perform the work. (TCP 1-1-18 & TCP 6-7).
TRN-2023-7289-UTL	J Thompson proposes to bore beneath Windy Hills Rd. to extend a private water line from the West side to the East side using 2" PVC pipe.
TRN-2024-7396-UTL	MCI Proposes to install 10564' of 864ct fiber optic cable along Bebee Rd. About 870' of this line will be within Hays County maintenance.

Attachments

Site Plan

Permit

Site Plan

Location Map

Permit

Location Map

Site Plan

Permit

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SHEET INDEX:

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|----|---------------------|
| 1. | COVER SHEET |
| 2. | AERIAL UTILITY PLAN |
| 3. | AERIAL UTILITY PLAN |
| 4. | AERIAL UTILITY PLAN |
| 5. | AERIAL UTILITY PLAN |
| 6. | AERIAL UTILITY PLAN |
| 7. | AERIAL UTILITY PLAN |



SPECTRUM
3757716_REV
RAINBOW RANCH
AERIAL IMPROVEMENTS

PROJECT INFORMATION:

STREET ADDRESS:
980 OLD OAKS RANCH RD.
WIMBERLEY, TEXAS 78676

OWNER:
DARRYL BROWN
SPECTRUM
810 W HOWARD LN
AUSTIN, TX 78753
DARRYL.BROWN@CHARTER.COM
512-230-4313

CONTACT:
BRENT GURLEY
LJA ENGINEERING, INC
2700 LA FRONTERA, SUITE 150
ROUND ROCK, TX 78681
BGURLEY@LJA.COM
512-439-4758

SUBMITTAL PREPARED BY:

LJA Engineering, Inc. 

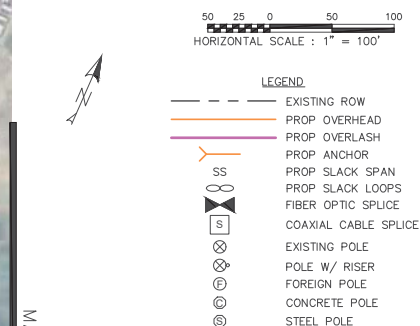
7500 RIALTO BLVD, STE 150
AUSTIN, TEXAS 78735
(512) 439-4700
TBPE FIRM REGISTRATION: F-1386

CONTACT:
STUART COWELL, PE
PHONE:
(512) 439-4717

12,881 LF NEW BUILD FOC



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NOTES

1. POLE LINE MAY BE LOCATED IN POSSIBLE EASEMENT.
2. EXISTING UTILITIES AND ROW BOUNDARIES HAVE BEEN DEPICTED ACCORDING TO PUBLIC INFORMATION, CITY GIS DATA, AND FIELD INVESTIGATION. NO SUE OR SURVEY WORK PERFORMED.



Spectrum

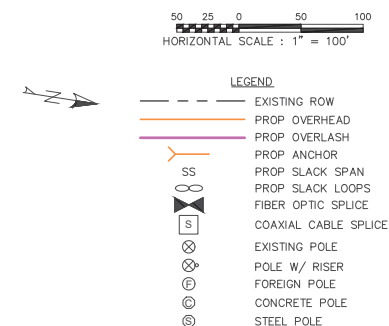
LJA Engineering, Inc. **LJA**
FRN - F-1386

SPECTRUM
3757716_REV
RAINBOW RANCH

AERIAL IMPROVEMENTS

DESIGN BY:	AG	SCALE:	
DRAWN BY:	AG	HORIZONTAL:	1"=100'
CHECKED BY:	DS	VERTICAL:	N/A
APPROVED BY:	JJB	SHEET:	1 OF 6
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DATE:	11/2/2023		

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Spectrum

LJA Engineering, Inc. **LJA**
FRN - F-1386

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RAINBOW RANCH

AERIAL IMPROVEMENTS

DESIGN BY:	AG	SCALE:	
DRAWN BY:	AG	HORIZONTAL:	1"=100'
CHECKED BY:	DS	VERTICAL:	N/A
APPROVED BY:	JB	SHEET:	2 OF 6
PROJECT NO:	2605-23-C057	PAGE:	3
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50 25 0 50 100
HORIZONTAL SCALE : 1" = 100'



LEGEND

- EXISTING ROW
- PROP OVERHEAD
- PROP OVERLASH
- PROP ANCHOR
- SS PROP SLACK SPAN
- SS PROP SLACK LOOPS
- SS FIBER OPTIC SPLICE
- S COAXIAL CABLE SPLICE
- ⊗ EXISTING POLE
- ⊗ POLE W/ RISER
- ⊗ FOREIGN POLE
- ⊗ CONCRETE POLE
- ⊗ STEEL POLE

NOTES

1. POLE LINE MAY BE LOCATED IN POSSIBLE EASEMENT.
2. EXISTING UTILITIES AND ROW BOUNDARIES HAVE BEEN DEPICTED ACCORDING TO PUBLIC INFORMATION, CITY GIS DATA, AND FIELD INVESTIGATION. NO SUE OR SURVEY WORK PERFORMED.



Spectrum

LJA Engineering, Inc. **LJA**
FRN - F-1386

SPECTRUM
3757716_REV
RAINBOW RANCH

AERIAL IMPROVEMENTS

DESIGN BY:	AG	SCALE:	
DRAWN BY:	AG	HORIZONTAL:	1"=100'
CHECKED BY:	DS	VERTICAL:	N/A
APPROVED BY:	JJB	SHEET:	3 OF 6
PROJECT NO:	2605-23-C057	PAGE:	4
DATE:	11/2/2023		

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MATCHLINE 6



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LEGEND

- EXISTING ROW
- PROP OVERHEAD
- PROP OVERLASH
- PROP ANCHOR
- SS PROP SLACK SPAN
- SS PROP SLACK LOOPS
- SS FIBER OPTIC SPLICE
- SS COAXIAL CABLE SPLICE
- ⊗ EXISTING POLE
- ⊗ POLE W/ RISER
- ⊗ FOREIGN POLE
- ⊗ CONCRETE POLE
- ⊗ STEEL POLE

NOTES

1. POLE LINE MAY BE LOCATED IN POSSIBLE EASEMENT.
2. EXISTING UTILITIES AND ROW BOUNDARIES HAVE BEEN DEPICTED ACCORDING TO PUBLIC INFORMATION, CITY GIS DATA, AND FIELD INVESTIGATION. NO SUE OR SURVEY WORK PERFORMED.

MATCHLINE 7



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LJA Engineering, Inc.

FRN - F-1386

SPECTRUM
3757716_REV
RAINBOW RANCH
AERIAL IMPROVEMENTS

DESIGN BY:	AG	SCALE:	HORIZONTAL: 1"=100'
DRAWN BY:	AG	VERTICAL:	N/A
CHECKED BY:	DS	SHEET:	4 OF 6
APPROVED BY:	JJB	PAGE:	5
PROJECT NO:	2605-23-C057		
DATE:	11/2/2023		

11/02/2023 7:37:54 AM \\jbleng.com\shares\Sectora\Telecom\UNDED PROJECTS\CHARTER-SPECTRUM\CENTRAL TEXAS\2023\2605-23-C057 Rainbow Ranch (3757716)\DOC\Permit Applications\Aerial Permitting\RAINBOW RANCH_REV.dwg aggrines



MATCHLINE 9

50 25 0 50 100
HORIZONTAL SCALE : 1" = 100'

LEGEND	
---	EXISTING ROW
---	PROP OVERHEAD
---	PROP OVERLASH
---	PROP ANCHOR
SS	PROP SLACK SPAN
SS	PROP SLACK LOOPS
SS	FIBER OPTIC SPLICE
SS	COAXIAL CABLE SPLICE
SS	EXISTING POLE
SS	POLE W/ RISER
SS	FOREIGN POLE
SS	CONCRETE POLE
SS	STEEL POLE

NOTES

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MATCHLINE 10

Spectrum

LJA Engineering, Inc. **LJA**
FRN - F-1386

SPECTRUM
3757716_REV
RAINBOW RANCH
AERIAL IMPROVEMENTS

DESIGN BY: AG	SCALE: 1"=100'
DRAWN BY: AG	HORIZONTAL: N/A
CHECKED BY: DS	VERTICAL: N/A
APPROVED BY: JB	SHEET: 5 OF 6
PROJECT NO: 2605-23-C057	PAGE: 6
DATE: 11/2/2023	

11/02/2023 7:37:54 AM \\jeng.com\shares\Sectors\Telecom\UNDED PROJECTS\CHARTER-SPECTRUM\CENTRAL TEXAS\2023\2605-23-C057 Rainbow Ranch (3757716)\DOC\Permit Applications\Aerial Permitting\RAINBOW RANCH_REV.dwg agfines



50 25 0 50 100
HORIZONTAL SCALE : 1" = 100'

LEGEND

- EXISTING ROW
- PROP OVERHEAD
- PROP OVERLASH
- PROP ANCHOR
- SS PROP SLACK SPAN
- SS PROP SLACK LOOPS
- S FIBER OPTIC SPLICE
- S COAXIAL CABLE SPLICE
- ⊗ EXISTING POLE
- ⊗ POLE W/ RISER
- ⊗ FOREIGN POLE
- ⊗ CONCRETE POLE
- ⊗ STEEL POLE

NOTES

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2. EXISTING UTILITIES AND ROW BOUNDARIES HAVE BEEN DEPICTED ACCORDING TO PUBLIC INFORMATION, CITY GIS DATA, AND FIELD INVESTIGATION. NO SUE OR SURVEY WORK PERFORMED.



Spectrum

LJA Engineering, Inc. **LJA**
FRN - F-1386

SPECTRUM
3757716_REV
RAINBOW RANCH

AERIAL IMPROVEMENTS

DESIGN BY:	AG	SCALE:	
DRAWN BY:	AG	HORIZONTAL:	1"=100'
CHECKED BY:	DS	VERTICAL:	N/A
APPROVED BY:	JB	SHEET:	6 OF 6
PROJECT NO:	2605-23-C057	PAGE:	7
DATE:	11/2/2023		



Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640
(P) 512-393-7385 (Web) 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 12/4/2023 .

Utility Company Information:

Name: Spectrum
Address: 810 Howard Ln Austin TX
Phone: 5122304313
Contact Name: Darryl Brown

Engineer / Contractor Information:

Name: B Rob
Address: TX
Phone: 5128978828
Contact Name: Bernie Robinson

Hays County Information:

Utility Permit Number: TRN-2023-7229-UTL
Type of Utility Service: Aerial New Build - Fiber optic Cable on existing poles
Project Description:
Road Name(s): Old Oaks Ranch Rd, Lone Mountain 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 .

A handwritten signature in cursive script, appearing to read "Roland Chan".

01/24/2024

Signature

Title

Date

JOHN C. PROCHNOW
(8.00 ACRES)
VOLUME 1829, PAGE 801
O.P.R.H.C.T.X.

RONALD L. HERRINGTON AND
DANIE L. HERRINGTON
(17.82 ACRES)
VOLUME 3699, PAGE 857
O.P.R.H.C.T.X.

THOMAS A. BOWERS AND WIFE
THOMAS C. BOWERS
(22.00 ACRES)
DOCUMENT NO. 891739
SPARE D.

WILLIAM E. AVERA
1257/303
(20.00 AC.)

WILLIAM E. AVERA
784/436

WILLIAM AVERA &
JEAN E. AVERA
(68.55 ACRES)
VOLUME 674, PAGE 133
O.P.R.H.C.T.X.

LINE	BEARING	DISTANCE
L1	N 47°19'59" W	75.09'
L2	N 05°57'56" E	123.11'
L3	N 03°57'32" E	64.10'
L4	S 89°59'18" E	15.12'
L5	S 89°59'18" E	125.86'

LEGEND

() RECORD INFORMATION

● CORNER AS NOTED

O.P.R.H.C.T.X. OFFICIAL PUBLIC RECORDS
OF HAYS COUNTY, TEXAS

D.R.H.C.T. DEED RECORDS
OF HAYS COUNTY, TEXAS

— OVERHEAD UTILITY LINE

Ø UTILITY POLE

NOTES:

- 1) ACCORDING TO THE NATIONAL FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 48209C0100F, DATED SEPTEMBER 02, 2005, THIS PROPERTY IS LOCATED IN ZONE "X", AND IS NOT LOCATED IN THE 100-YEAR FLOODPLAIN.
- 2) REFERENCE ATTACHED METES AND BOUNDS DESCRIPTION.
- 3) BEARING BASIS IS N.G.S. 84 BASED ON A LOCAL COORDINATE SYSTEM.
- 4) EASEMENT TO SOUTHWESTERN STATES TELEPHONE CO. RECORDED IN VOLUME 187, PAGE 483, DEED RECORDS OF HAYS COUNTY, TEXAS CAN NOT BE LOCATED BY THE DEED DESCRIPTION.

PURCHASER: 3907 RED RIVER, LLC
LENDER: CAPITAL FARM CREDIT
TITLE COMPANY: INDEPENDENCE TITLE COMPANY
STEWART TITLE COMPANY GUARANTY COMPANY
G.F. NO. 1320414-DF0

I, GARY F. PENNINGTON, DO HEREBY CERTIFY THAT THIS PLAT OF THE PROPERTY SHOWN HEREON, WAS PREPARED FROM A SURVEY PERFORMED UNDER MY DIRECTION AND SUPERVISION, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND EXCEPT AS SHOWN OR NOTED HEREON, THERE ARE NO VISIBLE UTILITY LINES OR ROADWAYS AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A PUBLIC RIGHT-OF-WAY.

GARY F. PENNINGTON, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
NUMBER 4404, STATE OF TEXAS
© ASH & ASSOCIATES, L.L.C.



WILLIAM SHARP
H. NO. HAGGARD
NO. 8

NOVELLA SORRELL
VOLUME 4305, PAGE 224
54.49 ACRES
(54.58 ACRES)

SURVEY
POINT OF BEGINNING
54.49 ACRES
1/2" IRON ROD FOUND

KEITH MILLER
(4.913 ACRES)
VOLUME 2142, PAGE 867
O.P.R.H.C.T.X.

SCALE 1" = 100'

1/2" IRON ROD FOUND (CAP PRECEDE LAND SURVEYING)

JOHN A. AND ELLIE SHARP
(1.00 ACRES)
VOLUME 674, PAGE 133
O.P.R.H.C.T.X.

JOHN A. SHARP AND WIFE
(REMAINDER OF 1.00 ACRES)
VOLUME 674, PAGE 133
O.P.R.H.C.T.X.

LUKE LINDSEY
(1.12 ACRES)
VOLUME 4305, PAGE 224
O.P.R.H.C.T.X.

THOMAS EUGENE MILLER
4095/419
(4.94 AC.)

ERNA PFULLMAN
(2.00 ACRES)
VOLUME 306, PAGE 815
D.R.H.C.T.X.

JOHN C. CRYSTAL JR. AND JEAN E. CRYSTAL
VOL. 1389, PG. 649
(4.00 ACRES)

WINDY HILLS ROAD

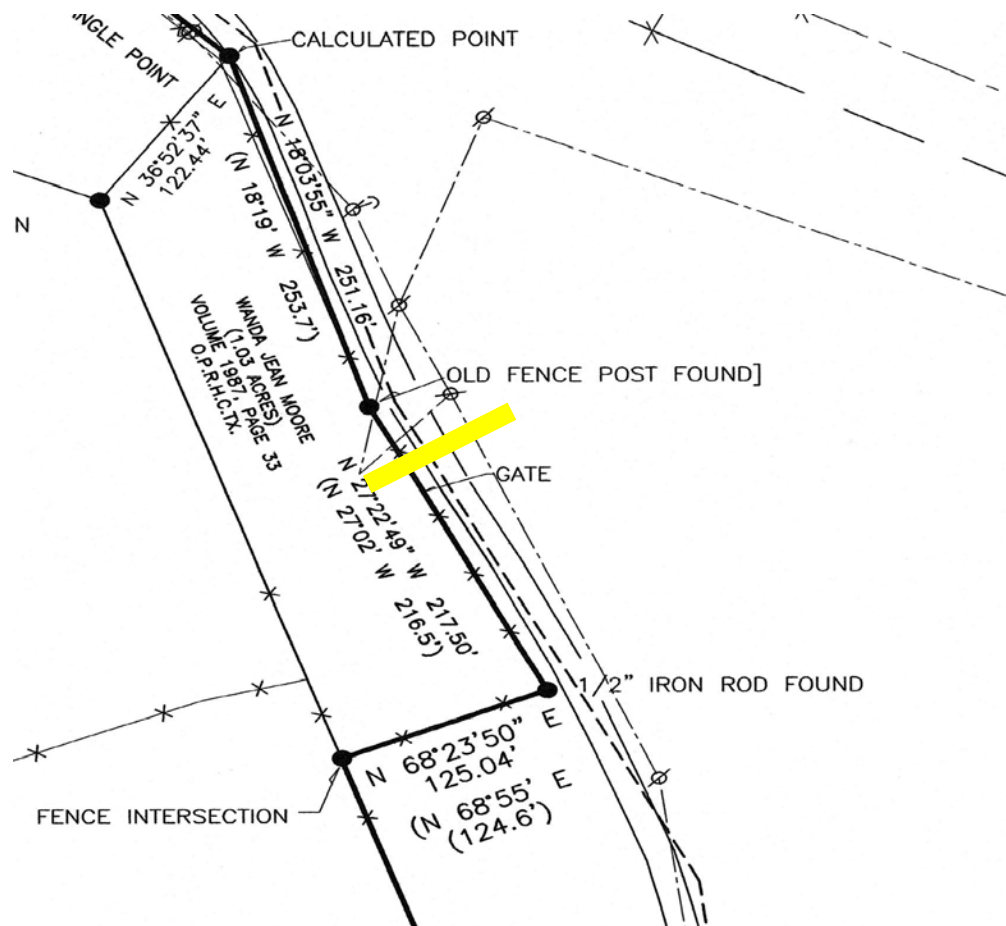
WINDY HILLS ROAD

ROAD

SURVEY OF 54.49 ACRES
OUT OF THE
WILLIAM H. HAGGARD SURVEY NO. 8,
HAYS COUNTY, TEXAS

ASH & ASSOCIATES
SURVEYING - ENGINEERING - ARCHITECTURE
1322 HWY. 290 W., STE. "A"
DREPPING SPRINGS, TEXAS 78620
(512) 894-0664 (OFFICE)
www.ashandassociates.net
Surveying: 100847-00 (SAN MARCOS)
Engineering: 101839-32 (DREPPING SPRINGS)
Architecture: 1020240
"SERVING THE COMMUNITY OF TEXAS"
JOB NO. 13-471855 DRAWN BY: G.F.P. - PD. 1
FILE NAME: AYRA_R2_FINAL.DWG

Close up view of where the road bore is going across the Windy Hills Road at 399 Windy Hills Road
Dripping Springs TX 78620





Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640
(P) 512-393-7385 (Web) 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 ASAP .

Utility Company Information:

Name:
Address: TX
Phone:
Contact Name:

Engineer / Contractor Information:

Name: J Thompson Professional Consulting, LLC
Address: PO Box 172 Dripping Springs TX 78620
Phone: 5125682184
Contact Name: Jon Thompson

Hays County Information:

Utility Permit Number: TRN-2023-7289-UTL
Type of Utility Service: Water (private) from existing ag water well
Project Description:
Road Name(s): Windy Hills Road (Dripping Springs); nearest cross street is Ella Lane to the southeast, , , , , ,
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 cursive script that reads "Roland Chapman".

Engineering Technician

01/25/2024

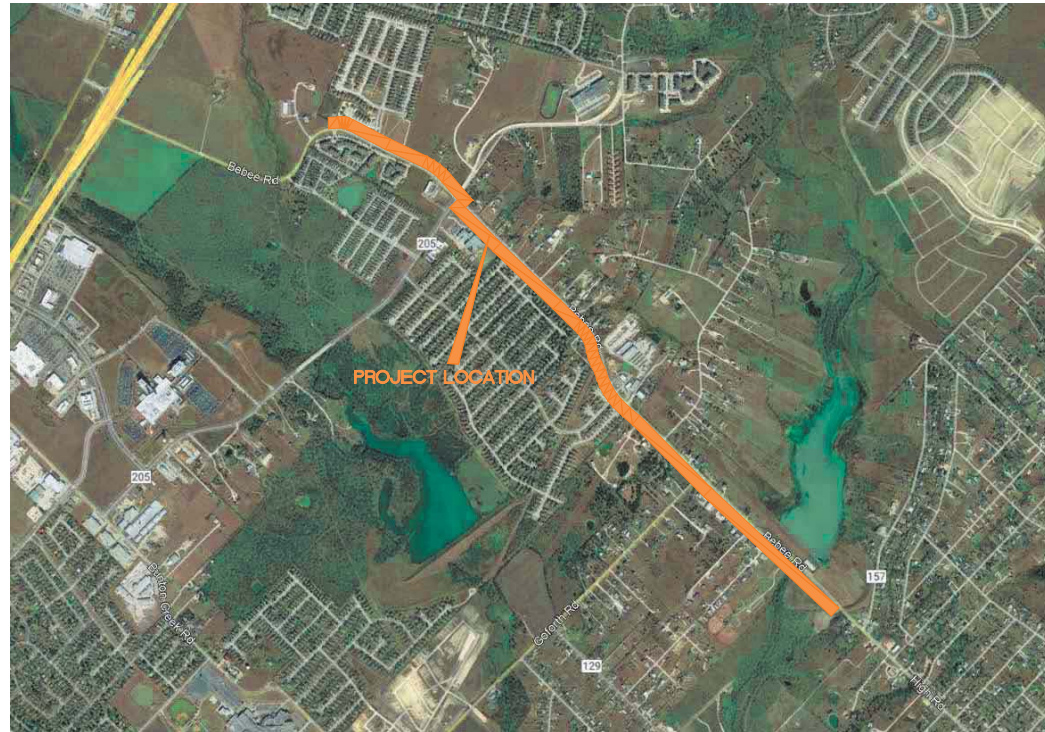
Signature

Title

Date

SHEET INDEX:

- 1 COVER SHEET:
PROJECT INFORMATION
- 2 KEY MAP
- 3 CONTACTS
- 4 LEGEND
- 5 GENERAL NOTES
- 6-26 UG ROUTE PLAN & PROFILE
- 26-36 CONSTRUCTION TYPICALS
- 37 TRAFFIC CONTROL TYPICALS



LOCATION MAP:

BEBEE_RD_STX - D

(KYLE, TEXAS)(HAYS COUNTY & CITY OF KYLE)

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) 2" HDPE	FT	10414
OPEN TRENCH W/ (1) 2" HDPE	FT	150
ADDITIONAL 2" HDPE	FT	
MICRODUCT	FT	
30X60X30 CORE HANDHOLE	EA	
36X60X30 HUBBELL HANDHOLE	EA	
24X36X24 NED HANDHOLE	EA	
30X60X30 NED HANDHOLE	EA	
36X60X30 NED HANDHOLE	EA	14
864CT FIBERCABLE (W/ SLACK)	FT	11964
FIBER SPLICES	EA	

INTERNAL ID: AUS_2003CGZS_3_CKY_1 // AUS_2003CGZS_3_HCO_1
NFID: 2003CGZS.3
SCOPE OF WORK: SuperNED
FQID: FIB:BUR::500969749
EWO: 2209DAAY
PROJECT DESCRIPTION: MCI METRO PROPOSES TO INSTALL 10564'
OF 864CT FOC ALONG BEBEE RD

BEGIN
Latitude: N 30.019618
Longitude: W -97.845113

END
Latitude: N 30.000201
Longitude: W -97.821435



SITE NAME: BEBEE_RD_STX - D

SITE ADDRESS:
821 BEBEE RD
KYLE, TX 78640

DATE: 01/17/24

SCALE: 1" = 40'

REVISIONS		
DATE	DESCRIPTION	BY
01/17/24	INITIAL SUBMITTAL	AEM

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL REMAIN THE PROPERTY OF MCI METRO. NO PARTS SHALL BE REPRODUCED, COPIED, OR USED FOR ANY PURPOSE WITHOUT SPECIFIC WRITTEN PERMISSION.



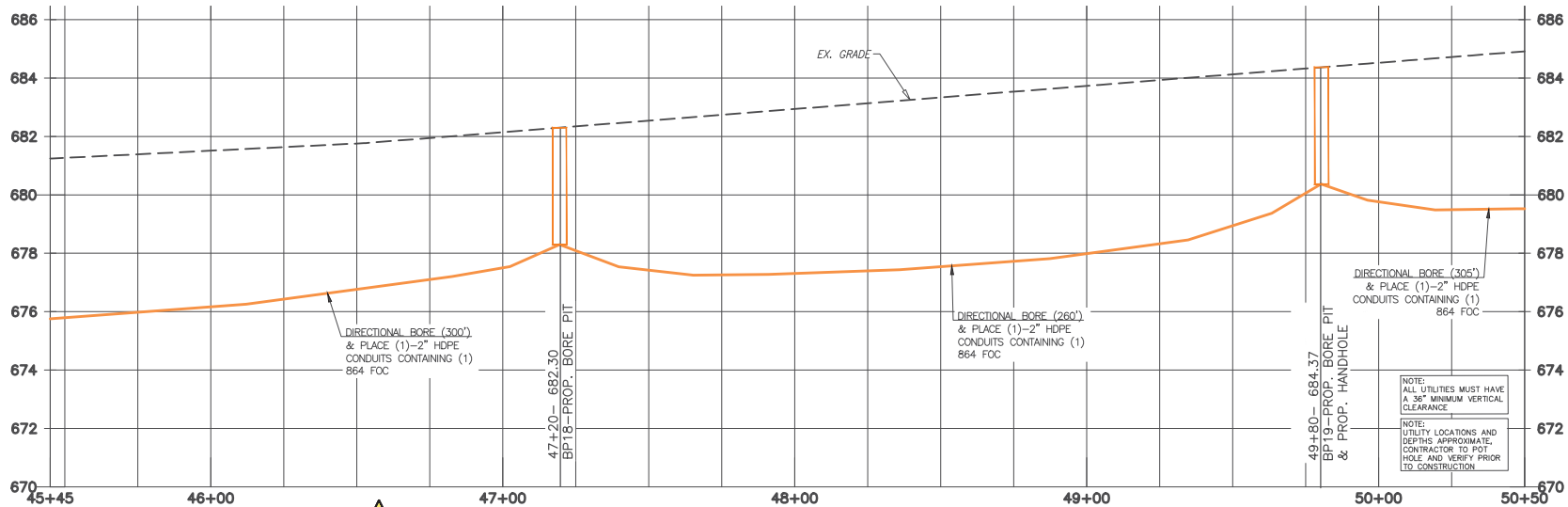
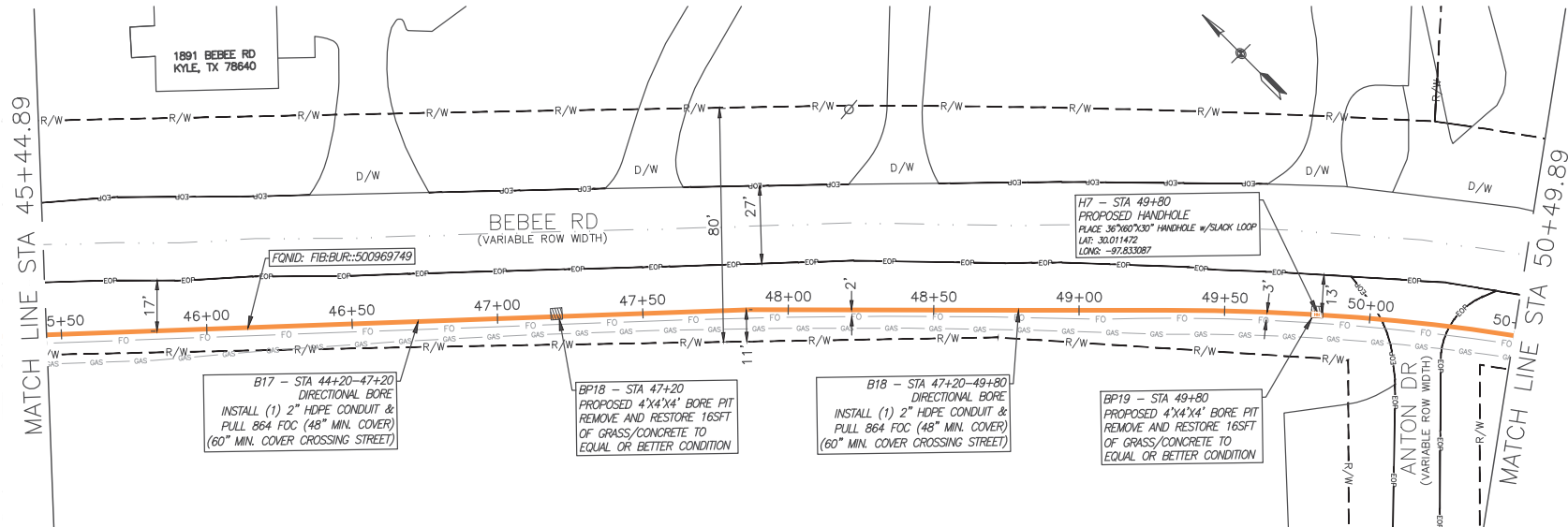
4801 Southwest Parkway, Building Two,
Suite 100 Austin, Texas, 78735
Ofc: 512.447.0575 email: info@sai.com
Texas Firm Registration No. 10054500

PROJECT: 1023085128

COVER

SHEET 1 OF 37

HAYS COUNTY, TX
BEBEE_RD_STX - D



CONTRACTORS NOTE:
ALL LINE WORK AND UTILITY LOCATIONS ARE APPROXIMATE
CONTRACTOR IS RESPONSIBLE FOR
EXACT LOCATIONS.



CAUTION
USE CARE
UNDERGROUND
UTILITIES IN AREA



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 AND BASED UPON PUBLIC RECORDS. 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: BEBEE_RD_STX - D

SITE ADDRESS:
821 BEBEE RD
KYLE, TX 78640

DATE: 01/17/24

SCALE: 1" = 40'

REVISIONS

DATE	DESCRIPTION	BY
01/17/24	INITIAL SUBMITTAL	AEM

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL REMAIN THE PROPERTY OF FIBERLIGHT, LLC. BEING ISSUED IN STRICT CONFIDENCE AND SHALL NOT BE REPRODUCED, COPIED, OR USED FOR ANY PURPOSE WITHOUT SPECIFIC WRITTEN PERMISSION.



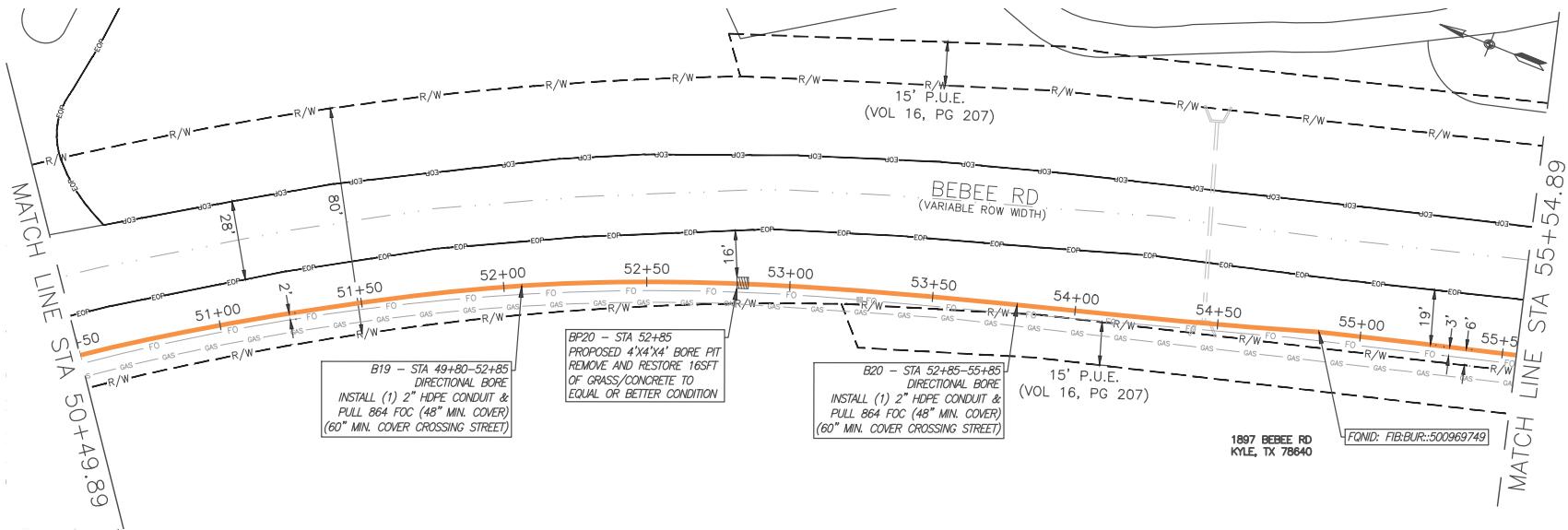
4801 Southwest Parkway, Building Two,
Sulite 100 Austin, Texas, 78735
Ofr: 512.447.0575 email: info@sam.biz
Texas Firm Registration No. 10064300

PROJECT: 1023085128

PLAN

SHEET 15 OF 37

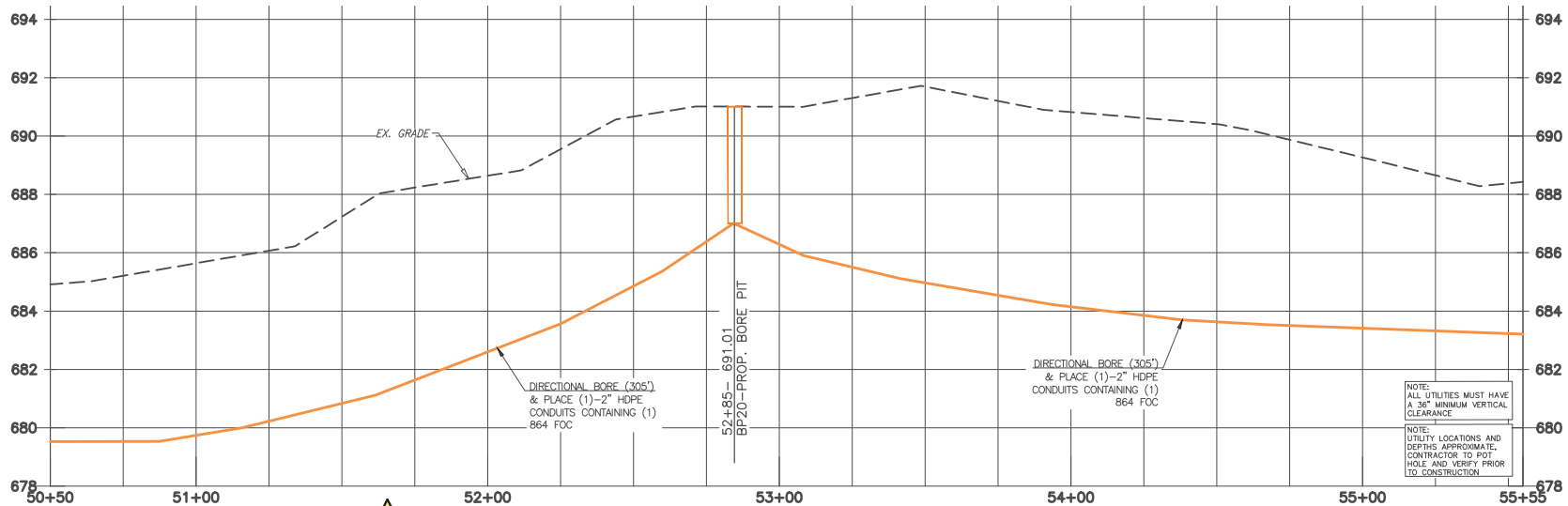
HAYS COUNTY, TX
BEBEE_RD_STX - D



B19 - STA 49+80-52+85
DIRECTIONAL BORE
INSTALL (1) 2" HDPE CONDUIT &
PULL 864 FOC (48" MIN. COVER)
(60" MIN. COVER CROSSING STREET)

BP20 - STA 52+85
PROPOSED 4'X4'X4' BORE PIT
REMOVE AND RESTORE 16SF
OF GRASS/CONCRETE TO
EQUAL OR BETTER CONDITION

B20 - STA 52+85-55+85
DIRECTIONAL BORE
INSTALL (1) 2" HDPE CONDUIT &
PULL 864 FOC (48" MIN. COVER)
(60" MIN. COVER CROSSING STREET)



CONTRACTORS NOTE:

ALL LINE WORK AND UTILITY LOCATIONS ARE APPROXIMATE
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EXACT LOCATIONS.



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SITE: BEBEE_RD_STX - D

SITE ADDRESS:
821 BEBEE RD
KYLE, TX 78640

DATE: 01/17/24

SCALE: 1" = 40'

REVISIONS

DATE	DESCRIPTION	BY
01/17/24	INITIAL SUBMITTAL	AEH

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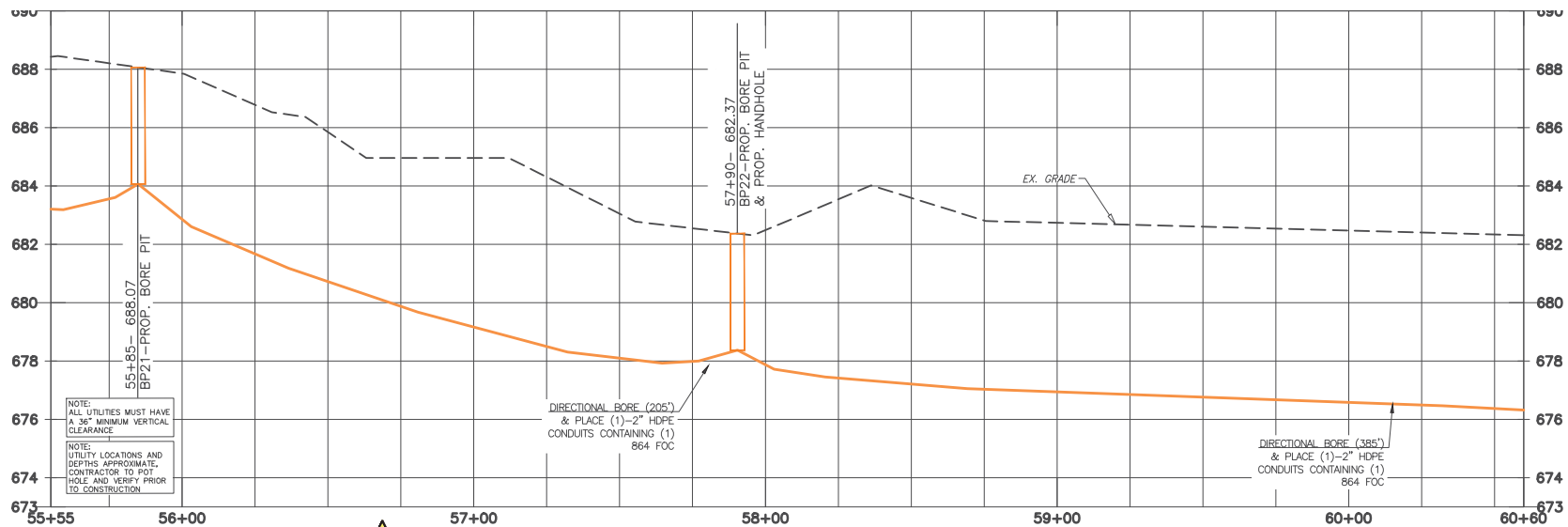
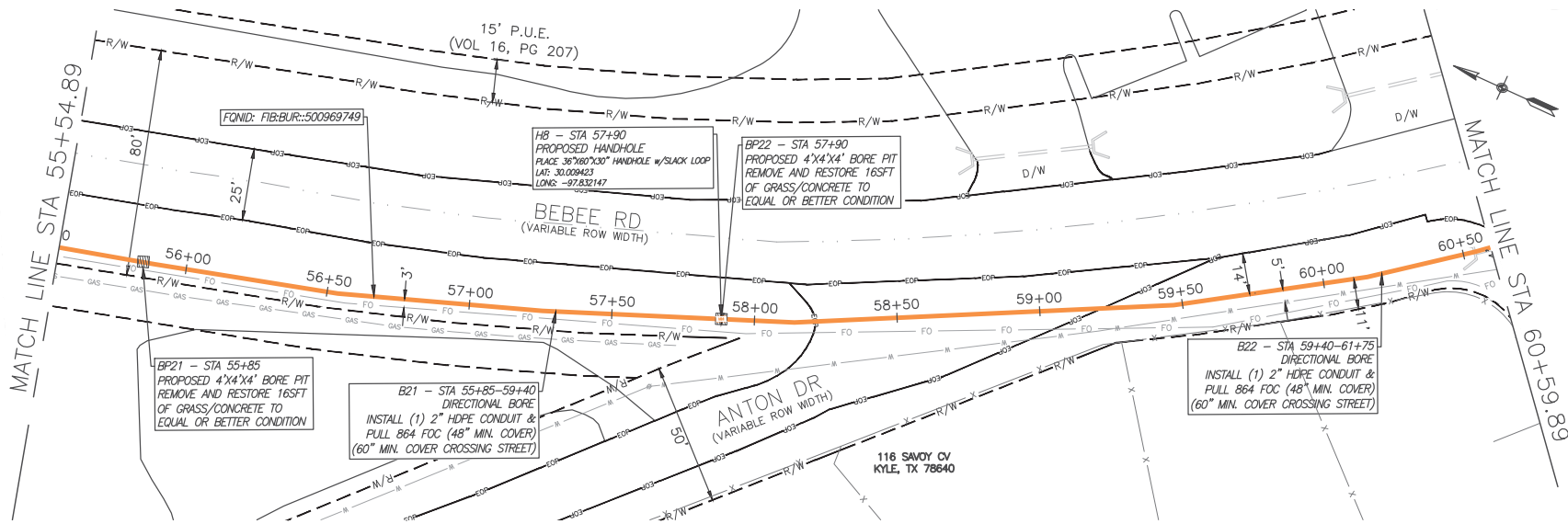
4801 Southwest Parkway, Building Two,
Suite 100 Austin, Texas, 78735
O: 512.447.0575 email: info@sam.biz
Texas Firm Registration No. 10064300

PROJECT: 1023085128

PLAN

SHEET 16 OF 37

HAYS COUNTY, TX
BEBEE_RD_STX - D



CONTRACTORS NOTE:
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UTILITIES SHOWN ARE BASED UPON PUBLIC AVAILABLE AS-BUILT PLANS AND UTILITY MARKINGS LOCATED IN THE FIELD.

SITE: BEBEE_RD_STX - D

SITE ADDRESS:
821 BEBEE RD
KYLE, TX 78640

DATE: 01/17/24

SCALE: 1" = 40'

REVISIONS		
DATE	DESCRIPTION	BY
01/17/24	INITIAL SUBMITTAL	AEM

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4801 Southwest Parkway, Building Two,
Sulle 100 Austin, Texas, 78735
O/E: 512.447.0575 email: info@sam.biz
Texas Firm Registration No. 10064300

PROJECT: 1023085128

PLAN

SHEET 17 OF 37



Hays County Transportation Department

2171 Yarrington Rd, Suite 200, Kyle Texas 78640
(P) 512-393-7385 (Web) www.hayscountytexas.com

UTILITY PERMIT APPROVAL LETTER

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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 2/19/2024 .

Utility Company Information:

Name:
Address: TX
Phone:
Contact Name:

Engineer / Contractor Information:

Name: SAM Companies
Address: 4801 Southwest Pkwy Austin TX 78735
Phone: 5128798294
Contact Name: Daniel LeTexier

Hays County Information:

Utility Permit Number: TRN-2024-7396-UTL
Type of Utility Service: Underground fiber optic cable and conduit.
Project Description:
Road Name(s): Bebee 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 .

A handwritten signature in black ink, appearing to read "Mark Bell".

01/25/2024

Signature

Title

Date



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Villarreal-Alonzo

Sponsor:

Commissioner Cohen

Co-Sponsor:

Commissioner Smith

Agenda Item:

Approve an increase of \$150.00 to the change fund for the Justice of the Peace Precinct 5 Office as recommended by the County Auditor pursuant to Texas Local Government Code Chapter 130.902 (d). **COHEN/SMITH/VILLARREAL-ALONZO**

Summary:

The Justice of the Peace Precinct 5 Office is running out of change when processing receipts and would like to increase their change fund.

Fiscal Impact:

Amount Requested: \$150

Line Item Number: 001-629-00.5211

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?:

Comments:

Auditor's Office

G/L Account Validated Y/N?:

New Revenue Y/N?:

Comments:

Attachments

JP 5 Change Fund Increase Request

Hays County Justice of the Peace
Judge Sandra Bryant



500 Jack C. Hays Trail
Buda, TX 78610
(512) 295-2700

January 17, 2024

Marisol Villarreal-Alonzo, CPA, MPA
Hays County Auditor
712 S. Stagecoach Trail, Suite 1071
San Marcos, TX 78666

Re: JP 5 - Change Fund Increase


Dear Ms. Villarreal-Alonzo,

Currently our office has a change fund of \$150.00. We would like to increase the change fund to \$300.00 (allocating \$100.00 per clerk), due to the clerks continuously running out of change.

Thank you for your consideration.

Please feel free to email me, if you have should you have questions.

Respectfully, ,

Sandra Bryant, Judge 
Hays County Justice of the Peace (Pct
5)500 Jack C. Hays Trail
Buda, TX 78610
(512) 295-2700 - Phone



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jennifer Doinoff, Elections Administrator

Sponsor:

Judge Becerra

Agenda Item:

Authorize payment to San Marcos Daily Record of \$2,721.00 for the Elections Administration Office related to publishing the Public Notice for the Election for the November Constitutional Amendment election where a purchase order was not obtained prior to services rendered as required per the Hays County Purchasing Policy. **BECERRA/DOINOFF**

Summary:

The Election Office posted one notice that was billed on two invoices (by page) and failed to obtain a purchase order prior to service rendered as required per the County Purchasing Policy. Funds are available in the Election Contract Fee Fund budget for this expense.

Attachment: SM Daily Record Invoice # 141022 and # 141021

Fiscal Impact:

Amount Requested: 2,721.00

Line Item Number: 002-655-00.5446

Budget Office:

Source of Funds: Election Contract Fee Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: No

Comments: No purchase order obtained prior to services

Auditor's Office

G/L Account Validated Y/N?: Yes, Election Expenses

New Revenue Y/N?: N/A

Comments:

Attachments

Invoices

San Marcos Daily Record

P.O. Box 1109
San Marcos, TX 78667
512-392-2458

Invoice

guc

Jennifer Doinoff
Hays County Election Office
712 Stagecoach Trail
San Marcos, TX 78666

P.O. 2024-222

Customer No.:	RA8009
Phone:	
Your Rep	Jonas, Kim
Inv. No.:	141022
Inv. Date:	10/08/23
Due Date:	11/30/23

Ad No.	Ad Type	Size	Col. Inch	Description	Customer PO
73212	Classified	7 X 11.25	78.75	hays co election 2023 p2	

Details

Start	End	Qty.	Publication	Page	Reference	Rate	Amount
10/08/23	10/08/23	78.75	Legal Classifieds		hays co election 2023 p2	\$12.08	\$951.00

Invoice Total	\$951.00
Amount Due	\$951.00

Received In The Office

JAN 18 REC'D

Hays County Auditor

San Marcos Daily Record

P.O. Box 1109
San Marcos, TX 78667
512-392-2458

Invoice

Jennifer Doinoff
Hays County Election Office
712 Stagecoach Trail
San Marcos, TX 78666

guc
P.O. 2024-222

Customer No.:	RA8009
Phone:	
Your Rep	Jonas, Kim
Inv. No.:	141021
Inv. Date:	10/08/23
Due Date:	11/30/23

Ad No.	Ad Type	Size	Col. Inch	Description	Customer PO
73210	Classified	7 X 21	147.0	hays co election 2023 p1	

Details

Start	End	Qty.	Publication	Page	Reference	Rate	Amount
10/08/23	10/08/23	147	Legal Classifieds		hays co election 2023 p1	\$12.04	\$1,770.00

Received In The Office
JAN 18 REC'D
Hays County Auditor

Invoice Total	\$1,770.00
Amount Due	\$1,770.00



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jennifer Doinoff

Sponsor:

Judge Becerra

Agenda Item:

Authorize the County Judge to execute a Contract Amendment with AMG Printing related to Election Form Printing Services pursuant to RFP 2020-P08. **BECERRA/DOINOFF**

Summary:

On September 8, 2020, the Commissioners Court approved a contract with AMG Printing for Election Printing Services as a result of formal solicitation RFP 2020-P08.

The Election's Office is requesting to update the bid form with the required forms needed for election printing.

Fiscal Impact:

Amount Requested: Per bid tab

Line Item Number: 001/002-655-00.5461

Budget Office:

Source of Funds: General Fund & Election Contract Fee Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Request for Proposal (RFP) 2020-P08 Election Form Printing Services

Auditor's Office:

G/L Account Validated Y/N?: Yes, Printing Services Expense

New Revenue Y/N?: N/A

Comments:

Attachments

(PE) Amendment 2 to Contract

Updated Bid Form & Pricing

**Second Amendment to the
Election Form Printing Services Agreement
(RFP 2020-P08 Election Form Printing Services)**

1. This Second Amendment to the Election Form Printing Services Agreement (the "Second Amendment"), attached as *Exhibit "A"* and executed September 8, 2020 (the "Agreement"), is made this 30th day of January 2024, by and between **Hays County, Texas ("Client")** and **AMG Printing ("Contractor")**. The above-cited parties are collectively referred to as "the parties to this Agreement" or "the parties."

2. This Agreement shall be amended as follows:

- a. Updating Bid Form Items and Pricing:
 - See attached Bid Form & Pricing

3. Except for the above modifications set forth in this Second Amendment, all other terms and conditions of the Agreement shall remain unaffected and shall continue in full force and effect in accordance with its terms.

HAYS COUNTY, TEXAS

By: _____

Printed Name: _____

Title: _____

Dated: _____

AMG PRINTING

By: _____

Printed Name: Aaron Gonzales

Title: President

Dated: 1-24-24

ATTEST: _____

Elaine Cardenas
Hays County Clerk

RFP 2020-P08 Election Form Printing
Amendment 2 - Updated Bid Form and Pricing

Item #	Part #	Description	Units/Price							
			500	1000	2500	5000	7500	10000	25000	50000
1	1	#14 OE White for returning Carrier to Voter	\$ 172.50	\$ 300.00	\$ 750.00	\$ 1,500.00	\$ 2,250.00	\$ 3,000.00	\$ 7,500.00	\$ 15,000.00
2	2	08-01 JACKET ENVELOPES 6.5x11.5	\$ 273.74	\$ 364.98	\$ 912.45	\$ 1,824.90	\$ 2,737.35	\$ 3,649.80	\$ 9,124.50	\$ 18,249.00
3	3	08-01 JACKET ENVELOPES BROWN KRAFT #14	\$ 149.93	\$ 199.90	\$ 499.75	\$ 999.50	\$ 1,499.25	\$ 1,999.00	\$ 4,997.50	\$ 9,995.00
4	4	08-02 EARLY VOTE ENV FOR BLK BALLOTS GREEN #14	\$ 238.73	\$ 318.30	\$ 795.75	\$ 1,591.50	\$ 2,387.25	\$ 3,183.00	\$ 7,957.50	\$ 15,915.00
5	5	08-02 EARLY VOTE ENV BALLOTS GREEN 6.125x9.5	\$ 238.55	\$ 318.06	\$ 795.15	\$ 1,590.30	\$ 2,385.45	\$ 3,180.60	\$ 7,951.50	\$ 15,903.00
6	6	08-03 CARRIER ENELOPES 6x9	\$ 382.50	\$ 510.00	\$ 1,275.00	\$ 2,550.00	\$ 3,825.00	\$ 5,100.00	\$ 12,750.00	\$ 25,500.00
7	7	08-03 CARRIER ENELOPES #12	\$ 382.50	\$ 510.00	\$ 1,275.00	\$ 2,550.00	\$ 3,825.00	\$ 5,100.00	\$ 12,750.00	\$ 25,500.00
8	8	08-04 BALLOT ENVELOPE WHITE #11	\$ 192.00	\$ 256.00	\$ 640.00	\$ 1,280.00	\$ 1,920.00	\$ 2,560.00	\$ 6,400.00	\$ 12,800.00
9	9	08-04 BALLOT ENVELOPE WHITE 5.75x8.75	\$ 265.85	\$ 354.45	\$ 886.13	\$ 1,772.25	\$ 2,658.38	\$ 3,544.50	\$ 8,861.25	\$ 17,722.50
10	10	08-05 FPCA Early Voting Envelope	\$ 89.13	\$ 155.00	\$ 387.50	\$ 775.00	\$ 1,162.50	\$ 1,550.00	\$ 3,875.00	\$ 7,750.00
11	11	08-06 FPCA Return Ballot	\$ 382.50	\$ 510.00	\$ 1,275.00	\$ 2,550.00	\$ 3,825.00	\$ 5,100.00	\$ 12,750.00	\$ 25,500.00
12	12	08-07 Envelope for Affidavit of Provisional Voter	\$ 206.25	\$ 275.00	\$ 687.50	\$ 1,375.00	\$ 2,062.50	\$ 2,750.00	\$ 6,875.00	\$ 13,750.00
13	13	08-07S Secrecy Envelope for Affidavit	\$ 71.88	\$ 125.00	\$ 312.50	\$ 625.00	\$ 937.50	\$ 1,250.00	\$ 3,125.00	\$ 3,250.00
14	14	08-09 ENVELOPE WINDOW OE 2 COLOR	\$ 51.28	\$ 102.55	\$ 256.38	\$ 512.75	\$ 769.13	\$ 1,025.50	\$ 2,563.75	\$ 5,127.50
15	15	08-10 ENVELOPE REGULAR OE 2 COLOR	\$ 51.28	\$ 102.55	\$ 256.38	\$ 512.75	\$ 769.13	\$ 1,025.50	\$ 2,563.75	\$ 5,127.50
16	16	08-200 Early Voting Kit 6x9	\$ 1,117.19	\$ 1,787.50	\$ 4,468.74	\$ 8,937.48	\$ 13,406.22	\$ 17,874.96	\$ 44,687.40	\$ 89,374.80
17	17	08-200 Early Voting Kit	\$ 824.54	\$ 1,484.15	\$ 3,710.38	\$ 7,420.75	\$ 11,131.13	\$ 14,841.50	\$ 37,103.74	\$ 74,207.48
18	18	08-250 Military Early Voting Kits	\$ 975.21	\$ 1,360.90	\$ 3,402.25	\$ 6,804.50	\$ 10,206.75	\$ 13,609.00	\$ 34,022.50	\$ 68,045.00
19	19	Voter Cards Mass Mail	\$ 30.00	\$ 60.00	\$ 150.00	\$ 300.00	\$ 450.00	\$ 600.00	\$ 1,500.00	\$ 3,000.00
20	20	Statement of Residence Card	\$ 135.00	\$ 180.00	\$ 450.00	\$ 900.00	\$ 1,350.00	\$ 1,800.00	\$ 4,500.00	\$ 9,000.00
21	21	Deputy VR Card Receipt 8.5x11 WHT 67lb Cover	\$ 225.00	\$ 300.00	\$ 675.00	\$ 1,200.00	\$ 1,687.50	\$ 210.00	\$ 5,250.00	\$ 10,500.00
22	22	3-Panel Voter Reg Address Confirmation	\$ 318.75	\$ 425.00	\$ 956.25	\$ 1,700.00	\$ 2,550.00	\$ 3,187.50	\$ 7,968.75	\$ 15,937.50
23	23	2-Panel Voter Registration Application Spanish	\$ 281.25	\$ 375.00	\$ 843.75	\$ 1,687.50	\$ 2,531.25	\$ 3,375.00	\$ 8,437.50	\$ 16,875.00
24	24	2-Panel Voter Reg Address Confirmation	\$ 262.50	\$ 350.00	\$ 875.00	\$ 1,750.00	\$ 2,625.00	\$ 3,500.00	\$ 8,750.00	\$ 17,500.00
25	25	2-Panel Voter Registration Application	\$ 281.25	\$ 375.00	\$ 843.75	\$ 1,500.00	\$ 2,250.00	\$ 2,625.00	\$ 6,562.50	\$ 13,125.00
26	26	BBMA Ballot by Mail App Env 2-color	\$ 158.13	\$ 275.00	\$ 687.50	\$ 1,375.00	\$ 2,062.50	\$ 2,750.00	\$ 6,875.00	\$ 13,750.00
27	27	Ballot by Mail Application Forms Spanish	\$ 306.25	\$ 437.50	\$ 875.00	\$ 1,750.00	\$ 2,625.00	\$ 3,500.00	\$ 8,750.00	\$ 17,500.00
28	28	Ballot by Mail Application Forms	\$ 262.50	\$ 350.00	\$ 787.50	\$ 1,400.00	\$ 2,100.00	\$ 2,800.00	\$ 7,000.00	\$ 14,000.00

RFP 2020-P08 Election Form Printing
Amendment 2 - Updated Bid Form and Pricing

Item #	Part #	Description	Units/Price							
			500	1000	2500	5000	7500	10000	25000	50000
29	29	ENV00 - Provisional Affidavit White Envelope	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
30	30	ENV06 - Requests & Cancell Ballots Brown	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
31	31	ENV01 - Returns and Tally List White Envelope	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
32	32	ENV02 - Precinct Presiding Judge Canary Envelope	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
33	33	ENV03 - Precinct Preesiding Judge Pink Envelope	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
34	34	ENV04 - Voter Register Gray Envelopes	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
35	35	ENV05 - Spoiled Ballots Brown Envelope	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
36	36	AW8-10 - Cancelled Ballots Envelope - Brown	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
37	37	AW8-15 Provisional 10x15 White	\$ 412.50	\$ 825.00	\$ 2,062.50	\$ 4,125.00	\$ 6,187.50	\$ 8,250.00	\$ 20,625.00	\$ 41,250.00
38	38	7-20 COMBO 4 part NCR	\$ 375.00	\$ 750.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	\$ 18,750.00	\$ 37,500.00
39	39	5-20 COMBO 4 part NCR	\$ 375.00	\$ 750.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	\$ 18,750.00	\$ 37,500.00
40	40	AW7-26 List Of Provisional Voters	\$ 345.00	\$ 690.00	\$ 1,725.00	\$ 3,450.00	\$ 5,175.00	\$ 6,900.00	\$ 17,250.00	\$ 34,500.00
41	41	AW5-14 Early List Provisional Voters	\$ 225.00	\$ 450.00	\$ 1,125.00	\$ 2,250.00	\$ 3,375.00	\$ 4,500.00	\$ 11,250.00	\$ 22,500.00
42	42	AW8-3 Statement of Comp 2NCR 8.5x14	\$ 375.00	\$ 750.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	\$ 18,750.00	\$ 37,500.00



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Tammy Crumley

Sponsor:

Commissioner Shell

Co-Sponsor:

Commissioner Smith

Agenda Item:

Authorize the County Judge to execute a Contract Amendment with Texas Disposal Systems related to Hauling Solid Waste pursuant to IFB 2020-B02, increasing the monthly weight report fee for each location to \$50.00.

SMITH/SHELL/T.CRUMLEY

Summary:

On November 5, 2019, the Commissioners Court approved a contract with Texas Disposal Systems for Hauling Solid Waste as a result of formal solicitation IFB 2020-B02.

Texas Disposal Systems is requesting an increase in the monthly weight report from \$15.00 per location to \$50.00 per location. Countywide Operations utilizes this report to show the diversion of the cardboard and the paper that is being received from both of the recycling centers and used for reporting purposes.

Fiscal Impact:

Amount Requested: Per bid tab

Line Item Number: 001-716-00.5452

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Invitation for Bid (IFB) 2020-B02 Hauling Solid Waste

Auditor's Office:

G/L Account Validated Y/N?: Yes, Trash Hauling Expense

New Revenue Y/N?: N/A

Comments:

Attachments

(PE) Amendment 3 to Contract

Third Amendment to the Hauling Solid Waste Contract (IFB 2020-B02 Hauling Solid Waste)

1. This Third Amendment to the Hauling Solid Waste Contract (the “Third Amendment”), attached as *Exhibit “A”* and executed November 5th, 2019, is made this 30th day of January 2024, by and between **Hays County, Texas (“Client”)** and **Texas Disposal Systems, Inc. (“Contractor”)**. The above-cited parties are collectively referred to as “the parties to this Agreement” or “the parties.”

2. Proposed Price increase:

- Weight Report: (\$15.00 per location increasing to \$50.00 per location)
 - For the Driftwood and Wimberley location
 - The Weight Report shows the diversion of the cardboard and paper that is coming from both the recycling centers.

3. Except for the above modifications set forth in this Second Amendment, all other terms and conditions of the Agreement shall remain unaffected and shall continue in full force and effect in accordance with its terms.

HAYS COUNTY, TEXAS

By: _____

Printed Name: _____

Title: _____

Dated: _____

TEXAS DISPOSAL SYSTEMS, INC.

By: Stefanie Quimby

Printed Name: Stefanie Quimby

Title: Governmental Sales Representative

Dated: 1.25.2024

ATTEST: _____

Elaine Cardenas
Hays County Clerk



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sheriff Gary Cutler

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize the County Judge to execute a Memorandum of Understanding with the Texas Commission on Law Enforcement for the ability of the Sheriff's Office Training Academy to instruct a School Marshal and Recertification Class.

INGALSBE/CUTLER

Summary:

The Sheriff's Office requests the execution of an MOU with the Texas Commission on Law Enforcement (TCOLE) for the Training Academy to instruct a School Marshal and recertification class. TCOLE will compensate the Sheriff's Office up to \$22,000 for the School Marshal Course and up to \$6,000 for the Recertification class.

Fiscal Impact:

Amount Requested: None

Line Item Number: 001-618-00.4408

Budget Office:

Source of Funds: TCOLE Funds

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD on procurement needs

Auditor's Office

G/L Account Validated Y/N?: TBD

New Revenue Y/N?: TBD, after the Marshall Training and Recertification events are completed

Comments:

Attachments

TCOLE School Master

TCOLE School Master Recertification

MEMORANDUM OF UNDERSTANDING
between
TEXAS COMMISSION ON LAW ENFORCEMENT
and

This Memorandum of Understanding ("MOU") is entered into by and between TEXAS COMMISSION ON LAW ENFORCEMENT, State of Texas State Agency, hereinafter referred to as "TCOLE" and _____, hereinafter referred to as School Marshal "Training Provider".

WHEREAS, TCOLE offers standards of and funding for School Marshal Training in the State of Texas; and,

WHEREAS, Training Provider is interested in conducting School Marshal Training in the State of Texas; and,

WHEREAS, it is deemed in the best interest of both parties that the parties enter into a mutually satisfactory agreement to share in this educational process;

NOW THEREFORE, based on this document, the parties hereto, intending to be legally bound, have agreed as follows:

Article I. Schedule and Conduct Training

Provide School Marshal Training in the State of Texas consisting of 80 hours, live, and in-person for qualified individuals:

- a. Employed by an Independent School District (ISD) in the State of Texas**
- b. Meet eligibility requirements to being appointed a School Marshal in the State of Texas**
- c. Eligible to attend the School Marshal Training**

1.1 TCOLE shall:

1. Recruit training providers to conduct the entire 80 hour live, in-person School Marshal training course for qualified candidates.
2. Vet qualified potential ISD candidates before scheduling School Marshal Training course.
3. Directly schedule and enroll all qualified potential ISD candidates to attend the School Marshal Training.
4. Manage scheduling and enrollment for each School Marshal Training course offered. Meeting a standard of 20 candidates enrolled for each course offered.
5. Send representatives to inspect and observe all or a portion of each School Marshal Training course offered by this Training Provider.
6. Provide current Instructor Guides.
7. Contact enrolled candidates in the event of rescheduling or canceling a course they were scheduled for.

1.2 Training Provider shall:

1. Provide qualified instructors to teach the School Marshal Training, meeting or exceeding standards of instructor to student ratios for each section.
2. Provide all facilities required to complete each section of the 80 hour in-person School Marshal Training.
3. Provide simulation materials, personal safety gear, printed and electronic materials, range costs, transportation to any off-site training locations if required for all candidates at each course offering.
4. Provide access to restrooms and potable water during each section of the course offering.
5. Training Provider shall provide course completion documentation, including but not limited to sign in sheets, training rosters, scores, surveys, or any documentation requested by and to TCOLE.
6. Training Provider shall offer this complete School Marshal Training course to all attendees completely free of charge. Training Provider, or their affiliated entities, must not charge any cost, or collect any money from any candidate attending this course.

1.3 Joint Responsibilities:

1. TCOLE and Training Provider shall coordinate scheduling dates of School Marshal Training courses offered by Training Provider.
2. TCOLE and Training Provider shall share any candidate eligibility documentation either party requires with each other.
3. Rescheduling Training course dates if warranted due to natural disaster damage to facilities, or similar. Training Provider must notify TCOLE if facility damage prevents holding a pending scheduled School Marshal Training. Training Provider and TCOLE must both agree to reschedule or cancel the course.

Article II. Duration of the MOU

2.1. Term. This MOU will become effective upon the date of its signing and shall have a term of two (2) years unless terminated by either party. This MOU may be extended by mutual written consent of the parties.

2.2. Termination of the MOU. This MOU may be terminated by either party at any time prior to the expiration of the MOU provided written notice is given to the other party (30) days in advance.

2.3. Contingent upon Appropriation Funding. This MOU is contingent upon the availability of appropriated funds for School Marshal Training by the State of Texas.

Article III. Modification

This MOU may be modified by prior mutual written consent of the parties. However, such modifications shall not retroactively alter the terms or conditions in force in such ways as to jeopardize the successful completion of existing activities.

Article IV. Billing and Financial Responsibilities

IV.1. Training Provider shall:

1. Submit to TCOLE upon signing this agreement the following documents:
 - a. Current, signed W-9
 - b. Completed and signed Application for Taxpayer Identification Number (TIN) Form AP-152 from the Texas Comptroller of Public Accounts.
2. Submit an Invoice to TCOLE no later than 10 business days after the last day the Training Provider completed 1 School Marshal Training event under this agreement. The Invoice must not exceed \$22,000 maximum. Invoice details must specify the following:
 - a. Dates of School Marshal Training.
 - b. Location of School Marshal Training.

IV.2. TCOLE shall:

1. Upon receipt of an Invoice by this Training Provider, review invoice and approve for payment to Training Provider within 30 business days.
2. Not reimburse Training Provider for any expenses under this MOU.

Article V. Audit

V.1. State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this MOU or indirectly through a subcontract under the MOU. The acceptance of funds directly under the MOU or indirectly through a subcontract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article VI. Points of Contact:

TCOLE: Brian Roth, CFO _____
Phone: (512) 936-7724 _____
E-mail: brian.roth@tcole.texas.gov


Training Provider: _____
Phone: () _____
E-mail: _____

Article VI. Execution

The undersigned parties bind themselves to the faithful performance of this MOU:

Signature
Name: _____
Title: _____
Date: _____

TCOLE

Signature
Name: 
Title: _____
Date: 1/22/24

MEMORANDUM OF UNDERSTANDING
between
TEXAS COMMISSION ON LAW ENFORCEMENT
and

This Memorandum of Understanding ("MOU") is entered into by and between TEXAS COMMISSION ON LAW ENFORCEMENT, State of Texas State Agency, hereinafter referred to as "TCOLE" and _____, hereinafter referred to as School Marshal "Recertification Training Provider".

WHEREAS, TCOLE offers standards of and funding for School Marshal Recertification Training in the State of Texas; and,

WHEREAS, Recertification Training Provider is interested in conducting School Marshal Recertification Training in the State of Texas; and,

WHEREAS, it is deemed in the best interest of both parties that the parties enter into a mutually satisfactory agreement to share in this educational process;

NOW THEREFORE, based on this document, the parties hereto, intending to be legally bound, have agreed as follows:

Article I. Schedule and Conduct Recertification Training

Provide School Marshal Recertification Training in the State of Texas consisting of 16 hours, live, and in-person for qualified individuals:

- a. Employed by an Independent School District (ISD) in the State of Texas**
- b. Meets eligibility requirements to Recertify as a School Marshal in the State of Texas**
- c. Eligible to attend the School Marshal Recertification Training**

1.1 TCOLE shall:

- 1. Recruit training providers to conduct the entire 16 hour live, in-person School Marshal Recertification training course for qualified candidates.**

2. Vet qualified potential ISD candidates before scheduling School Marshal Recertification Training course.
3. Directly schedule and enroll all qualified potential ISD candidates to attend the School Marshal Recertification Training.
4. Manage scheduling and enrollment for each School Marshal Recertification Training course offered. Meeting a standard of 20 candidates enrolled for each course offered.
5. Send representatives to inspect and observe all or a portion of each School Marshal Recertification Training course offered by this Recertification Training Provider.
6. Provide current Instructor Guides.
7. Contact enrolled candidates in the event of rescheduling or canceling a course they were scheduled for.

1.2 Recertification Training Provider shall:

1. Provide qualified instructors to teach the School Marshal Recertification Training, meeting or exceeding standards of Instructor to Student ratios for each section.
2. Provide all facilities required to complete each section of the 16 hour in-person School Marshal Recertification Training.
3. Provide simulation materials, personal safety gear, printed and electronic materials, range costs, transportation to any off-site training locations if required for all candidates at each course offering.
4. Provide access to restrooms and potable water during each section of the course offering.
5. Recertification Training Provider shall provide course completion documentation, including but not limited to sign in sheets, training rosters, scores, surveys, or any documentation requested by and to TCOLE.
6. Recertification Training Provider shall offer this complete School Marshal Recertification Training course to all candidates completely free of charge. Training Provider, or their affiliated entities, must not charge any cost, or collect any money from any candidate attending this course.

1.3 Joint Responsibilities:

1. TCOLE and Recertification Training Provider shall coordinate scheduling dates of School Marshal Recertification Training courses offered by Training Provider.
2. TCOLE and Recertification Training Provider shall share any candidate eligibility documentation either party requires with each other.
3. Rescheduling Recertification Training course dates if warranted due to natural disaster damage to facilities, or similar. Recertification Training Provider must notify TCOLE if facility damage prevents holding a pending scheduled School Marshal Recertification Training. Recertification Training Provider and TCOLE must both agree to reschedule or cancel the course.

Article II. Duration of the MOU

2.1. Term. This MOU will become effective upon the date of its signing and shall have a term of two (2) years unless terminated by either party. This MOU may be extended by mutual written consent of the parties.

2.2. Termination of the MOU. This MOU may be terminated by either party at any time prior to the expiration of the MOU provided written notice is given to the other party (30) days in advance.

2.3. Contingent upon Appropriation Funding. This MOU is contingent upon the availability of appropriated funds for School Marshal Training by the State of Texas.

Article III. Modification

This MOU may be modified by prior mutual written consent of the parties. However, such modifications shall not retroactively alter the terms or conditions in force in such ways as to jeopardize the successful completion of existing activities.

Article IV. Billing and Financial Responsibilities

IV.1. Recertification Training Provider shall:

1. Submit to TCOLE upon signing this agreement the following documents:
 - a. Current, signed W-9
 - b. Completed and signed Application for Taxpayer Identification Number (TIN) Form AP-152 from the Texas Comptroller of Public Accounts.
2. Submit an Invoice to TCOLE no later than 10 business days after the last day the Recertification Training Provider completed 1 School Marshal Recertification Training event under this agreement. The Invoice must not exceed \$6,000 maximum. Invoice details must specify the following:
 - a. Dates of School Marshal Recertification Training.
 - b. Location of School Marshal Recertification Training.

IV.2. TCOLE shall:

1. Upon receipt of an Invoice by this Recertification Training Provider, review invoice and approve for payment to Recertification Training Provider within 30 business days.
2. Not reimburse Recertification Training Provider for any expenses under this MOU.

Article V. Audit

V.1. State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this MOU or indirectly through a subcontract under the MOU. The acceptance of funds directly under the MOU or indirectly through a subcontract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article VI. Points of Contact:

TCOLE:

Brian Roth, CFO _____

Phone: (512) 936-7724 _____

E-mail: brian.roth@tcole.texas.gov

Recertification Training Provider: _____

Phone: () _____

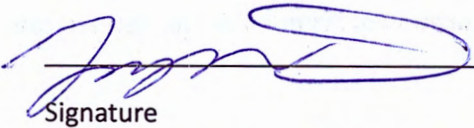
E-mail: _____

Article VI. Execution

The undersigned parties bind themselves to the faithful performance of this MOU:

Signature
Name: _____
Title: _____
Date: _____

TCOLE


Signature
Name: Gregory Stevens
Title: Executive Director
Date: 1/22/2024



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Accept donations totaling \$78,900.00 on behalf of the Hays County Child Protective Board and amend the budget accordingly. **INGALSBE**

Summary:

The Hays County Child Protective Board has received \$78,900 in grants and contributions utilizing the county federal tax identification number as authorized.

>\$75,000 - City of San Marcos grant

>\$3,300 - Nicole and Michael Blair donation

>\$600 - Eleanor Crook donation

HCCPB will deposit these funds with the county as their pass-through agency. The funds will be allocated back to the agency to be utilized for operational expenses:

>Basic Clothing

>Participation in extracurricular school activities and scholastic achievements

>Equipment and services to encourage and assist academic success and improve graduation rates

>Recognition of significant milestones

>Provide for physical and mental health services not covered by government programs

>Provide support for CPS caseworkers' participation in professional training

>Increase public awareness of child abuse

Fiscal Impact:

Amount Requested: None

Line Item Number: 001-895-98-354.4610/5600

Budget Office:

Source of Funds: Donated Funds

Budget Amendment Required Y/N?: Yes

Comments: N/A

(\$78,900) - Increase Contributions 001-895-98-354.4610

\$78,900 - Increase Project Expense 001-895-98-354.5600

Purchasing Office:

Purchasing Guidelines Followed Y/N?: N/A

Comments:

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$78,900 in Contributions

Comments: N/A



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Avrey Anderson, District Clerk

Sponsor:

Judge Becerra

Agenda Item:

Authorize the County Judge to execute quotes with Tyler Technology related to the Jury Module for the creation of the Justice of the Peace, Pct. 2 Place 2 Court and make changes to the Jury Summons template and amend the budget accordingly. **BECERRA/A. ANDERSON**

Summary:

The newly created Justice of the Peace, Pct. 2-2 will need to have geographic parameters added to the Jury Module to enable this Court to send out jury summons when holding a jury trial. Tyler Technology will add the location in the test and production environments, and configure location and summons.

Additionally, Tyler Technology will edit the current jury summons template in order to streamline the process for juror check in. The current summons lists multiple ID numbers (jury id, pool id, pool order) that relate to the Court that a juror is called to report to for jury duty. This creates some confusion for jurors and the Government Center Security to determine what numbers are tied to each court. Tyler will edit the jury summons template to add the reporting location to include the Judge and/or court they will be reporting to.

Fiscal Impact:

Amount Requested: \$2,250

Line Item Number: 001-609-00.5718_400

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: Recommended funding source, County-Wide contingencies

\$2,250 - Increase District Clerk Software_Operating 001-609-00.5718_400

(\$2,250) - Decrease County-Wide Contingencies 001-645-00.5399

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Sourcewell Contract #090320-TTI

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

Attachments

Tyler Tech Quote - JP2-2 Location

Tyler Tech Quote - Jury Summons Edit

**Quote for Change Request
Tyler Enterprise Jury Manager Platform
Hays County, TX
January 18, 2024**

Hays County has requested an additional location be created in Enterprise Jury Manager for a new Justice of the Peace Office.

Statement of Work:

A location will need to be added as location 10 in the Hays County TEST and PROD on premise environments. This will be a copy of location 1 (District Court) and will need to be configured for the Justice of the Peace, Precinct 2, Place 2. Additionally, a summons will need to be configured for the location.

Description		Charges
Tyler Technologies will:		\$2,000.00
1	Add a location 10 in both TEST and PROD on premise environments.	
2	Configure location 10 to mirror location 5.	
3	Configure summons for location 10.	

This quote will expire February 18, 2024.

Note: If additional changes are required that are above and beyond what is mentioned above, extra charges may apply.

Hays County, TX understands the statement of work and approves the quote.

By: _____

Name: _____

Title: _____

Date: _____

January 16, 2024

Hays County
Avrey Anderson
Hays County District Clerk

Dear Avrey:

RE: Quote for current Summons update Hays District Clerk CAS-23682-F9X8T1

Tyler Technologies will update/make changes with edits provided by Hays County. The edit(s) are listed below:

- Add Pool Notes under Pool Order
- Remove "business" from Step 02
- Add Floor Description in Reporting Location Information
- Remove Suite 2211 from Reporting Location

Please see page 2 for additional information.

The estimated cost for this change is **\$250**. This quote will expire February 16, 2024.

Note: If additional changes are required that are above and beyond what is mentioned above, extra charges may apply.

Sincerely,

Courthouse Technologies, Ltd.



Par Anand
Associate General Manager, Enterprise Jury Solutions
Tyler Technologies, Inc.



HAYS COUNTY DISTRICT CLERK
712 S STAGECOACH TRL STE 2211
SAN MARCOS, TX 78666-6257

**PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
SAN MARCOS, TX
PERMIT 134**

JURY SUMMONS

Failure to appear can result in a fine, incarceration, or both



Juror ID: 0000145758
Pool ID: 0001230701
Pool Order: 00002

<<Pool notes>>



*****AUTO**ALL FOR AADC 786

B1 C6 P1 001852



AUSTIN, TX 78739-1542

YOU HAVE BEEN SUMMONED FOR JURY SERVICE

Step 01

RESPOND TO THIS SUMMONS by completing the juror questionnaire online at the Juror Access website within 10 days.

Juror Access Website

<https://jury.co.hays.tx.us>

If you cannot respond online or do not have access to a computer call: (512) 393-7660



Use a QR code reader or the camera on your smartphone to visit the site.

Remove "business" business day before your reporting date.

Step 02

IF YOU DO NOT HEAR FROM US please check your reporting status on the Juror Access website, or call (512) 400-3101, after 5:00PM on the

Jurors who appear *without checking* their reporting status will *not* receive payment/credit for attendance.

Please dress appropriately for Jury Duty.

BRING THIS POSTCARD WHEN YOU APPEAR

REPORTING DATE

July 24, 2023

REPORTING TIME

9:00 AM

JUROR ID

0000145758

REPORTING LOCATION

Add Floor Desc. Remove Suite 2211
712 S. Stagecoach Trail, u e2
San Marcos, TX 78666



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jeff McGill, IT Director

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize the Information Technology Department to purchase a DocuSign Envelope Package to allow electronic signatures for County documents. **INGALSBE/McGILL**

Summary:

DocuSign will streamline the document signing process by allowing electronic signatures, reducing the need for paper-based forms and manual signatures. It eliminates the delays associated with physical document routing, printing, and scanning, resulting in a more efficient workflow for document processing. The District Attorney's Office has shown an initial interest in implementing DocuSign into their workflow, but all county departments can utilize the service pursuant to the DIR Contract #DIR-TSO-4288.

Fiscal Impact:

Amount Requested: \$5,747

Line Item Number: 001-680-00.5429

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Texas Department of Information Resources Contract #DIR-TSO-4288

Auditor's Office

G/L Account Validated Y/N?: Yes, Software Maintenance and Licensing Expense

New Revenue Y/N?: N/A

Comments:

Attachments

DocuSign Quote



Government - Price Quotation

DocuSign Government at Carahsoft

11493 Sunset Hills Road | Suite 100 | Reston, Virginia 20190
Phone (703) 871-8500 | Fax (703) 871-8505 | Toll Free (888) 662-2724
www.carahsoft.com | sales@carahsoft.com

carahsoft

TO: Jeff McGill
Chief Information Officer
Hays County, TX Office of Information Technology
712 South Stagecoach Trail
Ste 1206
San Marcos, TX 78666

FROM: Samuel Randolph
DocuSign Government at Carahsoft
11493 Sunset Hills Road
Suite 100
Reston, Virginia 20190

EMAIL: jmcgill@co.hays.tx.us

EMAIL: Samuel.Randolph@carahsoft.com

PHONE: (512) 393-2841

PHONE: (703) 871-8660 FAX: (703) 871-8505

TERMS: DIR Contract No. DIR-TSO-4288
Expiration Date: February 21, 2025
FTIN: 52-2189693
Shipping Point: FOB Destination
Credit Cards: VISA/MasterCard/AMEX
Remit To: Same as Above
Payment Terms: Net 30 (On Approved Credit)
Texas VID#: 1522189693700
Sales Tax May Apply

QUOTE NO: 42345510
QUOTE DATE: 01/22/2024
QUOTE EXPIRES: 01/31/2024
RFQ NO:
SHIPPING: ESD
TOTAL PRICE: \$5,747.00
TOTAL QUOTE: \$5,747.00

LINE NO.	PART NO.	DESCRIPTION	QUOTE PRICE	QTY	EXTENDED PRICE
1	APT-0462-679	DocuSign Business Pro Edition - Envelope Subs. DocuSign, Inc. - APT-0462 Start Date: 02/01/2024 End Date: 01/31/2025	\$4.58 TX DIR	1,000	\$4,580.00
2	APT-0075-679	Premier Support 15% of Recurring Fees (15% of List Price per \$100 of List License Fees) DocuSign, Inc. - APT-0075 Start Date: 02/01/2024 End Date: 01/31/2025	\$687.00 TX DIR	1	\$687.00
3	APT-0609-679	Adoption Consulting Lite DocuSign, Inc. - APT-0609 Start Date: 02/01/2024 End Date: 05/01/2024	\$480.00 TX DIR	1	\$480.00
SUBTOTAL:					\$5,747.00
TOTAL PRICE:					\$5,747.00
TOTAL QUOTE:					\$5,747.00

CONFIDENTIAL

QUOTE DATE: 01/22/2024
QUOTE NO: 42345510



Government - Price Quotation

DocuSign Government at Carahsoft

11493 Sunset Hills Road | Suite 100 | Reston, Virginia 20190
Phone (703) 871-8500 | Fax (703) 871-8505 | Toll Free (888) 662-2724
www.carahsoft.com | sales@carahsoft.com



Product Details:

Signature Envelope Allowance: 1,000

Overage/Usage Fees:

Signature Business Pro Edition - Envelope Subs. (Per Transaction): \$5.80

Customer must reference Quote number on Purchase Order.

If Customer purchase via Reseller all terms of Carahsoft Quote must be incorporated in Reseller quote and Customer Purchase Order to Reseller.

Any Increase in subscription and support pricing will be in accordance with DocuSign's pricing and policies in effect at the time of the renewal or as otherwise agreed to by the parties.

Licensee agrees that any order for DocuSign will be governed by the terms and conditions of the Carahsoft DocuSign Service Agreement copies of which are found at https://static.carahsoft.com/concrete/Files/2616/5962/5258/DocuSign_Master_Services_Agreement_fo_Public_Sector.pdf and all Schedules and Documentation referenced by the Terms are made a part hereof. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Quotes) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Quotes (and their Contract Vehicle), (2) the TOU, and (3) the Documentation. Licensee acknowledges it has had the opportunity to review the Terms, prior to executing an order.

If the customer purchase any version of DocuSign's IL-4 licensing the below terms will apply.

Reference the Memorandum previously provided to DISA Authorizing Official (dated October 22, 2023) detailing the Provisional Authorization (PA) granted by DISA, exception to/exclusions from the PA, and conditions DocuSign is required to meet in order to maintain the PA for U.S. Department of Defense Impact Level 4 (DoD/IL-4). Customer agrees:

- not to use DocuSign DoD/IL-4 in production without a BCAP connection (or DISA approval);
 - not to process, store or transmit IL-4 production data without a BCAP connection to NIPRnet; or not to use DocuSign DoD/IL-4 to connect to any DocuSign services or applications via an unauthorized endpoint outside of the NIPRnet or non-BCAP connections;
 - Customer is responsible for any Customer Data sent to third party applications (regardless of whether such third-party applications are IL-4 certified);
- Enterprise Premier Support for IL-4 customers is available from 9:00am - 8:30pm Eastern Standard Time.

CONFIDENTIAL

QUOTE DATE: 01/22/2024
QUOTE NO: 42345510



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Stephanie Robinson

Sponsor:

Commissioner Shell

Co-Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize the County Judge to execute an Investment Summary Proposal with Tyler Technologies, Inc. for PACE training days for the Combined Emergency Communications Center (CECC) using credited funds received by Hays County and amend the budget accordingly. **SHELL/INGALSBE/ROBINSON**

Summary:

The Hays County CECC is requesting the purchase the 5 Day PACE (Planned Annual Continuing Education) program from Tyler Technologies Public Safety. Tyler Technologies will conduct training both onsite and remotely for Hays County and CECC partners. Training will include GIS, Reporting, as well as CAD administration. Hays County has credited funds from our existing Tyler Technologies Public Safety contract. The Tyler Technologies Public Safety Software is part of a Hays County Contract that is shared by partnering CECC agencies. Tyler will charge travel for one onsite training (estimated at an additional \$2,000) which will be billed following the Tyler Travel Policy as outlined in our Tyler contract.

The PACE training provided by Tyler Technologies is an open market item and not covered under their Sourcewell Contract, a discretionary exemption pursuant to Texas Local Government Code Section 262.024(a)(7) will need to be authorized by the Commission Court.

Fiscal Impact:

Amount Requested: \$8,300

Line Item: 001-615-00.5448

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: Potential funding source, County-Wide contingencies.

\$8,300 - Increase CECC Contract Services 001-615-00.5448

(\$8,300) - Decrease County-Wide Contingencies 001-645-00.5399

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Requires a discretionary exemption pursuant to Texas Local Government Code, Section 262.024(a)(7)

Auditor's Office:

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Attachments

PACE Quote

Tyler Travel Policy

Discretionary Exemption Certification



INVESTMENT SUMMARY

Tyler Software	\$ 0
Services	\$ 0
Third-Party Products	\$ 0
Estimated Travel	\$ 0
Total One-Time Cost	\$ 0
Annual Recurring Fees/SaaS	\$ 6,300
Tyler Software Maintenance	\$ 0



Quoted By:
Quote Expiration:
Quote Name:

Amy Shultz
7/3/24
PACE 05

Sales Quotation For:

Hays County Sheriff
810 Stagecoach Trail
Hays County Law Enforcement
San Marcos TX 78666-8217
Phone: +1 (512) 393-7878

Annual / SaaS

Description	Fee	Discount	Annual
Enterprise Public Safety			
Recurring Costs			
PACE-05 (Includes five training days and two Connect Conference Passes)	\$ 6,300	\$ 0	\$ 6,300
TOTAL			\$ 6,300

Summary

Total Tyler Software
Total Annual
Total Tyler Services
Total Third-Party Hardware, Software, Services

One Time Fees

\$ 0
\$ 0
\$ 0
\$ 0

Recurring Fees

\$ 0
\$ 6,300
\$ 0
\$ 0

Summary Total

\$ 0

\$ 6,300

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____

Print Name: _____ P.O.#: _____

The Software, Maintenance, Services and Third-Party Products, as applicable, that are itemized above, are hereby added to your existing agreement with Tyler. Fees for Software, if applicable, will be invoiced to you in full upon receipt of your signed quote. Unless otherwise stated in the Assumptions, associated maintenance and support fees shall be invoiced on a prorated basis through the end of your current term, and thereafter in a lump sum amount together with your then-current maintenance and support fees for previously licensed software. Fees for Services, Third-Party Products and/or travel, as applicable, will be invoiced as rendered or delivered. The terms and conditions of your agreement will otherwise control.

Assumptions

Tyler's Enterprise Public Safety product requires Microsoft Windows Server 2016/2019/2022 and SQL Server 2014 SP2/2016 SP2/2019, including required User or Device Client Access Licenses (CALs) for applicable Microsoft products. If on-premises, servers must meet minimum hardware requirements provided by Tyler. Personal Computers must meet the minimum hardware requirements and Microsoft Windows 8.1 64-bit, Windows 10 64-bit and Windows 11 are the supported operating systems. The supported Microsoft operating system and SQL versions are specific to Tyler's release versions.

Enterprise Public Safety product requires Microsoft Excel or Windows Search 4.0 for document searching functionality; Microsoft Word is required on the application server for report formatting.

Tyler recommends a 100 Mbps/1 Gbps Ethernet network for the local area network. Wide area network requirements vary based on system configuration. Client is responsible to maintain business class high-speed internet and provide enough bandwidth and throughput to support existing internet traffic and additional traffic generated by the Tyler deployment. Tyler will provide further consultation for this environment.

Does not include servers, workstations, or any required third-party hardware or software unless specified in this Investment Summary. Client is responsible for any third-party support. Licensed Software, and third-party software embedded therein, if any, will be delivered in a machine-readable form to Client via an agreed upon network connection. Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.

Tyler's GIS implementation services are to assist the Client in preparing the required GIS data for use with the Licensed Enterprise Public Safety Software. Depending upon the Licensed Software the Client at a minimum will be required to provide an accurate street centerline layer and the appropriate polygon layers needed for Unit Recommendations and Run Cards in an industry standard Esri file format (Personal Geodatabase, File Geodatabase, Shape Files). Client is responsible for having clearly defined boundaries for Police Beats, EMS Districts and Fire Quadrants. If necessary, Tyler will assist Client in creating the necessary polygon layers. Tyler is not responsible for the accuracy of, or any ongoing maintenance of the GIS data used within the Licensed Enterprise Public Safety Software. Client is responsible for maintaining GIS data using Esri ArcGIS Desktop/Pro software, pushing source GIS data updates to the Tyler software, any ongoing annual maintenance on third-party products and is advised to contact the third-party vendor to ensure understanding of and compliance with all maintenance requirements. All maintenance, training and ongoing support of this product will be contracted with and conducted by Esri. Maintenance for Esri's ArcGIS suite of products that are used for maintaining Client's GIS data will be contracted by Client separately with Esri.

When State/NCIC is included, Client is responsible for obtaining the necessary State approval and any non-Tyler hardware and software. Includes state specific standard forms developed by Tyler. Additional forms can be provided for an additional fee.

The amount of converted data entering the new system can drastically impact storage utilization. Additional drive space may be required on the production and test SQL and file storage servers to accommodate the converted data based on the quantity of source data. During the conversion process, additional drive space on the production and test SQL servers will also be required temporarily. Does not apply to Data Archive.

Travel expenses will be billed as incurred according to Tyler's standard business travel policy.

Planned Annual Continuing Education (PACE) Terms and Conditions

The services include training days and two Connect conference passes. The following payment terms shall apply:

- a. The initial PACE term commences upon the date of your signature on Tyler's Investment Summary ("Effective Date"), and continues for a one year period. Upon expiration of the initial term, PACE services will renew automatically for additional one (1) year terms unless canceled in writing by either party at least forty-five (45) days prior to the end of the then-current term.
- b. Your PACE fees for the initial term, at the rates set forth in the Investment Summary, will be invoiced on the Effective Date.. PACE fees for each renewal term shall be invoiced on each anniversary thereof at our then-current rates.
- c. Any training services or Connect registrations purchased prior to the start of the initial PACE term will be invoiced as incurred.
- d. Training days expire at the end of each PACE term and can only be utilized on live modules.
- e. Travel and Living Expenses are not included in the annual PACE fee and will be invoiced as incurred in accordance with our then-current Business Travel Policy.
- f. In the event you cancel services less than two (2) weeks in advance, you are liable to Tyler for (i) all non-refundable expenses incurred by Tyler on your behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.
- g. Training hours are scheduled and delivered in four (4) or eight (8) hour increments.

- h. Tyler provides on-site training for a maximum of twelve (12) people per class. In the event that more users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client-designated attendees of the initial training can thereafter train the remaining users.
- i. Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting.



Amendment Exhibit B Business Travel Policy

1. Air Travel

A. Reservations & Tickets

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a “mid-size” or “intermediate” car. “Full” size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler’s TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of Defense and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

- Breakfast 15%
- Lunch 25%
- Dinner 60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.

Hays County Commissioners Court
January 31, 2024
RE: Tyler Technologies Agreement for PACE Training

Attn: County Clerk

As per requirements to authorize a discretionary exemption per Texas Local Government Code 262.024(a)(7), the Hays County Combined Emergency Communications Center Director recognizes Tyler Technologies Inc. as a sole source provider to provide Planned Annual Continuing Education (PACE) Training for five days for Enterprise Public Safety Software.

Stephanie Robinson

Hays County Combined Emergency Communications Center Director



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Authorize payment to Bobby A. Caine, Veteran's Treatment Court (VTC) defense attorney for hotel, flight and conference registration reimbursement to attend the National Association of Drug Court Professionals (NADCP) Conference and amend the budget accordingly. **INGALSBE/JOHNSON**

Summary:

Mr. Caine serves as the VTC Defense Attorney and attended the NADCP Defense Counsel Training Seminar in Oklahoma City from September 19 - 23, 2023. This seminar provided essential instruction on the roles and responsibilities of VTC defense attorneys and emphasizes the skills and special considerations necessary for providing service to Veteran participants within the Drug Treatment Court model. Mr. Caine has been serving in this role as VTC Defense Attorney for over a year and had not previously attended this training session. The VTC grant covered members participating in the Veterans Treatment Court in the past. However, a request to the granting agency for reimbursement this year was denied. The County Court at Law does not have a budget to pay for defense counsel training, therefore, request a line item budget amendment in order to process this reimbursement request.

Fiscal Impact:

Amount Requested: \$1,443.42

Line Item Number: 001-612-00.5391

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$1,444 - Increase Misc. Expense 001-612-00.5391

(\$1,444) - Decrease Time Payment Expense 001-612-00.5325

Purchasing Office:

Purchasing Guidelines Followed Y/N?: No

Comments: No PO obtained for registration fees that exceeded \$500.00, and no Court approval for out-of-state travel.

Auditor's Office

G/L Account Validated Y/N?: Yes

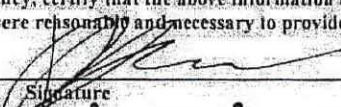

New Revenue Y/N?: N/A

Comments:

Attachments

Reimbursement Request

Hays County Court at Law Attorney Fee Voucher

1. Jurisdiction COUNTY COURT 2	2. County HAYS COUNTY	Cause Number VETERAN'S TREATMENT COURT	Offense	4. Proceedings <input type="checkbox"/> Trial-Jury <input type="checkbox"/> Trial-Court <input type="checkbox"/> Plea-Open <input type="checkbox"/> Plea-Bargain <input checked="" type="checkbox"/> Other - VTC
5. In the case of: STATE OF TEXAS v. E.R., et al				
6. Case Level: <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Juvenile <input type="checkbox"/> Appeal <input type="checkbox"/> Revocation - Felony <input type="checkbox"/> No Charges Filed <input checked="" type="checkbox"/> Other - VTC				
7. Attorney (Full Name) ROBERT A. CAINE		9. Attorney Address (Include Law Firm Name if Applicable) ROBERT A. CAINE ATTORNEY AT LAW P.O. Box 92495 AUSTIN, TX 78709-2495		10. Telephone (512) 751-2792
8. State Bar Number 03610300	8a. Tax ID Number 453-90-3246			11. Fax (512) 692-3931
12.				
Date	In Court Services	Expenses		
	Reimbursement For Expenses			
9/15/23	NADCP Defense Counsel seminar - registration fee	850.00		
	Air Fare - SW Airlines	244.96		
	Hotel reservations - Sheraton	348.46		
	(See invoices attached)			
Rate per Hour: \$50 before 7/1/2020; \$100 on 7/1/2020 or Flat Rate \$500/\$200 each additional case		\$1,443.42		
14. Time Period of service Rendered: 9/15/22				
15. Additional Comments:				16. Total Expenses Claimed \$1,443.42
17. Attorney Certification - I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel.				
<input checked="" type="checkbox"/> Final Payment <input type="checkbox"/> Partial Payment		9.15.23		
Signature 		Date		
18. SIGNATURE OF PRESIDING JUDGE: 				Amount Approved: \$1,443.42

National Association of Drug Court Professionals
625 N. Washington St., Ste. 212
Alexandria, VA 22314
703-575-9521

INVOICE

DEF23-1066-0021-0019

Defense Attorney Training

September 19-22, 2023

Payment Due: September 1, 2023

Bill To:

bobby Caine

cainelaw@gmail.com

712 s stagecoach drive ste 200

san marcos, TX 78666

Mail Payments To:

P.O. Box 79289

Baltimore, MD 21279-0289

Invoice

DEF23-1066-0021-0019

Order

M5NT56QF6Q5

Invoice Date

June 20, 2023 / 9:15 AM CT

Item	Price	Quantity	Amount
Event Registration	\$850.00	1	\$850.00

Order Total: \$850.00

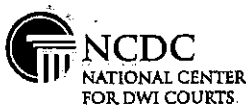
Balance Due: \$0.00

Payment Details:

Date	Type	Reference #	Amt Paid
20-Jun-2023	Mastercard	P-5196	\$850.00

Payment Policy: Payment must be received in full by September 1, 2023. No late payments will be accepted. If payment has not been received by the deadline, your registration will be canceled. Accepted payment types include Visa, MasterCard, American Express, and Discover. If paying by check, the corresponding invoice(s) must be attached to the check. Checks must be made payable to National Association of Drug Court Professionals (NADCP).

Cancellation Policy: Refer to the event website for the full cancellation policy. If wishing to cancel your registration, contact ksutherland@nadcp.org.



Flight 2: Friday, 09/22/2023 Est. Travel Time: 1h 10m Wanna Get Away®

FLIGHT
1949

DEPARTS
OKC 02:20PM
Oklahoma City



ARRIVES
AUS 03:30PM
Austin

Payment information

Total cost

Air - 4HAMN5

Base Fare	\$	200.15
U.S. Transportation Tax	\$	15.01
U.S. 9/11 Security Fee	\$	11.20
U.S. Flight Segment Tax	\$	9.60
U.S. Passenger Facility Chg	\$	9.00
Total	\$	244.96

Payment

Univ Air Travel ending in 2472

Date: July 19, 2023

Payment Amount: \$244.96

Fare rules: If you decide to make a change to your current itinerary it may result in a fare increase.

Your ticket number: 5262480708006

All your perks, all in one place. (Plus a few reminders.)



Wanna Get Away® fare: Your two bags fly free², no change³ or cancel⁴ fees, and 6X Rapid Rewards® points. [Learn more.](#)



Make sure you know when to arrive at your airport. Times vary by city.



If your plans change, cancel your reservation at least 10 minutes before the original scheduled departure time of your flight to receive a flight credit.⁶ If you don't cancel your reservation in time, your funds will be forfeited.

Prepare for takeoff

Use our app to make changes to your trip, get a boarding pass, & more.



Download app now



Download app now

Don't miss out on automatic check-in



At the heart of communities for over 80 years

Welcome to Sheraton. Where the World Comes
Together. We invite you to gather, share
experiences and explore your destination.

Summary Of Charges

Monday, September 18, 2023 – Thursday, September 21, 2023

3 Nights at 102.00 USD per night per room

DEFENSE ATTORNEY PRA

Taxes & Fees (per night per room)

Estimated Government Taxes & Fees 14.15 USD

Totals

Total for Stay (all rooms) 348.46 USD

Other Charges

On-site parking, fee: 2 USD hourly, 10 USD daily

Valet parking, fee: 32 USD daily

Valet Parking is available. Garage clearance 6'8. No parking of oversized vehicles.

Rate Details & Cancellation Policy

- A cancellation policy does apply. For more information, view the 'Cancellation Policy' link in your reservation on the Marriott website, contact the hotel or call Marriott Reservations.

Rate Guarantee Limitation(s)

- Changes in taxes or fees implemented after booking will affect the total room price.

Additional Information

- Upon check-in an authorization request will be placed on your credit or debit card (where accepted) in an amount equal to the cost of the room, tax and incidental charges for the length of your stay (up to seven nights). If your stay exceeds seven



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

CUTLER

Sponsor:

Commissioner Cohen

Co-Sponsor:

Commissioner Smith

Agenda Item:

Authorize the execution of an updated Interlocal Cooperation Agreement between Hays Consolidated Independent School District (HCISD) and Hays County related to school resource officers. **COHEN/SMITH/CUTLER**

Summary:

This updated Agreement includes revised language that better details the responsibilities of all parties to the Agreement, increases the vehicle usage fees, and confirms the campus placements of each SRO officer.

Fiscal Impact:

Amount Requested: None

Line Item Number: 001-618-00]

Budget Office:

Source of Funds: Hays CISD Funds & General Fund

Budget Amendment Required Y/N?: No

Comments: SRO positions are budgeted during the annual budget process, no additional officers are added in this agreement.

Purchasing Office:

Purchasing Guidelines Followed Y/N?:

Comments:

Auditor's Office:

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

Attachments

HCISD SRO ILA 2024

Exhibit B - HCISD SRO ILA 2024

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND HAYS COUNTY**

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between Hays Consolidated Independent School District (“Hays CISD”), a political subdivision acting through its Board of Trustees, and Hays County, Texas (“Hays County”), a political subdivision of the State of Texas. Collectively, Hays CISD and Hays County may be referred to individually as a “Party” or collectively as the “Parties.”

PREMISES

WHEREAS, Chapter 791 of the Texas Government Code, as amended, entitled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services;

WHEREAS, Hays CISD is a public-school district with campuses located within the jurisdictional boundaries of Hays County where the Hays County Sheriff’s Office (“HCSO”) presently provides law enforcement services;

WHEREAS, Hays CISD and Hays County each find that contracting for and with respect to the governmental services described herein will result in increased efficiency, economy, and enhanced public safety for the constituents of both Hays CISD and Hays County;

WHEREAS, Hays CISD and Hays County warrant that both possess adequate legal authority to enter into this Interlocal Agreement and their respective governing bodies have authorized each signatory official to enter into this Agreement and bind the local governments to the terms of this Agreement and any subsequent amendments hereto;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the Parties, it is agreed as follows:

**Article 1
LEGAL AUTHORITY AND PURPOSE**

- 1.1 The legal authority for Hays County and the Hays CISD to enter into this agreement is the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The purpose, terms, rights, and duties of the parties are stated below.
- 1.2 The purpose of this Agreement is to set forth guidelines to ensure that Hays County and Hays CISD have a shared understanding of the role and responsibility of each in maintaining safe schools, improving climate, and supporting educational opportunities for all students.
- 1.3 The mission of the school resource officer (“SRO”) program is to place a community law enforcement officer in the Hays CISD campuses to build working relationships with schools, students, and parents; to address on-site security; to maintain safe schools; to serve as a positive role-model for students; and to provide a direct link with the HCSO. The breakdown of SRO placement can be found in **Exhibit A**.

Article 2
SRO PROGRAM STRUCTURE

- 2.1 Under this framework, the SROs are first and foremost law enforcement officers for Hays County. The SROs shall be responsible for carrying out all duties and responsibilities of a law enforcement officer and shall remain at all times under the control, through the chain of command, of the HCSO. School officials should ensure that non-criminal student disciplinary matters remain the responsibility of school staff and not the SROs. Enforcement of the Student Code of Conduct is the responsibility of teachers and administrators. The SROs shall refrain from being involved in the enforcement of disciplinary rules that do not constitute violations of law, except to support staff in maintaining a safe school environment.
- 2.2 Although the SROs have been placed in a formal educational environment, the SROs retain official duties of law enforcement officers. The SROs shall intervene when it is necessary to prevent any criminal act or maintain a safe school environment. Citations may be issued, and arrests made when appropriate and in accordance with Texas law and HCSO policy. The SROs or the HCSO will have the final decision on whether criminal charges shall be filed. The HCSO reserves the right to remove temporarily the SROs in the event that additional officers are needed during a critical incident, natural disaster or for immediate service of public safety.
- 2.3 The SROs are not formal counselors or educators and will not act as such. However, with the agreement of Hays County, the SROs may be used as a law enforcement resource to assist students, faculty, staff, and all persons involved with the school. The SROs can be utilized to help instruct students and staff on a variety of subjects, ranging from alcohol and drug education, search and seizure, motor vehicle and criminal law to formalized academic classes. The SROs may use these opportunities to build rapport between the students and the staff.
- 2.4 The SROs will confer with the principal or other appropriate administrator, as needed, to develop plans and strategies to prevent and/or minimize dangerous situations and criminal activity on or near the campus or involving students at school-related activities.

Article 3
GENERAL DUTIES AND RESPONSIBILITIES

- 3.1 Hays County agrees to perform any obligations required to maintain the SROs as commissioned law enforcement officers with full Texas peace officer status; including but not limited to, providing the SROs with any and all continuing training necessary to maintain their TCOLE certification and their assignment as a school-based law enforcement officer.
- 3.2 The SROs assigned to Hays CISD shall be subject to the decision of the HCSO. Hays CISD understands that Hays County or the HCSO may rotate or change any officer assigned to serve as an SRO. If for some reason Hays CISD has a substantial issue with an SRO assigned, they may communicate that to the HCSO for them to take into consideration.

- 3.3 Any properly licensed officer providing SRO services under this Agreement shall be vested with all powers, privileges, and immunities of a peace officer within all territory contained in the boundaries of Hays CISD and while on any property under the control and jurisdiction of Hays CISD or otherwise in the performance of his/her duties under the guidelines of Hays CISD policies and regulations.
- 3.4 Hays County will authorize the SROs to carry a weapon and act as a peace officer at all times, so long as the officer is acting under his/her official capacity. Likewise, Hays CISD specifically authorizes each SRO to carry a weapon in performing services at all schools and property within Hays CISD. When not on duty as SROs, the officers' rights to carry a firearm will be governed by provisions and rules set forth by TCOLE, Hays County, the HCSO, the Texas Association of School Boards ("TASB"), and any applicable Hays CISD policies.
- 3.5 As Hays County employees, any disciplinary action taken against the SROs shall follow the policy and procedure set forth in the employee handbook of Hays County or procedures of the HCSO.
- 3.6 Hays CISD will report all required student misconduct to the HCSO in accordance with Texas Education Code § 37.015. Hays County, through the HCSO, will make all reports regarding students as required by Texas Code of Criminal Procedure Art. 15.27.
- 3.7 Subject to its obligations under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, Hays CISD agrees to provide the SROs with: (a) unrestricted access to student and personnel records as necessary for the investigation of criminal offenses that occur on school property or in conjunction with a school event or activity, to collect certain incident-based data, or to ensure the safety and security of school campuses or events, and (b) unrestricted access to technology installed at Hays CISD, including surveillance cameras, to provide for safety and security. SROs shall be designated as "school officials" under Hays CISD policies for purposes of access to student records to enable the SROs to perform the duties set out in this Agreement.
- 3.8 The Parties shall each monitor, review and provide oversight and supervision of the services as they are provided and each agree to notify the other as soon as reasonably possible in the event the level or quality of any scheduling, operating, service or performance issue becomes unsatisfactory.
- 3.9 The Parties recognize that the services to be provided by Hays County may be limited to the extent that said services conflict with or compromise Hays County's ability to provide effective law enforcement services to Hays County generally; and, should a conflict arise between the policies of Hays CISD and Hays County, Hays County's policy shall prevail. The Parties agree to work in good faith to resolve conflicts with their best reasonable efforts; however, should such conflicts occur which prevent Hays County from meeting its obligations under this Agreement, Hays County acknowledges such conflict constitutes good cause to terminate the Agreement.

- 3.10 The Parties agree that they will use their best reasonable efforts to coordinate media relations pertaining to law enforcement incidents and investigations occurring pursuant to this Agreement prior to the release of information whenever possible. Information will only be released by a Party in accordance with established law and its existing policies and procedures.
- 3.11 Nothing in this Agreement prevents Hays CISD from continuing its practice of hiring off-duty police officers to provide security at sporting events, after-hour activities, or other events. This Agreement shall not govern off-duty peace officers hired for these purposes; rather the HCSO policy regarding off-duty employment shall govern.

Article 4

SPECIFIC DUTIES AND RESPONSIBILITIES

Hays County through the HCSO SRO program establishes that:

- 4.1 The ultimate goal of the SRO is to maintain a peaceful educational environment that allows the learning process to continue uninterrupted.
- 4.2 The SRO will conduct themselves in a manner that exemplifies a positive role model to students and maintain good relations with the school community.
- 4.3 The SRO will wear and/or utilize the Sheriff's Office issued uniform with all the normal accessories and equipment during their duty hours.
- 4.4 The SRO will respond to calls for service during the course of the regular school day or when serving in support of an official Hays CISD extracurricular or after-school activity.
- 4.5 The SRO will patrol areas within or in the vicinity of the geographical boundaries of Hays CISD to protect all students, personnel, and visitors. The SRO will remain highly visible throughout the campus yet be unpredictable in their movements to maintain order, prevention, awareness, intervention and disruptions.
- 4.6 The SRO will remain on their assigned school campus(es) and attend to school activities during their duty hours. Responses to Hays County law enforcement calls are to be limited to extreme emergencies and observation of criminal acts. The SRO shall notify campus administrators upon departure and return when responding to such calls, circumstances permitting.
- a. This does not apply to the "patrol" activities of the roving SRO for the elementary school setting.
- 4.7 The SRO will engage in all law enforcement activities arising from the enforcement of criminal laws or civil situations, including, but not limited to, responding immediately to a crisis situation, intervening in and investigating alleged crimes, preparing reports, security monitoring and consulting, issuing citations, enforcing court orders, transporting arrested persons, completing follow-up activities, filing of affidavits and complaints, and participating in legal proceedings resulting from the law enforcement services provided in accordance with this Agreement.

- 4.8 The SRO shall not be involved in searches conducted by school officials or compelled to search on behalf of Hays CISD. The SRO may provide presence for safety or exigent circumstance criteria. In the event that illegal contraband is discovered via a district search, it will be immediately released to the SRO.
- 4.9 The SRO will assist school officials in school safety projects, scheduling, major event planning, drills and simulations related to crises management, emergency response, and threat mitigation.
- 4.10 The SRO will provide traffic direction and control as needed, and as deemed appropriate by the SRO.
- 4.11 Hays CISD and Hays County agree that canine contraband services will be conducted by a third party. The third-party canine handler will coordinate with the Hays CISD Office of Safety & Security to plan dates for the canine searches. The procedures for the searches will be determined by the third-party canine search provider. The SRO and a representative of Hays CISD will accompany the outside service providers during random canine searches conducted on Hays CISD property.
- 4.12 Pursuant to Section 37.115 of the Texas Education Code (Threat Assessment and Safe and Supportive School Program and Team), the SRO will serve on the campus threat assessment team for the purpose of assisting in assessing students who make threats of violence and exhibit harmful, threatening or violent behavior, as defined by law. In this capacity, the SRO will assist the team in providing, gathering, and analyzing data to determine the level of risk and appropriate intervention for a student and assist in providing guidance to students or school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community or individual.
- 4.13 The SRO may assist Hays CISD with its Emergency Operation Plan.
- 4.14 The SRO will remain compliant with Hays CISD policies, regulations, rules and guidelines while completing their duties and remain physically located on Hays CISD property in accordance with this Agreement to the extent that they do not contradict their duties as law enforcement officers.
- 4.15 The SRO will attend campus meetings, briefings and training as requested by the campus/district administration, when possible.
- 4.16 The SRO will prepare reports and documentation related to events occurring within the geographic boundaries of Hays CISD, to the extent such information is required by law or Hays CISD policy or HCSO procedures. This information will be provided in a monthly statistical report format that is agreed upon by the parties. Hays CISD and Hays County shall maintain records of every campus-based incident resulting in police involvement.

- 4.17 If it is necessary to question or interview a student at school for any purpose other than a child abuse investigation, all law enforcement agencies and SROs will contact the campus principal of the student's campus. As provided by Hays CISD policies, the principal will:
- a. Verify and record the identity of the officer or other authority and request an explanation of the need to interview the student at school.
 - b. Make reasonable efforts to notify the student's parents or other person having lawful control of the student. If the SRO/designee raises what the principal considers to be a valid objection to the notification, the parent shall not be notified.
 - c. The principal or a designee ordinarily shall be present during the questioning or interview. If the interviewer presents what the principal considers to be a valid objection to a third party's presence, the interview shall be conducted without that person's presence.
- 4.18 The SRO will notify the campus and district administration in advance, whenever possible, regarding an absence. When circumstances don't allow this, the notice should be given as soon as possible for district planning. The County will make every effort to provide for replacement officers for those times when the SRO assigned pursuant to this agreement is absent due to training, extended sick time, vacation time, FMLA, workers compensation, etc. *Routine absences may not be covered due to staffing demands within the Sheriff's Office.*
- 4.19 The SRO and Hays CISD will coordinate, whenever practical, investigation procedures and actions.

The Hays CISD, as established through this Agreement, shall:

- 4.20 Assume control of all campus management and activities.
- 4.21 Provide training and guidance to the SRO for any campus activities.
- 4.22 Provide access to Hays CISD records, systems and otherwise confidential information for the specific purpose of investigating a potential criminal violation that occurred on campus or to complete a report for an incident that occurred off-campus but is reported to the SRO as part of their duties.
- 4.23 If a student at school is arrested or taken into custody by an SRO, the principal shall immediately notify the Superintendent or their designee and ordinarily notify the parent or other person having lawful control of the student. If the SRO raises what the principal considers to be a valid objection to notifying the parent at that time, the principal shall not notify the parent. Hays CISD shall receive notification of the incident from the HCSO within the timeframe required by law and of the disposition of the individual to the extent allowed by law.
- 4.24 Provide a reasonable opportunity to address district officials, administrators, teachers, parents and students regarding the SRO program, goals and objectives.
- 4.25 Seek input and collaborate with the SRO regarding criminal justice programs relating to students and security issues.

- 4.26 Notify the SRO or SRO supervisor as soon as reasonably possible when school personnel or students discover weapons, drugs, alcohol or illegal contraband on HAYS CISD property. All items will be immediately released to the custody of the SRO pursuant to their rules and policy.
- 4.27 Report to the SRO any violations of law or criminal offenses for proper collaboration of investigative actions.
- 4.28 Complete all requests for information, reports, statements, etc. requested by the SRO for purposes of a campus law enforcement investigation.
- 4.29 Collaborate with SRO regarding any security issues or restrictive access to the campus property involving “Criminal Trespass” to ensure both parties have prompt access to the information.
- 4.30 Supply necessary information regarding the campus safety, traffic plan and any additional information needed to complete the desired tasks. (This information is disseminated at the discretion of the campus administration.)
- 4.31 Not involve the SRO in ordinary campus discipline. SROs’ input may be sought at the discretion of the campus administration. Disciplining students is an administrative school district responsibility.
- 4.32 Not request an SRO to participate in campus activities in which they have not been trained and approved to complete during their scheduled hours. The approval includes their immediate chain of command and their designated campus administrators.
- 4.33 Notify the Hays CISD designee and the SRO supervisor in the event of any issues, complaints or concerns regarding the SRO, their behavior or performance. This may include a written summary of the incident.

Article 5

FINANCIAL RESPONSIBILITIES & EQUIPMENT

- 5.1 SROs are employees of Hays County, by and through the HCSO, and are not employees of the Hays CISD. Hays County shall provide the SROs with all wages, salaries, or other compensation, and benefits of similarly-situated and classified employees of Hays County. Hays County shall also be directly responsible for the payment of all payroll taxes, bond costs, retirement contributions, social security taxes, if any, and all other payroll expenses, with the exception of overtime as detailed in Section 5.2 below.
- 5.2 Hays CISD shall be responsible for any overtime charges associated with the provision of services under this Agreement in accordance with the rates set forth in **Exhibit B**.
- 5.3 Hays CISD shall pay Hays County at the rates set forth in **Exhibit B** for the actual time spent by any substitute deputy as if they were the standard assigned deputy.

- 5.4 Hays County shall invoice Hays CISD quarterly for the services rendered within thirty (30) days of the completion of the quarter. Hays CISD shall pay Hays County for the services rendered within thirty (30) days of the date that the invoice is received by Hays CISD.
- 5.5 The Parties acknowledge that the cost to Hays County of providing the services described herein may change over time. Hence, the Parties agree that Hays County may change the monthly compensation rates for officers' progression within their merit-based steps in accordance with the Hays County Collective Bargaining Agreement without giving a Notice of Rate Change for each officers' movement within the pay scale. However, if Hays County changes the merit-based step ranges, Hays County shall give Hays CISD a written Notice of Rate Change at least sixty (60) days prior to the effective date of the rate change. Such Notice of Rate Change shall include an itemization of costs as set forth in Exhibit B. If Hays CISD does not desire to continue to receive services at the rates stated in the Notice of Rate Change, it may terminate this Agreement or negotiate a mutually-agreed-upon rate change prior to the effective date of the rate change by giving Hays County written notice. If Hays CISD does not terminate this Agreement or negotiate a mutually-agreed-upon modification to the rate change, Hays CISD will be deemed to have accepted the rate change and shall pay the rates stated in the Notice of Rate Change for any services provided by the HCSO pursuant to this Agreement on or after the effective date of the rate change.
- 5.6 Fourth quarter services may be requested by Hays CISD to Hays County during the summer months of June and July. These services will be requested by Hays CISD at least sixty (60) days prior to the start date of coverage. Payment for services will follow the same billing guidelines indicated above. Payment for these services will be based on the number of hours worked for that time period and will not reflect a full quarterly billing encumbrment. The invoice and payment will be paid based on the officer assigned and the days worked.
- 5.7 Hays CISD will pay for any additional SRO training that Hays CISD may require unrelated to TCOLE training requirements.
- 5.8 The Parties agree to provide the following equipment and materials to the SROs:
- a. At its own cost, Hays County shall furnish the SROs with all equipment routinely assigned to law enforcement personnel who serve Hays County. Hays County will maintain and service all equipment used by the SROs in providing services to Hays CISD. Equipment includes, but is not limited to, uniforms, computers and computer equipment specific to HCSO record-keeping systems, firearms, radios, and all other devices used by Hays County law enforcement personnel in the performance of their duties. Hays County will also provide a fully equipped patrol car to each SRO. Hays CISD shall fund the County, in accordance with Exhibit B, for costs related to vehicle maintenance and fuel for such patrol car(s).
 - b. Hays CISD will provide the SROs with office space on school property, a telephone, a Hays CISD computer utilized to access the Hays CISD system records, and other office equipment to perform duties under this Agreement, and as mutually agreed by the Parties. Hays CISD will provide the SROs with a map and personnel roster for each campus and Central Office.

- c. Hays County will provide the SROs with access to its facilities as needed to conduct law enforcement business regarding the securing of evidence in crimes and interviewing individuals in connection with a criminal investigation into crimes conducted on school property on in conjunction with a school event or activity.

Article 6
RELATIONSHIP BETWEEN THE PARTIES

- 6.1 Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities. The relationship of Hays CISD and Hays County shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.
- 6.2 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venture, or any other similar such relationship.
- 6.3 Officers employed by Hays County and assigned by Hays County to serve as SROs at Hays CISD are and will remain employed by Hays County.
- 6.4 HAYS COUNTY SHALL HAVE NO LIABILITY WHATSOEVER FOR OR WITH RESPECT TO HAYS CISD'S USE OF ANY HAYS CISD PROPERTY OR FACILITY, OR THE ACTIONS OF, OR FAILURE TO ACT BY, ANY EMPLOYEES, SUBCONTRACTORS, AGENTS OR ASSIGNS OF HAYS CISD. HAYS CISD COVENANTS AND AGREES THAT:
 - a. HAYS CISD SHALL BE SOLELY RESPONSIBLE, AS BETWEEN HAYS CISD AND HAYS COUNTY AND THE AGENTS, OFFICERS AND EMPLOYEES OF HAYS COUNTY, FOR AND WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR WITH RESPECT TO ANY ACT, OMISSION, OR FAILURE TO ACT BY HAYS CISD OR ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS, WHILE ON HAYS CISD PROPERTY OR WHILE USING ANY HAYS CISD FACILITY OR PERFORMING ANY FUNCTION OR PROVIDING OR DELIVERING ANY SERVICE UNDERTAKEN BY HAYS CISD PURSUANT TO THIS AGREEMENT.
 - b. FOR AND WITH RESPECT TO THE SERVICES TO BE PROVIDED BY HAYS COUNTY TO HAYS CISD PURSUANT TO THIS AGREEMENT, HAYS CISD HEREBY CONTRACTS, COVENANTS, AND AGREES TO OBTAIN AND MAINTAIN IN FULL FORCE AND EFFECT, DURING THE TERM OF THIS AGREEMENT, A POLICY OR POLICIES OF INSURANCE, OR RISK POOL COVERAGE, REASONABLY EXPECTED TO INSURE HAYS CISD AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND AGAINST ANY CLAIM, CAUSE OF ACTION OR LIABILITY ARISING OUT OF OR FROM THE ACTION, OMISSION, OR FAILURE TO ACT BY HAYS CISD, ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS IN THE COURSE OF THEIR DUTIES.

- 6.5 HAYS CISD SHALL HAVE NO LIABILITY WHATSOEVER FOR OR WITH RESPECT TO HAYS COUNTY'S USE OF ANY HAYS COUNTY PROPERTY OR FACILITY, OR THE ACTIONS OF, OR FAILURE TO ACT BY, ANY EMPLOYEES, SUBCONTRACTORS, AGENTS, OR ASSIGNS OF HAYS COUNTY. HAYS COUNTY COVENANTS AND AGREES THAT:
- a. HAYS COUNTY SHALL BE SOLELY RESPONSIBLE, AS BETWEEN HAYS COUNTY AND HAYS CISD AND THE AGENTS, OFFICERS, AND EMPLOYEES OF THE HAYS CISD, FOR AND WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR WITH RESPECT TO ANY ACT, OMISSION, OR FAILURE TO ACT BY HAYS COUNTY OR ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS, WHILE ON HAYS COUNTY PROPERTY OR WHILE USING THE ANY OF HAYS COUNTY'S FACILITIES OR PERFORMING ANY FUNCTION OR PROVIDING OR DELIVERING ANY SERVICE UNDERTAKEN BY THE HAYS COUNTY PURSUANT TO THIS AGREEMENT.
 - b. FOR AND WITH RESPECT TO THE SERVICES TO BE PROVIDED BY THE HAYS COUNTY TO HAYS CISD PURSUANT TO THIS AGREEMENT, HAYS COUNTY HEREBY CONTRACTS, COVENANTS, AND AGREES TO OBTAIN AND MAINTAIN IN FULL FORCE AND EFFECT, DURING THE TERM OF THIS AGREEMENT, A POLICY OR POLICIES OF INSURANCE, OR RISK POOL COVERAGE, IN THE AMOUNTS SUFFICIENT TO INSURE HAYS COUNTY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ANY CLAIM, CAUSE OF ACTION, OR LIABILITY ARISING OUT OF OR FROM THE ACTION, OMISSION, OR FAILURE TO ACT BY HAYS COUNTY, ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS IN THE COURSE OF THEIR DUTIES.
- 6.6 It is specifically agreed that, as between the Parties, each party to this Agreement shall be individually and respectively responsible for responding to, dealing with, insuring against, defending, and otherwise handling and managing liability and potential liability pursuant to this Agreement.
- 6.7 Each party hereto reserves and does not waive any immunity or defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from the services provided and/or any circumstance arising under the Agreement. Neither Hays CISD nor Hays County waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity or sovereign immunity under the laws of the State of Texas on behalf of itself, its trustees, council members, officers, employees, and agents.
- 6.8 No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither Hays County nor Hays CISD shall be held legally liable for any claim or cause of action arising pursuant to, or out of the services provided under, this Agreement except as specifically provided herein or by law. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

- 6.9 Nothing in this Agreement shall be deemed to extend, increase or limit the jurisdiction or authority of any of Hays County or Hays CISD except as necessary to implement, perform and obtain the services and duties provided for in this Agreement. Save and except only as specifically provided in this Agreement, all governmental functions and services traditionally provided by Hays CISD, and all governmental and proprietary functions and services traditionally provided by Hays County, shall be and remain the sole responsibility of each such party.

Article 7

TERM

- 7.1 The initial term of this Agreement shall commence on January 30, 2024, and continue through July 31, 2024, and shall automatically renew for annual terms commencing on August 1st thereafter, unless terminated earlier, in writing, by either party.
- 7.2 This Agreement may be terminated at any time by either Party, without cause, by giving the other party a minimum of ninety (90) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party.
- 7.3 In the event the Parties are unable to reach a mutual agreement on the terms of the Agreement by August 1st of the annual term, any Party will have cause to terminate its participation in the Agreement by giving the other Party a minimum of thirty (30) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party.

ARTICLE 8

NOTIFICATIONS

- 8.1 All correspondence and communications regarding this Agreement shall be directed to:

HAYS COUNTY
Attn: County Judge
111 E. San Antonio Street, Suite 300
San Marcos, TX 78666

HAYS CISD
Attn: Superintendent of School
21003 IH 35
Kyle, TX 78640

With copy to:

Hays County Sheriff's Office
Attn: Captain—LE Bureau
810 S. Stagecoach Trail
San Marcos, TX 78666

- 8.2 Notices provided pursuant to this Agreement must be in writing and hand-delivered or sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of _____, 2024.

HAYS COUNTY, TEXAS

By _____
Ruben Becerra, Judge, Hays County

By _____
Gary Cutler, Sheriff, Hays County

ATTEST:

By _____
Elaine Cardenas, Clerk, Hays County

HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT

By _____
Ms. Vanessa Petrea, President, HCISD School Board

By _____
Dr. Eric Wright, HCISD Superintendent

ATTEST:

By _____
Ms. Esperanza Orosco, Secretary, HCISD School Board

EXHIBIT A
INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND HAYS COUNTY

Campus/SRO Assignments:

Hays County will provide TWELVE (12) full-time deputies assigned to provide the law enforcement services as School Based Law Enforcement (SBLE) School Resource Officers (SRO) described herein and that these deputies shall be assigned to areas as agreed upon by the Sheriff's Office and HCISD, as set forth below:

- a. Two (2) deputies will divide their time between Hays High School and Live Oak Academy
- b. Two (2) deputies assigned to Johnson High School
- c. Two (2) deputies assigned to Lehman High School
- d. One (1) deputy assigned to Barton Middle School
- e. One (1) deputy assigned to Chapa Middle School
- f. One (1) deputy assigned to McCormick Middle School
- g. One (1) deputy assigned to Simon Middle School
- h. One (1) deputy assigned to Wallace Middle School
- i. One (1) deputy will divide his/her time between Dahlstrom Middle School and Impact Alternative Education Program facility

EXHIBIT B

INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT AND HAYS COUNTY

"EXHIBIT B"

	Annualized	8/16 through 5/31 ¹	
		21% Hays Co	79% Hays CISD
Base Salary ²	79,983	16,796	63,186
Certification Pay	900	189	711
Salary	80,883	16,985	63,897
FICA/Medicare	6,188	1,299	4,888
Retirement	11,097	2,330	8,767
Insurances	12,230	2,568	9,662
Fringe	29,515	6,198	23,317
Vehicle Maint	3,500	735	2,765
Total Per Officer	113,897	23,918	89,979
Total for 12 Officers	1,366,768	287,021	1,079,747

Total Estimated Contract Costs:

1st Quarter:	359,916
2nd Quarter:	359,916
3rd Quarter:	359,916
Total ISD for 3 Quarters	1,079,747
Hays Co Total	287,021
Annualized Cost	1,366,768
4th Quarter: ³	23,918

¹ Percentage allocations based on an 8/16 to 5/31 school year, officer percentage to be billed will be based on actual start and end date per school calendar or specific request from ISD to report to and/or end duty

² Proposed Base Salary is calculated utilizing current MBS-6 with a 5% projected market increase and standard certifications

³ Option for 4th Quarter per additional office

**Hays County Commissioners Court**

Date: 01/30/2024

Requested By:

CUTLER

Sponsor:

Commissioner Smith

Agenda Item:

Authorize the execution of an updated Interlocal Cooperation Agreement between Dripping Springs Independent School District (DSISD) and Hays County related to school resource officers (SRO); establishing one additional SRO position effective December 1, 2023 and amend the budget accordingly. **SMITH/CUTLER**

Summary:

This updated Agreement includes revised language that better details the responsibilities of all parties to the Agreement, increases the vehicle usage fees, and confirms the campus placements of each SRO officer.

Fiscal Impact:

Amount Requested: \$33,094 - FY24

Line Item Number: 001-618-00]

Budget Office:

Source of Funds: DSISD Funds & Hays County General Fund

Budget Amendment Required Y/N?: No

Comments: Salary savings due to attrition are available to cover the county portion of this request.

SRO Officer					
MBS-4					
				<u>Budget Amendment</u>	
71,801	Base Salary		35,900	001-618-00.5021	Increase Staff Salaries
15,251	Fringe		2,226	001-618-00.5101_100	Increase FICA
12,230	Insurances		521	001-618-00.5101_200	Increase Medicare
99,282	Total Annualized		4,879	001-618-00.5101_100	Increase Retirement
82,735	FY24 (eff 12/1/23)		5,880	001-618-00.5160_400	Increase Medical
			203	001-618-00.5160_500	Increase Dental
	<u>Estimated Cost per Agency</u>		32	001-618-00.5160_600	Increase Life
49,641	DSISD		-49,641	001-618-00.4031	Increase Intergovernmental Revenue
33,094	Hays Co				
82,735					

Purchasing Office:

Purchasing Guidelines Followed Y/N?:

Comments:

Auditor's Office:

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: \$49,641 Increase in Intergovernmental Revenues

Comments:

Attachments

DSISD SRO ILA 2024

Exhibit B - DSISD SRO ILA

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT AND HAYS COUNTY**

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into by and between Dripping Springs Independent School District (“DSISD”), a political subdivision acting through its Board of Trustees, and Hays County, Texas (“Hays County”), a political subdivision of the State of Texas. Collectively, DSISD and Hays County may be referred to individual as a “Party” or collectively as the “Parties.”

PREMISES

WHEREAS, Chapter 791 of the Texas Government Code, as amended, entitled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services;

WHEREAS, DSISD is a public-school district with campuses located within the jurisdictional boundaries of Hays County where the Hays County Sheriff’s Office (“HCSO”) presently provides law enforcement services;

WHEREAS, DSISD and Hays County each find that contracting for and with respect to the governmental services described herein will result in increased efficiency, economy, and enhanced public safety for the constituents of both DSISD and Hays County;

WHEREAS, DSISD and Hays County warrant that both possess adequate legal authority to enter into this Interlocal Agreement and their respective governing bodies have authorized each signatory official to enter into this Agreement and bind the local governments to the terms of this Agreement and any subsequent amendments hereto;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the Parties, it is agreed as follows:

**Article 1
LEGAL AUTHORITY AND PURPOSE**

- 1.1 The legal authority for Hays County and DSISD to enter into this agreement is the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The purpose, terms, rights, and duties of the parties are stated below.
- 1.2 The purpose of this Agreement is to set forth guidelines to ensure that Hays County and DSISD have a shared understanding of the role and responsibility of each in maintaining safe schools, improving climate, and supporting educational opportunities for all students.
- 1.3 The mission of the school resource officer (“SRO”) program is to place a community law enforcement officer in the DSISD campuses to build working relationships with schools, students, and parents; to address on-site security; to maintain safe schools; to serve as a positive role-model for students; and to provide a direct link with the HCSO. The breakdown of SRO placement can be found in **Exhibit A**.

Article 2
SRO PROGRAM STRUCTURE

- 2.1 Under this framework, the SROs are first and foremost law enforcement officers for Hays County. The SROs shall be responsible for carrying out all duties and responsibilities of a law enforcement officer and shall remain at all times under the control, through the chain of command, of the HCSO. School officials should ensure that non-criminal student disciplinary matters remain the responsibility of school staff and not the SROs. Enforcement of the Student Code of Conduct is the responsibility of teachers and administrators. The SROs shall refrain from being involved in the enforcement of disciplinary rules that do not constitute violations of law, except to support staff in maintaining a safe school environment.
- 2.2 Although the SROs have been placed in a formal educational environment, the SROs retain official duties of law enforcement officers. The SROs shall intervene when it is necessary to prevent any criminal act or maintain a safe school environment. Citations may be issued, and arrests made when appropriate and in accordance with Texas law and HCSO policy. The SROs or the HCSO will have the final decision on whether criminal charges shall be filed. The HCSO reserves the right to remove temporarily the SROs in the event that additional officers are needed during a critical incident, natural disaster or for immediate service of public safety.
- 2.3 The SROs are not formal counselors or educators and will not act as such. However, with the agreement of Hays County, the SROs may be used as a law enforcement resource to assist students, faculty, staff, and all persons involved with the school. The SROs can be utilized to help instruct students and staff on a variety of subjects, ranging from alcohol and drug education, search and seizure, motor vehicle and criminal law to formalized academic classes. The SROs may use these opportunities to build rapport between the students and the staff.
- 2.4 The SROs will confer with the principal or other appropriate administrator, as needed, to develop plans and strategies to prevent and/or minimize dangerous situations and criminal activity on or near the campus or involving students at school-related activities.

Article 3
GENERAL DUTIES AND RESPONSIBILITIES

- 3.1 Hays County agrees to perform any obligations required to maintain the SROs as commissioned law enforcement officers with full Texas peace officer status; including but not limited to, providing the SROs with any and all continuing training necessary to maintain their TCOLE certification and their assignment as a school-based law enforcement officer.
- 3.2 The SROs assigned to DSISD shall be subject to the decision of the HCSO. DSISD understands that Hays County or the HCSO may rotate or change any officer assigned to serve as an SRO. If for some reason DSISD has a substantial issue with an SRO assigned, they may communicate that to the HCSO for them to take into consideration.

- 3.3 Any properly licensed officer providing SRO services under this Agreement shall be vested with all powers, privileges, and immunities of a peace officer within all territory contained in the boundaries of DSISD and while on any property under the control and jurisdiction of DSISD or otherwise in the performance of his/her duties under the guidelines of DSISD policies and regulations.
- 3.4 Hays County will authorize the SROs to carry a weapon and act as a peace officer at all times, so long as the officer is acting under his/her official capacity. Likewise, DSISD specifically authorizes each SRO to carry a weapon in performing services at all schools and property within DSISD. When not on duty as SROs, the officers' rights to carry a firearm will be governed by provisions and rules set forth by TCOLE, Hays County, the HCSO, the Texas Association of School Boards ("TASB"), and any applicable DSISD policies.
- 3.5 As Hays County employees, any disciplinary action taken against the SROs shall follow the policy and procedure set forth in the employee handbook of Hays County or procedures of the HCSO.
- 3.6 DSISD will report all required student misconduct to the HCSO in accordance with Texas Education Code § 37.015. Hays County, through the HCSO, will make all reports regarding students as required by Texas Code of Criminal Procedure Art. 15.27.
- 3.7 Subject to its obligations under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, DSISD agrees to provide the SROs with: (a) unrestricted access to student and personnel records as necessary for the investigation of criminal offenses that occur on school property or in conjunction with a school event or activity, to collect certain incident-based data, or to ensure the safety and security of school campuses or events, and (b) unrestricted access to technology installed at DSISD, including surveillance cameras, to provide for safety and security. SROs shall be designated as "school officials" under DSISD policies for purposes of access to student records to enable the SROs to perform the duties set out in this Agreement.
- 3.8 The Parties shall each monitor, review and provide oversight and supervision of the services as they are provided and each agree to notify the other as soon as reasonably possible in the event the level or quality of any scheduling, operating, service or performance issue becomes unsatisfactory.
- 3.9 The Parties recognize that the services to be provided by Hays County may be limited to the extent that said services conflict with or compromise Hays County's ability to provide effective law enforcement services to Hays County generally; and, should a conflict arise between the policies of DSISD and Hays County, Hays County's policy shall prevail. The Parties agree to work in good faith to resolve conflicts with their best reasonable efforts; however, should such conflicts occur which prevent Hays County from meeting its obligations under this Agreement, Hays County acknowledges such conflict constitutes good cause to terminate the Agreement.
- 3.10 The Parties agree that they will use their best reasonable efforts to coordinate media relations pertaining to law enforcement incidents and investigations occurring pursuant to this Agreement prior to the release of information whenever possible. Information will only be released by a Party in accordance with established law and its existing policies and procedures.

- 3.11 Nothing in this Agreement prevents DSISD from continuing its practice of hiring off-duty police officers to provide security at sporting events, after-hour activities, or other events. This Agreement shall not govern off-duty peace officers hired for these purposes; rather the HCSO policy regarding off-duty employment shall govern.

Article 4
SPECIFIC DUTIES AND RESPONSIBILITIES

Hays County through the HCSO SRO program establishes that:

- 4.1 The ultimate goal of the SRO is to maintain a peaceful educational environment that allows the learning process to continue uninterrupted.
- 4.2 The SRO will conduct themselves in a manner that exemplifies a positive role model to students and maintain good relations with the school community.
- 4.3 The SRO will wear and/or utilize the Sheriff's Office issued uniform with all the normal accessories and equipment during their duty hours.
- 4.4 The SRO will respond to calls for service during the course of the regular school day or when serving in support of an official DSISD extracurricular or after-school activity.
- 4.5 The SRO will patrol areas within or in the vicinity of the geographical boundaries of DSISD to protect all students, personnel, and visitors. The SRO will remain highly visible throughout the campus yet be unpredictable in their movements to maintain order, prevention, awareness, intervention and disruptions.
- 4.6 The SRO will remain on their assigned school campus(es) and attend to school activities during their duty hours. Responses to Hays County law enforcement calls are to be limited to extreme emergencies and observation of criminal acts. The SRO shall notify campus administrators upon departure and return when responding to such calls, circumstances permitting.
- 4.7 The SRO will engage in all law enforcement activities arising from the enforcement of criminal laws or civil situations, including, but not limited to, responding immediately to a crisis situation, intervening in and investigating alleged crimes, preparing reports, security monitoring and consulting, issuing citations, enforcing court orders, transporting arrested persons, completing follow-up activities, filing of affidavits and complaints, and participating in legal proceedings resulting from the law enforcement services provided in accordance with this Agreement.
- 4.8 The SRO shall not be involved in searches conducted by school officials or compelled to search on behalf of DSISD. The SRO may provide presence for safety or exigent circumstance criteria. In the event that illegal contraband is discovered via a district search, it will be immediately released to the SRO.

- 4.9 The SRO will assist school officials in school safety projects, scheduling, major event planning, drills and simulations related to crises management, emergency response, and threat mitigation.
- 4.10 The SRO will provide traffic direction and control as needed, and as deemed appropriate by the SRO.
- 4.11 DSISD and Hays County agree that canine contraband services will be conducted by a third party. The third-party canine handler will coordinate with the DSISD Office of Safety & Security to plan dates for the canine searches. The procedures for the searches will be determined by the third-party canine search provider. The SRO and a representative of DSISD will accompany the outside service providers during random canine searches conducted on DSISD property.
- 4.12 Pursuant to Section 37.115 of the Texas Education Code (Threat Assessment and Safe and Supportive School Program and Team), the SRO will serve on the campus threat assessment team for the purpose of assisting in assessing students who make threats of violence and exhibit harmful, threatening or violent behavior, as defined by law. In this capacity, the SRO will assist the team in providing, gathering, and analyzing data to determine the level of risk and appropriate intervention for a student and assist in providing guidance to students or school employees on recognizing harmful, threatening, or violent behavior that may pose a threat to the community or individual.
- 4.13 The SRO may assist DSISD with its Emergency Operation Plan.
- 4.14 The SRO will remain compliant with DSISD policies, regulations, rules and guidelines while completing their duties and remain physically located on DSISD property in accordance with this Agreement to the extent that they do not contradict their duties as law enforcement officers.
- 4.15 The SRO will attend campus meetings, briefings and training as requested by the campus/district administration, when possible.
- 4.16 The SRO will prepare reports and documentation related to events occurring within the geographic boundaries of DSISD, to the extent such information is required by law or DSISD policy or HCSO procedures. This information will be provided in a monthly statistical report format that is agreed upon by the parties. DSISD and Hays County shall maintain records of every campus-based incident resulting in police involvement.
- 4.17 If it is necessary to question or interview a student at school for any purpose other than a child abuse investigation, all law enforcement agencies and SROs will contact the campus principal of the student's campus. As provided by DSISD policies, the principal will:
- a. Verify and record the identity of the officer or other authority and request an explanation of the need to interview the student at school.
 - b. Make reasonable efforts to notify the student's parents or other person having lawful control of the student. If the SRO/designee raises what the principal considers to be a valid objection to the notification, the parent shall not be notified.
 - c. The principal or a designee ordinarily shall be present during the questioning or interview. If the interviewer presents what the principal considers to be a valid objection

to a third party's presence, the interview shall be conducted without that person's presence.

- 4.18 The SRO will notify the campus and district administration in advance, whenever possible, regarding an absence. When circumstances don't allow this, the notice should be given as soon as possible for district planning. The County will make every effort to provide for replacement officers for those times when the SRO assigned pursuant to this agreement is absent due to training, extended sick time, vacation time, FMLA, workers compensation, etc. *Routine absences may not be covered due to staffing demands within the Sheriff's Office.*
- 4.19 The SRO and DSISD will coordinate, whenever practical, investigation procedures and actions.

DSISD, as established through this Agreement, shall:

- 4.20 Assume control of all campus management and activities.
- 4.21 Provide training and guidance to the SRO for any campus activities.
- 4.22 Provide access to DSISD records, systems and otherwise confidential information for the specific purpose of investigating a potential criminal violation that occurred on campus or to complete a report for an incident that occurred off-campus but is reported to the SRO as part of their duties.
- 4.23 If a student at school is arrested or taken into custody by an SRO, the principal shall immediately notify the Superintendent or their designee and ordinarily notify the parent or other person having lawful control of the student. If the SRO raises what the principal considers to be a valid objection to notifying the parent at that time, the principal shall not notify the parent. DSISD shall receive notification of the incident from the HCSO within the timeframe required by law and of the disposition of the individual to the extent allowed by law.
- 4.24 Provide a reasonable opportunity to address district officials, administrators, teachers, parents and students regarding the SRO program, goals and objectives.
- 4.25 Seek input and collaborate with the SRO regarding criminal justice programs relating to students and security issues.
- 4.26 Notify the SRO or SRO supervisor as soon as reasonably possible when school personnel or students discover weapons, drugs, alcohol or illegal contraband on DSISD property. All items will be immediately released to the custody of the SRO pursuant to their rules and policy.
- 4.27 Report to the SRO any violations of law or criminal offenses for proper collaboration of investigative actions.
- 4.28 Complete all requests for information, reports, statements, etc. requested by the SRO for purposes of a campus law enforcement investigation.

- 4.29 Collaborate with SRO regarding any security issues or restrictive access to the campus property involving “Criminal Trespass” to ensure both parties have prompt access to the information.
- 4.30 Supply necessary information regarding the campus safety, traffic plan and any additional information needed to complete the desired tasks. (This information is disseminated at the discretion of the campus administration.)
- 4.31 Not involve the SRO in ordinary campus discipline. SROs’ input may be sought at the discretion of the campus administration. Disciplining students is an administrative school district responsibility.
- 4.32 Not request an SRO to participate in campus activities in which they have not been trained and approved to complete during their scheduled hours. The approval includes their immediate chain of command and their designated campus administrators.
- 4.33 Notify the DSISD designee and the SRO supervisor in the event of any issues, complaints or concerns regarding the SRO, their behavior or performance. This may include a written summary of the incident.

Article 5

FINANCIAL RESPONSIBILITIES & EQUIPMENT

- 5.1 SROs are employees of Hays County, by and through the HCSO, and are not employees of the DSISD. Hays County shall provide the SROs with all wages, salaries, or other compensation, and benefits of similarly-situated and classified employees of the Hays County. Hays County shall also be directly responsible for the payment of all payroll taxes, bond costs, retirement contributions, social security taxes, if any, and all other payroll expenses, with the exception of overtime as detailed in Section 5.2 below.
- 5.2 DSISD shall be responsible for any overtime charges associated with the provision of services under this Agreement in accordance with the rates set forth in **Exhibit B**.
- 5.3 DSISD shall pay Hays County at the rates set forth in **Exhibit B** for the actual time spent by any substitute deputy as if they were the standard assigned deputy.
- 5.4 Hays County shall invoice DSISD quarterly for the services rendered within thirty (30) days of the completion of the quarter. DSISD shall pay Hays County for the services rendered within thirty (30) days of the date that the invoice is received by DSISD.
- 5.5 The Parties acknowledge that the cost to Hays County of providing the services described herein may change over time. Hence, the Parties agree that Hays County may change the monthly compensation rates for officers’ progression within their merit-based steps in accordance with the Hays County Collective Bargaining Agreement without giving a Notice of Rate Change for each officers’ movement within the pay scale. However, if Hays County changes the merit-based step ranges, Hays County shall give DSISD a written Notice of Rate Change at least sixty (60) days prior to the effective date of the rate change. Such Notice of Rate Change shall include an

itemization of costs as set forth in Exhibit B. If DSISD does not desire to continue to receive services at the rates stated in the Notice of Rate Change, it may terminate this Agreement or negotiate a mutually-agreed-upon rate change prior to the effective date of the rate change by giving Hays County written notice. If DSISD does not terminate this Agreement or negotiate a mutually-agreed-upon modification to the rate change, DSISD will be deemed to have accepted the rate change and shall pay the rates stated in the Notice of Rate Change for any services provided by the HCSO pursuant to this Agreement on or after the effective date of the rate change.

- 5.6 Fourth quarter services may be requested by DSISD to Hays County during the summer months of June and July. These services will be requested by DSISD at least sixty (60) days prior to the start date of coverage. Payment for services will follow the same billing guidelines indicated above. Payment for these services will be based on the number of hours worked for that time period and will not reflect a full quarterly billing encumbrment. The invoice and payment will be paid based on the officer assigned and the days worked.
- 5.7 DSISD will pay for any additional SRO training that DSISD may require unrelated to TCOLE training requirements.
- 5.8 The Parties agree to provide the following equipment and materials to the SROs:
 - a. At its own cost, Hays County shall furnish the SROs with all equipment routinely assigned to law enforcement personnel who serve Hays County. Hays County will maintain and service all equipment used by the SROs in providing services to DSISD. Equipment includes, but is not limited to, uniforms, computers and computer equipment specific to HCSO record-keeping systems, firearms, radios, and all other devices used by Hays County law enforcement personnel in the performance of their duties. Hays County will also provide a fully equipped patrol car to each SRO. DSISD shall fund the County, in accordance with Exhibit B, for costs related to vehicle maintenance and fuel for such patrol car(s).
 - b. DSISD will provide the SROs with office space on school property, a telephone, a DSISD computer utilized to access the DSISD system records, and other office equipment to perform duties under this Agreement, and as mutually agreed by the Parties. DSISD will provide the SROs with a map and personnel roster for each campus and Central Office.
 - c. Hays County will provide the SROs with access to its facilities as needed to conduct law enforcement business regarding the securing of evidence in crimes and interviewing individuals in connection with a criminal investigation into crimes conducted on school property on in conjunction with a school event or activity.

Article 6

RELATIONSHIP BETWEEN THE PARTIES

- 6.1 Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities. The relationship

of DSISD and Hays County shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.

- 6.2 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venture, or any other similar such relationship.
- 6.3 Officers employed by Hays County and assigned by Hays County to serve as SROs at DSISD are and will remain employed by Hays County.
- 6.4 HAYS COUNTY SHALL HAVE NO LIABILITY WHATSOEVER FOR OR WITH RESPECT TO DSISD'S USE OF ANY DSISD PROPERTY OR FACILITY, OR THE ACTIONS OF, OR FAILURE TO ACT BY, ANY EMPLOYEES, SUBCONTRACTORS, AGENTS OR ASSIGNS OF DSISD. DSISD COVENANTS AND AGREES THAT:
- a. DSISD SHALL BE SOLELY RESPONSIBLE, AS BETWEEN DSISD AND HAYS COUNTY AND THE AGENTS, OFFICERS AND EMPLOYEES OF HAYS COUNTY, FOR AND WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR WITH RESPECT TO ANY ACT, OMISSION, OR FAILURE TO ACT BY DSISD OR ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS, WHILE ON DSISD PROPERTY OR WHILE USING ANY DSISD FACILITY OR PERFORMING ANY FUNCTION OR PROVIDING OR DELIVERING ANY SERVICE UNDERTAKEN BY DSISD PURSUANT TO THIS AGREEMENT.
 - b. FOR AND WITH RESPECT TO THE SERVICES TO BE PROVIDED BY HAYS COUNTY TO DSISD PURSUANT TO THIS AGREEMENT, DSISD HEREBY CONTRACTS, COVENANTS, AND AGREES TO OBTAIN AND MAINTAIN IN FULL FORCE AND EFFECT, DURING THE TERM OF THIS AGREEMENT, A POLICY OR POLICIES OF INSURANCE, OR RISK POOL COVERAGE, REASONABLY EXPECTED TO INSURE DSISD AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM ANY AND AGAINST ANY CLAIM, CAUSE OF ACTION OR LIABILITY ARISING OUT OF OR FROM THE ACTION, OMISSION, OR FAILURE TO ACT BY DSISD, ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS IN THE COURSE OF THEIR DUTIES.
- 6.5 DSISD SHALL HAVE NO LIABILITY WHATSOEVER FOR OR WITH RESPECT TO HAYS COUNTY'S USE OF ANY HAYS COUNTY PROPERTY OR FACILITY, OR THE ACTIONS OF, OR FAILURE TO ACT BY, ANY EMPLOYEES, SUBCONTRACTORS, AGENTS, OR ASSIGNS OF HAYS COUNTY. HAYS COUNTY COVENANTS AND AGREES THAT:
- a. HAYS COUNTY SHALL BE SOLELY RESPONSIBLE, AS BETWEEN HAYS COUNTY AND DSISD AND THE AGENTS, OFFICERS, AND EMPLOYEES OF THE DSISD, FOR AND WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR WITH RESPECT TO ANY ACT, OMISSION, OR FAILURE TO ACT BY HAYS COUNTY OR ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS, WHILE ON HAYS COUNTY PROPERTY OR WHILE USING THE ANY OF HAYS COUNTY'S FACILITIES OR PERFORMING ANY FUNCTION OR PROVIDING OR DELIVERING ANY SERVICE UNDERTAKEN BY THE HAYS COUNTY PURSUANT TO THIS AGREEMENT.

b. FOR AND WITH RESPECT TO THE SERVICES TO BE PROVIDED BY THE HAYS COUNTY TO DSISD PURSUANT TO THIS AGREEMENT, HAYS COUNTY HEREBY CONTRACTS, COVENANTS, AND AGREES TO OBTAIN AND MAINTAIN IN FULL FORCE AND EFFECT, DURING THE TERM OF THIS AGREEMENT, A POLICY OR POLICIES OF INSURANCE, OR RISK POOL COVERAGE, IN THE AMOUNTS SUFFICIENT TO INSURE HAYS COUNTY AND ITS AGENTS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ANY CLAIM, CAUSE OF ACTION, OR LIABILITY ARISING OUT OF OR FROM THE ACTION, OMISSION, OR FAILURE TO ACT BY HAYS COUNTY, ITS AGENTS, OFFICERS, EMPLOYEES, AND SUBCONTRACTORS IN THE COURSE OF THEIR DUTIES.

- 6.6 It is specifically agreed that, as between the Parties, each party to this Agreement shall be individually and respectively responsible for responding to, dealing with, insuring against, defending, and otherwise handling and managing liability and potential liability pursuant to this Agreement.
- 6.7 Each party hereto reserves and does not waive any immunity or defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from the services provided and/or any circumstance arising under the Agreement. Neither DSISD nor Hays County waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity or sovereign immunity under the laws of the State of Texas on behalf of itself, its trustees, council members, officers, employees, and agents.
- 6.8 No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither Hays County nor DSISD shall be held legally liable for any claim or cause of action arising pursuant to, or out of the services provided under, this Agreement except as specifically provided herein or by law. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.
- 6.9 Nothing in this Agreement shall be deemed to extend, increase or limit the jurisdiction or authority of any of Hays County or DSISD except as necessary to implement, perform and obtain the services and duties provided for in this Agreement. Save and except only as specifically provided in this Agreement, all governmental functions and services traditionally provided by DSISD, and all governmental and proprietary functions and services traditionally provided by Hays County, shall be and remain the sole responsibility of each such party.

Article 7

TERM

- 7.1 The initial term of this Agreement shall be December 1, 2023, and continue through July 31, 2024, and shall automatically renew for annual terms commencing on August 1st thereafter, unless terminated earlier, in writing, by either party.
- 7.2 This Agreement may be terminated at any time by either Party, without cause, by giving the other party a minimum of ninety (90) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party.
- 7.3 In the event the Parties are unable to reach a mutual agreement on the terms of the Agreement by August 1st of the annual term, any Party will have cause to terminate its participation in the Agreement by giving the other Party a minimum of thirty (30) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party.

ARTICLE 8

NOTIFICATIONS

- 8.1 All correspondence and communications regarding this Agreement shall be directed to:

HAYS COUNTY
Attn: County Judge
111 E. San Antonio Street, Suite 300
San Marcos, TX 78666

DSISD
Attn: Superintendent of School
21003 IH 35
Kyle, TX 78640

With copy to:

Hays County Sheriff's Office
Attn: Captain—LE Bureau
810 S. Stagecoach Trail
San Marcos, TX 78666

- 8.2 Notices provided pursuant to this Agreement must be in writing and hand-delivered or sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of _____, 2024.

HAYS COUNTY, TEXAS

By _____
Ruben Becerra, Judge, Hays County

By _____
Gary Cutler, Sheriff, Hays County

ATTEST:

By _____
Elaine Cardenas, Clerk, Hays County

DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT

By _____
Ms. Stefani Reinold, President, DSISD School Board

By _____
Dr. Holly Morris-Kuentz, DSISD Superintendent

ATTEST:

By _____
Ms. Olivia Barnard, Secretary, DSISD School Board

EXHIBIT A
INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT AND HAYS COUNTY

Campus/SRO Assignments:

Hays County will provide FOUR (4) full-time deputies assigned to provide the law enforcement services as School Based Law Enforcement (SBLE) School Resource Officers (SRO) described herein and that these deputies shall be assigned to areas as agreed upon by the Sheriff's Office and DSISD, as set forth below:

- a. Two (2) deputies will be assigned full-time to Dripping Springs High School
- b. One (1) deputy will be assigned full-time to Dripping Springs Middle School
- c. One (1) deputy will be assigned full-time to Dripping Springs Elementary School

EXHIBIT B

INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT AND HAYS COUNTY

"EXHIBIT B"

	Annualized	8/16 through 5/31 ¹	
		21% Hays Co	79% DSISD
Base Salary ²	79,983	16,796	63,186
Certification Pay	900	189	711
Salary	80,883	16,985	63,897
FICA/Medicare	6,188	1,299	4,888
Retirement	11,097	2,330	8,767
Insurances	12,230	2,568	9,662
Fringe	29,515	6,198	23,317
Vehicle Maint	3,500	735	2,765
Total Per Officer	113,897	23,918	89,979
Total for 4 Officers	455,589	95,674	359,916

Total Estimated Contract Costs:

1st Quarter:	119,972
2nd Quarter:	119,972
3rd Quarter:	119,972
Total ISD for 4 Quarters	359,916
Hays Co Total	95,674
Annualized Cost	455,589
4th Quarter: ³	23,918

¹ Percentage allocations based on an 8/16 to 5/31 school year, officer percentage to be billed will be based on actual start and end date per school calendar or specific request from ISD to report to and/or end duty

² Proposed Base Salary is calculated utilizing current MBS-6 with a 5% projected market increase and standard certifications

³ Option for 4th Quarter per additional officer



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding, P.E., Transportation Director

Sponsor:

Commissioner Smith

Agenda Item:

Discussion and possible action to authorize the Court to execute a Professional Services Agreement between Hays County and Cobb, Fendley & Associates, Inc. to provide engineering services on the Fitzhugh Road Corridor Study project in Precinct 4. **SMITH/BORCHERDING**

Summary:

The corridor study of Fitzhugh Road from its intersection with RM 12 east to the Travis County line will be moving forward with project development services. Cobb, Fendley & Associates, Inc. (CFA) was selected for the Fitzhugh Road Corridor Study project through RFQ 2018-P06 May 23, 2023. The Professional Service Agreement includes a compensation cap of \$400,000.00 to complete the corridor study. Work Authorization No. 1 in the amount of \$385,961.80 will authorize the development of near term operational and safety improvements including traffic analysis and safety audit, preliminary and operational improvement layouts, stakeholder coordination and public involvement.

Cobb, Fendley & Associates has been pre-qualified for the requested services through RFQ 2018-P08. The process to initially select an engineer consultant to negotiate a scope of work and fee proposal, with subsequent action by the Hays County Commissioners Court to approve the contract integrating the negotiated scope of work and fee proposal, follows the process set forth in the Hays County Purchasing Policy and Procedures Manual, revised May 30, 2017.

Fiscal Impact:

Amount Requested: \$400,000.00

Line Item Number: 020-710-00.5448_008

Budget Office:

Source of Funds: Road & Bridge General Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Request for Qualifications (RFQ) 2018-P08 Professional Engineering Services

Auditor's Office:

G/L Account Validated Y/N?: Yes, Contract Services Consultant Expense

New Revenue Y/N?: N/A

Comments:

Attachments

FitzhughCorridorStudy-CFA-Contract

FitzhughCorridorStudy-CFA-Form1295

FitzhughCorridorStudy-CFA-CIQForm

FitzhughCorridorStudy-CFA-CodeofEthics

FitzhughCorridorStudy-CFA-HB89

FitzhughCorridorStudy-CFA-RelatedPartyDisclosureForm

HAYS COUNTY

CONTRACT FOR ENGINEERING SERVICES

FIRM: Cobb, Fendley & Associates, Inc. (“Engineer”)
ADDRESS: 505 E. Huntland Drive, Suite 100, Austin, Texas 78752
PROJECT: Fitzhugh Road Corridor Study (“Project”)

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

THIS CONTRACT FOR ENGINEERING SERVICES (“Contract”) is made and entered into, effective as the date of the last party’s execution hereinbelow, by and between Hays County, Texas, a political subdivision of the State of Texas, whose offices are located at 111 E. San Antonio Street, Suite 300, San Marcos, Texas, 78666 (hereinafter referred to as “County”), and Engineer, and such Contract is for the purpose of contracting for professional engineering services.

RECITALS:

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled “Professional Services Procurement Act” provides for the procurement by counties of services of professional engineers; and

WHEREAS, County and Engineer desire to contract for such professional engineering services; and

WHEREAS, County and Engineer wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

ARTICLE 1
CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS

A. Contract Documents. The Contract Documents consist of this Contract, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract), any fully executed Work Authorizations; any fully executed Supplemental Work Authorizations and all fully executed Contract Amendments (as defined herein in Article 14) which are subsequently issued. These form the entire contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

B. Project Documents. In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

- A. TxDOT 2011 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions
- B. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2014 (English units)
- C. National Environmental Policy Act (NEPA)
- D. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions
- E. Americans with Disabilities Act (ADA) Regulations
- F. U.S. Army Corps Regulations
- G. International Building Code, current edition as updated
- H. Hays County Design Criteria & Project Development Manual, latest edition
- I. Hays County Multi-Corridor Transportation Plan Project Level Environmental Review and Compliance Protocol, latest edition
- J. Hays County Protocol for Sustainable Roadsides, latest edition
- K. TxDOT Bridge Design Manual - LRFD, latest edition
- L. TxDOT Geotechnical Manual, latest edition

ARTICLE 2
NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST
PROHIBITED

A. Non-collusion. Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

B. Debarment Certification. Engineer must sign the Debarment Certification enclosed herewith as **Exhibit A**.

C. Financial Interest Prohibited. Engineer covenants and represents that Engineer, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

ARTICLE 3 **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in **Exhibit B** entitled “Engineering Services.”

County will prepare and issue Work Authorizations, in substantially the same form identified and attached hereto as **Exhibit C** and entitled “Work Authorization No. 1”, to authorize the Engineer to perform one or more tasks of the Engineering Services. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, definite review times by County and Engineer of all Engineering Services and a fee amount agreed upon by the County and Engineer. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the Engineer’s responsibilities and obligations established in this Contract. The executed Work Authorizations shall become part of this Contract.

All work must be completed on or before the date specified in the Work Authorization. The Engineer shall promptly notify the County of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Engineer from costs or liabilities resulting from delays in completion of the Work Authorization. Should the review times or Engineering Services take longer than shown on the Work Authorization, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the County. Any changes in a Work Authorization shall be enacted by a written Supplemental Work Authorization before additional costs may be incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization.

ARTICLE 4 **CONTRACT TERM**

A. Term. The Engineer is expected to complete the Engineering Services described herein in accordance with the above described Work Authorizations or any Supplemental Work Authorization related thereto. If Engineer does not perform the Engineering Services in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall have the right to terminate this Contract as set forth below in Article 20. So long as the County elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering Services are completed in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto. Any Engineering Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall

notify County in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with an applicable Work Authorization or any Supplemental Work Authorization related thereto.

B. Work Authorizations. Engineer acknowledges that each Work Authorization is of critical importance, and agrees to undertake all reasonably necessary efforts to expedite the performance of Engineering Services required herein so that construction of the Project will be commenced and completed as scheduled. In this regard, and subject to adjustments in a particular Work Authorization, as provided in Article 3 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

C. Commencement of Engineering Services. After execution of this Contract, Engineer shall not proceed with Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing by the County to proceed, as provided in Article 8.

ARTICLE 5

COMPENSATION AND EXPENSES

County shall pay and Engineer agrees to accept up to the amount shown below as full compensation for the Engineering Services performed and to be performed under this Contract. The basis of compensation for the services of principals and employees engaged in the performance of the Engineering Services shall be based on the Rate Schedule set forth in the attached **Exhibit D**.

The maximum amount payable under this Contract, without modification, is **Four hundred thousand Dollars (\$ 400,000.00)** (the "Compensation Cap"), provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. The Compensation Cap shall be revised equitably only by written Contract Amendments executed by both parties in the event of a change the overall scope of the Engineering Services set forth in **Exhibit B**, as authorized by County.

The Compensation Cap is based upon all labor and non-labor costs estimated to be required in the performance of the Engineering Services provided for under this Contract. Should the actual costs of all labor and non-labor costs rendered under this Contract be less than the above stated Compensation Cap, then Engineer shall receive compensation for only actual fees and costs of the Engineering Services actually rendered and incurred, which may be less than the above stated Compensation Cap.

The Compensation Cap herein referenced may be adjusted for Additional Engineering Services requested and performed only if approved by a written Contract Amendment signed by both parties.

Engineer shall prepare and submit to County monthly progress reports in sufficient detail to support the progress of the Engineering Services and to support invoices requesting monthly payment. The format for such monthly progress reports and invoices must be in a format acceptable to County. Satisfactory progress of Engineering Services shall be an absolute condition of payment.

Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Contract at the Engineer's invoice cost. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice. The copies of the provider's invoice must evidence the actual costs billed to Engineer without mark-up.

ARTICLE 6

METHOD OF PAYMENT

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to County's Road Bond Program Manager, not more frequently than once per month, a progress report as referenced in Article 5 above. Such progress report shall state the percentage of completion of Engineering Services accomplished for an applicable Work Authorization or any Supplemental Work Authorization related thereto during that billing period and to date. This submittal shall also include a progress assessment report in a form acceptable to the County Auditor.

Simultaneous with submission of such progress report, Engineer shall prepare and submit one (1) original of a certified invoice to the County Auditor in a form acceptable to the County Auditor. All invoices submitted to County must, at a minimum, be accompanied by an original complete packet of supporting documentation and time sheets detailing hours worked by staff persons with a description of the work performed by such persons. For Additional Engineering Services performed pursuant to this Contract, a separate invoice or itemization of the Additional Engineering Services must be presented with the same aforementioned requirements.

Payments shall be made by County based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, County shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of the County Auditor's receipt. County reserves the right to reasonably withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to County, adequate and sufficient in its determination, that tasks of an applicable Work Authorization or any Supplemental Work Authorization related thereto were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

Upon submittal of the initial invoice, Engineer shall provide the County Auditor with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

ARTICLE 7

PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which the County Auditor receives a correct invoice for services, whichever is later.

Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A.** There is a bona fide dispute between County and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B.** The terms of a federal contract, grant, regulation, or statute prevent County from making a timely payment with federal funds; or
- C.** There is a bona fide dispute between Engineer and a subcontractor/subconsultant or between a subcontractor/subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D.** The invoice is not mailed to the County Auditor in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

The County Auditor shall document to Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

ARTICLE 8

COMMENCEMENT OF ENGINEERING SERVICES

The Engineer shall not proceed with any task of the Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and instructed, in writing by the County, to proceed with the applicable Engineering Services. The County shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties. Engineer shall not be required to perform any work for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

ARTICLE 9
PROJECT TEAM

County's Designated Representative for purposes of this Contract is as follows:

County's Road Bond Program Manager
Attn: Carlos A. Lopez, P.E.
HNTB Corporation
200 W 6th Street, Suite 2400
Austin, Texas 78701

County shall have the right, from time to time, to change the County's Designated Representative by giving Engineer written notice thereof. With respect to any action, decision or determination which is to be taken or made by County under this Contract, the County's Designated Representative may take such action or make such decision or determination or shall notify Engineer in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the County's Designated Representative shall be binding on County; *provided, however*, the County's Designated Representative shall not have any right to modify, amend or terminate this Contract, an Executed Work Authorization, an executed Supplemental Work Authorization or executed Contract Amendment. County's Designated Representative shall not have any authority to execute a Contract Amendment, Work Authorization or any Supplemental Work Authorization unless otherwise granted such authority by the Hays County Commissioners Court.

Engineer's Designated Representative for purposes of this Contract is as follows:

Cobb, Fendley & Associates, Inc.
Attn: Julie Hastings, PE
505 E. Huntland Drive, Suite 100
Austin, Texas 78752

Engineer shall have the right, from time to time, to change the Engineer's Designated Representative by giving County written notice thereof. With respect to any action, decision or determination which is to be taken or made by Engineer under this Contract, the Engineer's Designated Representative may take such action or make such decision or determination or shall notify County in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the Engineer's Designated Representative on behalf of Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the Engineer's Designated Representative shall be in accordance with such

express standards or parameters. Any consent, approval, decision or determination hereunder by the Engineer's Designated Representative shall be binding on Engineer. Engineer's Designated Representative shall have the right to modify, amend and execute Work Authorizations, Supplemental Work Authorizations and Contract Amendments on behalf of Engineer.

ARTICLE 10

PROGRESS EVALUATION

Engineer shall, from time to time during the progress of the Engineering Services, confer with County at County's election. Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Engineering Services. At the request of County or Engineer, conferences shall be provided at Engineer's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Engineering Services. County may, from time to time, require Engineer to appear and provide information to the Hays County Commissioners Court.

Should County determine that the progress in Engineering Services does not satisfy an applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall review same with Engineer to determine corrective action required.

Engineer shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Engineering Services, including but not limited to the following:

- A.** Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of an applicable Work Authorization or any Supplemental Work Authorization related thereto, or preclude the attainment of Project Engineering Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and
- B.** Favorable developments or events which enable meeting goals sooner than anticipated in relation to an applicable Work Authorization's or any Supplemental Work Authorization related thereto.

ARTICLE 11

SUSPENSION

Should County desire to suspend the Engineering Services, but not to terminate this Contract, then such suspension may be effected by County giving Engineer thirty (30) calendar days' verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from County to resume the Engineering Services. Such sixty-day (60) notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract and, in the event, Engineer shall be compensated for all Engineering Services performed and reimbursable expenses incurred, provided such Engineering Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

If County suspends the Engineering Services, the contract period as determined in Article 4, and the Work Authorization or any Supplemental Work Authorization related thereto, shall be extended for a time period equal to the suspension period.

County assumes no liability for Engineering Services performed or costs incurred prior to the date authorized by County for Engineer to begin Engineering Services, and/or during periods when Engineering Services is suspended, and/or subsequent to the completion date.

ARTICLE 12

ADDITIONAL ENGINEERING SERVICES

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the overall scope of this Contract, as set forth in **Exhibit B**, and as such constitutes extra work ("Additional Engineering Services"), he/she/it shall promptly notify County in writing. In the event County finds that such work does constitute Additional Engineering Services, County shall so advise Engineer and a written Contract Amendment will be executed between the parties as provided in Article 14. Any increase to the Compensation Cap due to Additional Engineering Services must be set forth in such Contract Amendment. Engineer shall not perform any proposed Additional Engineering Services nor incur any additional costs prior to the execution, by both parties, of a written Contract Amendment. Following the execution of a Contract Amendment that provides for Additional Engineering Services, a written Work Authorization, which sets forth the Additional Engineering Services to be performed, must be executed by the parties. County shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to Additional Engineering Services not directly associated with the performance of the Engineering Services authorized in this Contract, by a fully executed Work Authorization or a fully executed Contract Amendment thereto.

ARTICLE 13

CHANGES IN COMPLETED ENGINEERING SERVICES

If County deems it necessary to request changes to previously satisfactorily completed

Engineering Services or parts thereof which involve changes to the original Engineering Services or character of Engineering Services under this Contract, then Engineer shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Engineering Services and paid for as specified under Article 12.

Engineer shall make revisions to Engineering Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Engineering Services.

ARTICLE 14

CONTRACT AMENDMENTS

The terms set out in this Contract may be modified by a written fully executed Contract Amendment. Changes and modifications to a fully executed Work Authorization shall be made in the form of a Supplemental Work Authorization. To the extent that such changes or modifications to a Work Authorization do not also require modifications to the terms of this Contract (i.e. changes to the overall scope of Engineering Services set forth in **Exhibit B**, modification of the Compensation Cap, etc.) a Contract Amendment will not be required.

ARTICLE 15

USE OF DOCUMENTS

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Engineering Work Products") prepared by Engineer and its subcontractors/subconsultants are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to Engineer.

By execution of this Contract and in confirmation of the fee for services to be paid under this Contract, Engineer hereby conveys, transfers and assigns to County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and work product developed under this Contract. Copies may be retained by Engineer. Engineer shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer, including agents, employees, Engineers or subcontractors/subconsultants. All documents so lost or damaged shall be replaced or restored by Engineer without cost to County.

Upon execution of this Contract, Engineer grants to County permission to reproduce Engineer's work and documents for purposes of constructing, using and maintaining the Project, provided that County shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer's

subcontractors/subconsultants consistent with this Contract. If and upon the date Engineer is adjudged in default of this Contract, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

County shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written consent of Engineer. However, County shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Engineering Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Engineering Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Engineering Work Products shall be at County's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to County any Engineering Work Products in electronic form or County providing to Engineer any electronic data for incorporation into the Engineering Work Products, County and Engineer shall by separate written contract set forth the specific conditions governing the format of such Engineering Work Products or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer for the convenience of County, and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer shall be relied upon.

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 16

PERSONNEL, EQUIPMENT AND MATERIAL

Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Engineering Services, and adequate and sufficient personnel and equipment to perform the Engineering Services as required. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Engineering Services shall immediately be removed from association with the Project when so instructed by County. Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering Services required under this Contract, or will obtain such personnel from sources other than County. Engineer may not change the Project Manager without prior written consent of County.

ARTICLE 17

SUBCONTRACTING

Engineer shall not assign, subcontract or transfer any portion of the Engineering Services under this Contract without prior written approval from County. All subcontracts shall include the provisions required in this Contract. No subcontract shall relieve Engineer of any responsibilities under this Contract.

ARTICLE 18

REVIEW OF ENGINEERING SERVICES

Engineer's Engineering Services will be reviewed by County under its applicable technical requirements and procedures.

A. Completion. Reports, plans, specifications, and supporting documents shall be submitted by Engineer on or before the dates specified in the applicable Work Authorization or Supplemental Work Authorization related thereto. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in the applicable Work Authorization, have been included in compliance with the requirements of this Contract. The completeness of any Engineering Services submitted to County shall be determined by County within thirty (30) days of such submittal and County shall notify Engineer in writing within such thirty (30) day period if such Engineering Services have been found to be incomplete. If the submission is Complete, County shall notify Engineer and County's technical review process will begin.

If the submission is not Complete, County shall notify Engineer, who shall perform such professional services as are required to complete the Engineering Services and resubmit it to County. This process shall be repeated until a submission is Complete.

B. Acceptance. County shall review the completed Engineering Services for compliance with this Contract, in accordance with the standard of care. If necessary, the completed Engineering Services shall be returned to Engineer, who shall perform any required Engineering Services and resubmit it to County. This process shall be repeated until the Engineering Services are Accepted. "Acceptance" or "Accepted" shall mean that in the County's reasonable opinion, substantial compliance with the requirements of this Contract has been achieved.

C. Final Approval. After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by the County. "Final Approval" in this sense shall mean formal recognition that the Engineering Services have been fully carried out.

D. Errors and Omissions. After Final Approval, Engineer shall, without additional compensation, perform any work required as a result of Engineer's development of the work which is found to be in error or omission due to Engineer's negligence. However, any work required or

occasioned for the convenience of County after Final Approval shall be paid for as Additional Engineering Services.

E. Disputes Over Classifications. In the event of any dispute over the classification of Engineer's Engineering Services as Complete, Accepted, or having attained Final Approved under this Contract, the decision of the County shall be final and binding on Engineer, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

F. County's Reliance on Engineer. ENGINEER'S DUTIES AS SET FORTH HEREIN SHALL AT NO TIME BE IN ANY WAY DIMINISHED BY REASON OF ANY REVIEW, EVALUATION OR APPROVAL BY THE COUNTY NOR SHALL THE ENGINEER BE RELEASED FROM ANY LIABILITY BY REASON OF SUCH REVIEW, EVALUATION OR APPROVAL BY THE COUNTY, IT BEING UNDERSTOOD THAT THE COUNTY AT ALL TIMES IS ULTIMATELY RELYING UPON THE ENGINEER'S SKILL, ABILITY AND KNOWLEDGE IN PERFORMING THE ENGINEERING SERVICES REQUIRED HEREUNDER.

ARTICLE 19

VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT

Violation of contract terms or breach of contract by Engineer and failure to comply with the standard of care shall be grounds for termination of this Contract, and any increased costs arising from Engineer's default, breach of contract, or violation of contract terms shall be paid by Engineer.

ARTICLE 20

TERMINATION

This Contract may be terminated as set forth below.

- A.** By mutual agreement and consent, in writing, of both parties.
- B.** By County, by notice in writing to Engineer, as a consequence of failure by Engineer to perform the Engineering Services set forth herein in a satisfactory manner.
- C.** By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- D.** By County, for reasons of its own and not subject to the mutual consent of Engineer, upon not less than thirty (30) days' written notice to Engineer.
- E.** By satisfactory completion of all Engineering Services and obligations described herein.

Should County terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, County shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering Services completed at that time.

Should County terminate this Contract under Subsection (D) immediately above, then the amount charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Engineer defaults in the performance of this Contract by failing to meet the standard of care, or if County terminates this Contract for fault on the part of Engineer, then County shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of the Engineering Services which are usable to County, the cost to County of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to County of the Engineering Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Contract. If the termination of this Contract is due to the failure of Engineer to fulfill his/her/its contractual obligations in accordance with the standard of care, then County may take over the Project and prosecute the Engineering Services to completion. In such case, Engineer shall be liable to County for any additional and reasonable costs incurred by County.

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

ARTICLE 21

COMPLIANCE WITH LAWS

A. Compliance. Engineer shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations in effect at the time the Services are performed, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish County with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses necessary for Engineer's business operations required in the performance of the Engineering Services contracted for herein.

B. Taxes. Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering Services performed hereunder. County is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

ARTICLE 22

INDEMNIFICATION

ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY ENGINEER, ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH ENGINEER INCLUDING, WITHOUT LIMITATION, ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL.

ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM ENGINEER'S FAILURE TO PAY ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER.

ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM ENGINEER IS NOT LEGALLY LIABLE, ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN ENGINEER IN ANY SUCH PROCEEDINGS AT THE COUNTY'S COST. ENGINEER SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING COSTS AND REASONABLE ATTORNEYS' FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE ENGINEER, ITS EMPLOYEES, AGENTS,

SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

ARTICLE 23

ENGINEER'S RESPONSIBILITIES

Engineer shall be responsible for the accuracy of his/her/its Engineering Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of Article 33. Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

ARTICLE 24

ENGINEER'S SEAL

The responsible engineer shall sign, seal and date all appropriate engineering submissions to County in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

ARTICLE 25

INSURANCE

Engineer must comply with the following insurance requirements at all times during this Contract:

A. Coverage Limits. Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect the following insurance:

1. Worker's Compensation in accordance with statutory requirements.
2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
4. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

B. Additional Insureds; Waiver of Subrogation. County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by County shall be excess and not

contribute with it. Such policies shall also include waivers of subrogation in favor of County.

C. Premiums and Deductible. Engineer shall be responsible for payment of premiums for all of the insurance coverages required under this section. Engineer further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Engineer is responsible hereunder, Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in the Engineer's insurance must be declared and approved in writing by County in advance.

D. Commencement of Work. Engineer shall not commence any field work under this Contract until he/she/it has obtained all required insurance and such insurance has been approved by County. As further set out below, Engineer shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Engineer hereunder.

E. Insurance Company Rating. The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A-rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

F. Certification of Coverage. Engineer shall furnish County with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Engineer shall also notify County, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**

G. No Arbitration. It is the intention of the County and agreed to and hereby acknowledged by the Engineer, that no provision of this Contract shall be construed to require the County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Contract.

H. Subcontractor/Subconsultant's Insurance. Without limiting any of the other obligations or liabilities of Engineer, Engineer shall require each subcontractor/subconsultant performing work under this Contract (to the extent a subcontractor/subconsultant is allowed by County) to maintain during the term of this Contract, at the subcontractor/subconsultant's own expense, the same stipulated minimum insurance required in this Article above, including the required provisions and additional policy conditions as shown below in this Article.

Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements.

Engineer must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

I. Insurance Policy Endorsements. Each insurance policy shall include the following conditions by endorsement to the policy:

1. County shall be notified thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

Hays County Auditor
c/o: Vickie G. Dorsett
712 S. Stagecoach Trail, Suite 1071
San Marcos, Texas 78666

With copy to: HNTB Corporation
Attn: Carlos A. Lopez, P.E.
200 W 6th Street, Suite 2400
Austin, Texas 78701

2. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

J. Cost of Insurance. The cost of all insurance required herein to be secured and maintained by Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such Certificates of Insurance are evidenced as **Exhibit F** herein entitled "Certificates of Insurance."

ARTICLE 26 **COPYRIGHTS**

County shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer for governmental purposes.

ARTICLE 27 **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

ARTICLE 28
SEVERABILITY

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

ARTICLE 29
PRIOR AGREEMENTS SUPERSEDED

This Contract constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

ARTICLE 30
ENGINEER'S ACCOUNTING RECORDS

Engineer agrees to maintain, for a period of three (3) years after final payment under this Contract, detailed records identifying each individual performing the Engineering Services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for verification purposes. Engineer agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer further agrees that County shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Engineer reasonable advance notice of intended audits.

ARTICLE 31
NOTICES

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

County: Hays County Judge
 111 E. San Antonio Street, Suite 300
 San Marcos, Texas 78666

With copy to: HNTB Corporation
200 W 6th Street, Suite 2400
Austin, Texas 78701
Attn: Carlos A. Lopez, P.E.

and to: Office of General Counsel
Hays County
111 E. San Antonio Street, Room 202
San Marcos, Texas 78666

Engineer: Cobb, Fendley & Associates, Inc.
Attn: Julie Hastings, PE
505 E. Huntland Drive, Suite 100
Austin, Texas 78752

ARTICLE 32

GENERAL PROVISIONS

A. Time is of the Essence. Subject to Article 3 hereof, Engineer understands and agrees that time is of critical importance and Engineer shall perform its Services to meet the schedule as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, and that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed work schedule set out in the applicable Work Authorization, in accordance with the standard of care, may constitute a material breach of this Contract. Engineer shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer's standard of performance as defined herein. Where damage is caused to County due to Engineer's negligent failure to perform County may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of County's additional legal rights or remedies.

B. Force Majeure. Neither County nor Engineer shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

C. Enforcement and Venue. This Contract shall be enforceable in San Marcos, Hays County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Hays County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

D. Standard of Performance. The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this

Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under the same or similar circumstances at the same time and in the same locality.

E. Opinion of Probable Cost. Any opinions of probable Project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Engineer prepares.

F. Opinions and Determinations. Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

G. Reports of Accidents. Within 24 hours after Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Contract, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Contract.

H. Gender, Number and Headings. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Contract.

I. Construction. Each party hereto 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.

J. Independent Contractor Relationship. Both parties hereto, 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.

K. No Waiver of Immunities. 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.

L. Texas Public Information Act. 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 that 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.

M. Governing Terms and Conditions. If there is an irreconcilable conflict between the terms and conditions set forth in this Contract or any Contract Amendment and the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract, the terms and conditions set forth in this Contract or any Contract Amendment shall control over the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract.

N. Meaning of Day. For purposes of this Contract, all references to a "day" or "days" shall mean a calendar day or calendar days.

O. Appropriation of Funds by County. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Engineer understands and agrees that County's payment of amounts under this Contract is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

ARTICLE 33

DISPUTE RESOLUTION

Except as otherwise specifically set forth herein, County and Engineer shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Contract, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject

matter of this Contract, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Contract shall be conducted in Hays County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of the Contract.

ARTICLE 34

EQUAL OPPORTUNITY IN EMPLOYMENT

During the performance of this Contract and to the extent the Project is a federally funded project, Engineer, for itself, its assignees and successors in interest agrees as follows:

A. Compliance with Regulations. The Engineer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

B. Nondiscrimination. The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports. The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County (referred to in this Article as the "Recipient") or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Engineer shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract

sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
2. cancellation, termination or suspension of the Contract, in whole or in part.

F. Incorporation of Provisions. The Engineer shall include the provisions of Subsections (A) through (F) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor/subconsultant or supplier as a result of such direction, the Engineer may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

SIGNATORY WARRANTY

The undersigned signatory for Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Contract.


IN WITNESS WHEREOF, County has caused this Contract to be signed in its name by its duly authorized County Judge, as has Engineer, signing by and through its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof, to be effective as of the date of the last party's execution below. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE HAYS COUNTY COMMISSIONERS COURT.

COUNTY

HAYS COUNTY, TEXAS

By: _____
Ruben Becerra, County Judge

Date: _____, 20____


1/23/2024

ENGINEER

Cobb, Fendley & Associates, Inc.

By: 

Printed Name: Dan Warth

Title: Executive Vice President

Date: January 9, 2024

LIST OF EXHIBITS ATTACHED

- | | |
|----------------------|---------------------------|
| (1) Exhibit A | Debarment Certification |
| (2) Exhibit B | Engineering Services |
| (3) Exhibit C | Work Authorization |
| (4) Exhibit D | Rate Schedule |
| (5) Exhibit E | Certificates of Insurance |

EXHIBIT A
DEBARMENT 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 Engineer 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* 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 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 transactions* terminated for cause or default; and

(e) Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Cobb, Fendley and Associates, Inc.

Name of Firm



Signature of Certifying Official

Dan Warth

Printed Name of Certifying Official

Executive Vice President

Title of Certifying Official

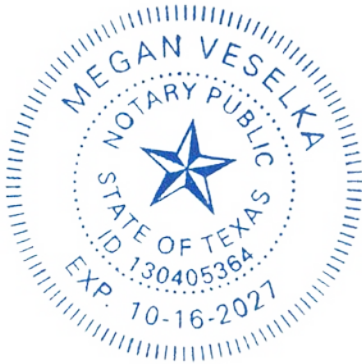
January 9, 2024

Date

(2) Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

* federal, state, or local

SUBSCRIBED and sworn to before me the undersigned authority by Dan Warth
the 9th of January, on
behalf of said firm.



Megan Veselka

Notary Public in and for the
State of Texas

My commission expires: 10/16/2027

EXHIBIT B

ENGINEERING SERVICES

EXHIBIT B
SERVICES TO BE PROVIDED BY THE Engineer
DESIGN SERVICES FOR FITZHUGH ROAD

1. GENERAL DESCRIPTION OF THE PROJECT:

The Fitzhugh Road project study area consists of Fitzhugh Road and adjacent properties from RM 12 to the Travis County Line. The project has been identified as a MAU4 in the Hays County Transportation Plan. The existing Fitzhugh Road is a 2-lane, 24-foot roadway with asphalt pavement and roadside ditches. The existing ROW is approximately 56 feet in width. Fitzhugh Road is initially planned as an ultimate MAU-4 arterial in the Hays County 2021 Transportation Plan.

2. PRELIMINARY DESIGN PHASE SERVICES:

a. This phase of the project generally consists of preparing documents, reports, and maps. Services may include, but are not limited to:

- Project Specific QA/QC Plan
- Project Management
- Data Collection
- Stakeholder Coordination
- Preliminary Constraints Mapping
- Route and Alignment Studies
- Roadway Schematic
- Miscellaneous Services

3. DESIGN PHASE SERVICES:

a. This phase of the project generally consists of preparing construction plans, specifications, estimates, and contract documents. Services may include, but are not limited to:

- Project Specific QA/QC Plan
- Project Management
- Roadway Schematic and Construction Plans
- Miscellaneous Services

- Surveying
- Geotechnical Investigations
- Environmental Investigations
- Traffic Analysis
- Drainage and Water Quality Development

EXHIBIT C

WORK AUTHORIZATION

(To Be Completed and Executed After Contract Execution)

WORK AUTHORIZATION NO. _____

PROJECT: _____

This Work Authorization is made pursuant to the terms and conditions of the Hays County Contract for Engineering Services, being dated _____, 20____ and entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (the "County") and _____ (the "Engineer").

Part 1. The Engineer will provide the following Engineering Services set forth in Attachment "B" of this Work Authorization.

Part 2. The maximum amount payable for services under this Work Authorization without modification is _____.

Part 3. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with the Contract.

Part 4. This Work Authorization shall become effective on the date of final acceptance and full execution of the parties hereto and shall terminate on _____, 20____. The Engineering Services set forth in Attachment "B" of this Work Authorization shall be fully completed on or before said date unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Contract.

Part 6. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Authorization. Engineer understands and agrees that County's payment of amounts under this Work Authorization is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

Part 7. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this ____ day of _____, 20__.

ENGINEER:

COUNTY:

[Insert Company Name HERE]

Hays County, Texas

By:_____

By:_____

Signature

Signature

Printed Name

Printed Name

Title

Title

LIST OF ATTACHMENTS

Attachment A - Services to be Provided by County

Attachment B - Services to be Provided by Engineer

Attachment C - Work Schedule

Attachment D - Fee Schedule

EXHIBIT D

Fee/Rate Schedule

**FEE SCHEDULE SHALL BE INSERTED AT THE
TIME OF AGREEMENT/CONTRACT EXECUTION**

EXHIBIT E

CERTIFICATES OF INSURANCE

ATTACHED BEHIND THIS PAGE

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

01/10/2024

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Southwest 9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600		CONTACT NAME: Tami Melton PHONE (A/C, No, Ext): 713 490-4600 E-MAIL ADDRESS: tami.melton@usi.com FAX (A/C, No): 713-490-4700															
INSURED Cobb, Fendley & Associates, Inc. 4424 W Sam Houston Parkway N Suite 600 Houston, TX 77041		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Phoenix Insurance Company</td> <td>25623</td> </tr> <tr> <td>INSURER B : Travelers Property Cas. Co. of America</td> <td>25674</td> </tr> <tr> <td>INSURER C : Farmington Casualty Company</td> <td>41483</td> </tr> <tr> <td>INSURER D : Endurance American Specialty Ins Co</td> <td>41718</td> </tr> <tr> <td>INSURER E : Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Phoenix Insurance Company	25623	INSURER B : Travelers Property Cas. Co. of America	25674	INSURER C : Farmington Casualty Company	41483	INSURER D : Endurance American Specialty Ins Co	41718	INSURER E : Travelers Indemnity Company	25658	INSURER F :	
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INSURER F :																	

COVERAGES**CERTIFICATE NUMBER: 43307396****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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			P6306T020324PHX23	07/10/2023	07/10/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
E	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BA5T9261002343G	07/10/2023	07/10/2024	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"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10000			CUP4S01891423NF	07/10/2023	07/10/2024	EACH OCCURRENCE \$ 12,000,000 AGGREGATE \$ 12,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB6T0405192343G	07/10/2023	07/10/2024	<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	Professional Liability			DPL30039639000	07/10/2023	07/10/2024	\$5,000,000 per claim \$5,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability and Automobile Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate holder, only when there is a written contract or written agreement between the named insured and the certificate holder that requires such status, and only with regard to work performed on behalf of the named insured (GL: CGD3790219 ongoing and completed operations, CG D2460419; AL: CA T3530817).
 (See Attached Descriptions)

CERTIFICATE HOLDER**CANCELLATION**

Hays County
 111 E. San Antonio St., Ste 300
 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



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DESCRIPTIONS (Continued from Page 1)

The General, Automobile, and Umbrella Liability policies contain a special endorsement with "Primary and Noncontributory" wording (GL: CGT1000219; AL: CAT4740817; UL: EU0001 7/16).

The General Liability, Automobile, Workers Compensation, and Professional Liability policies provide a Blanket Waiver of Subrogation when required by written contract (GL: CGD3790219; AL: CA73530817; WC: WC000313; BDP0417001).

The General Liability, Automobile, Workers Compensation, Umbrella Liability, and Professional Liability policies include an endorsement providing that 30 days notice of cancellation for reasons other than non-payment of premium and 10 days notice of cancellation for nonpayment of premium will be given to the Certificate Holder by the Insurance Carrier.

The Umbrella Liability policy contains Excess Follows Form (EU0001 7/16). The Umbrella policy sits over the General, Auto, and Employers Liability coverages.

Description of Operations: Fitzhugh Road Corridor Study

Hays County, its directors, officers and employees are included as additional insureds on the General Liability and Auto Liability policies where required by written contract.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Cobb, Fendley & Associates, Inc.
Houston, TX United States

Certificate Number:
2023-1092923

Date Filed:
11/09/2023

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Hays County, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Engineering Services
Fitzhugh Road Corridor Study

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Silver, Monica	Houston, TX United States	X	
	Warth, Dan	Austin, TX United States	X	
	Eastland, Charles	Houston, TX United States	X	
	Scurry, Floyd	Houston, TX United States	X	
	Ram, Vineeta	Houston, TX United States	X	

5 Check only if there is NO Interested Party.

☐**6 UNSWORN DECLARATION**

My name is Ami Goudie, and my date of birth is May 07, 1974.

My address is 13430 Northwest Freeway, Suite 1100, Houston, Texas, 77040, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 9th day of November, 2023.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

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.

N/A - Cobb, Fendley & Associates, Inc.

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

11/9/2023

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.

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.

1. 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.
2. 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:
 - A. 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.
 - B. 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.
 - C. **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.

- D. 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.
- E. Contract Clause:** The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.
- F. 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: Dan Warth, Executive Vice President

COMPANY NAME: Cobb, Fendley & Associates, Inc.

**Hays County
House Bill 89 Verification**

I, Dan Warth (Person name), the undersigned

representative of (Company or Business name)

Cobb, Fendley & Associates, Inc.

(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.

11/9/2023
DATE

DWARth
SIGNATURE OF COMPANY REPRESENTATIVE

On this the 9th day of November, 2023, personally appeared

Dan warth, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

Cindy Martin
NOTARY SIGNATURE

11/9/2023
Date





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 2nd degree of consanguinity or affinity to either of the above⁽¹⁾ (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:

CobbFendley is not aware of any existing relationships.

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

Cobb, Fendley & Associates, Inc.

Name of Vendor



Signature of Certifying Official

Executive Vice President

Title of Certifying Official

Dan Warth

Printed Name of Certifying Official

11/9/2023

Date

⁽¹⁾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*
Person	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
Person	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.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding, P.E., Transportation Director

Sponsor:

Commissioner Shell

Agenda Item

Discussion and possible action to authorize the Court to execute Change Order No. 4 amending the billing rates in the Professional Services Agreement between Hays County and BGE, Inc. for the RM 12 Safety Improvements near the intersection of Mountain Crest and Skyline Drive project in Precinct 3. This is a zero cost Change Order.

SHELL/BORCHARDING

Summary

The requested Change Order proposes to update the billing rates utilizing the CPI rate adjustment equation developed from the U.S. Department of Labor Consumer Price Index (CPI-U). This project is funded by the Transportation Department project number 26-777-020.

Attachments

RM12atSkylineMntnCrest-BGE-CO4



Hays County Transportation Department Change Order Request Form

Date: 01/09/2024 Contract Performance Date: 8/6/2019

Project Name: RM 12 Safety Improvements near the intersection of Mountain Crest and Skyline

Contract number: 26-777-020

Contractor/Consultant: BGE, Inc

Change Order Number: 4

Change in Scope Necessitating Change-Order:

Adjusting rate schedule to adjust subs rates using CPI.

Attach Supporting Documentation for Change Order to this Form

Original Contract Amount: \$365,754

Net Amount of Previously Authorized Change Order: \$92,978.49

Net Amount for this requested change order: \$0

Total Contract Amount with all change orders: \$458,732.49

Original Contract Performance Length: 498 Days

Net previous schedule change orders: 1460 Days

Net Schedule adjustment requested this change order: 0 Days

Total performance days with change orders: 1958 Days

Contractor: John. W Tuley Sign:  Date: 1-09-24

Hays County: _____ Sign: _____ Date: _____

(Hays County Employee-attach to agenda request form, CO approval contingent on Commissioners Court)

Carlos A. Lopez, P.E.
1/24/2024

RATE SCHEDULE

BGE, Inc.				
CATEGORY	Original Rate	Change Order No. 3 Approved CPI Increase 09/19/23	Change Order No. 4	Description
Project Director	\$260.00	\$312.47	\$312.47	No Change
Quality Manager	\$225.00	\$270.41	\$270.41	No Change
Senior Project Manager	\$220.00	\$264.40	\$264.40	No Change
Senior Structural Engineer	\$260.00	\$312.47	\$312.47	No Change
Senior Engineer	\$205.00	\$246.37	\$246.37	No Change
Project Engineer	\$160.00	\$192.29	\$192.29	No Change
Graduate Engineer	\$125.00	\$150.23	\$150.23	No Change
Senior Design Technician	\$140.00	\$168.25	\$168.25	No Change
Design Technician	\$115.00	\$138.21	\$138.21	No Change
Senior CADD Technician	\$110.00	\$132.20	\$132.20	No Change
CADD Technician	\$80.00	\$96.14	\$96.14	No Change
Environmental QA/QC Manager	\$226.00		\$271.61	CPI Increase
Environmental Task Leader	\$145.00		\$174.26	CPI Increase
Archeologist	\$140.00		\$167.57	CPI Increase
Sr. GIS Technician	\$135.00		\$162.24	CPI Increase
GIS Technician	\$100.00		\$120.18	CPI Increase
Junior Environmental Scientist	\$95.00		\$114.17	CPI Increase
Survey Director	\$185.00		\$222.33	CPI Increase
RPLS	\$190.00		\$228.34	CPI Increase
Survey Technician	\$105.00		\$126.19	CPI Increase
Survey Field Crew	\$170.00		\$204.31	CPI Increase
Clerical	\$80.00	\$96.14	\$96.14	No Change
Utility Coordinator	\$125.00	\$150.23	\$150.23	No Change
Corsair				
CATEGORY	Original Rate	Change Order No. 3 Approved CPI Increase 09/19/23	Change Order No. 4	Description
Project Manager	\$223.90		\$269.08	CPI Increase
Senior Engineer	\$189.45		\$227.68	CPI Increase
Project Engineer	\$152.66		\$183.47	CPI Increase
Design Engineer	\$129.99		\$156.22	CPI Increase
Engineer in Training	\$104.12		\$125.13	CPI Increase
Senior Eng. Tech	\$109.60		\$131.72	CPI Increase
Engineer Tech	\$93.94		\$112.90	CPI Increase
Junior Engineer Tech	\$72.02		\$86.55	CPI Increase
Admin/Clerical	\$67.73		\$81.40	CPI Increase
CD&P				
CATEGORY	Original Rate	Change Order No. 3 Approved CPI Increase 09/19/23	Change Order No. 4	Description
Principal	\$200.00		\$240.36	CPI Increase
Project Manager	\$160.00		\$192.29	CPI Increase
Specialist	\$125.00		\$150.23	CPI Increase
Designer	\$100.00		\$120.18	CPI Increase
Coordinator	\$75.00		\$90.14	CPI Increase

RATE SCHEDULE

DIRECT EXPENSES				
CATEGORY	Original Rate	Change Order No. 3 Approved 09/19/23	Change Order No. 4	Description
Postage		Current Postage Rate	Current Postage Rate	No Change
Mileage (per mile)	Current Federal Rate	Current Federal Rate	Current Federal Rate	No Change
Photocopies B/W (8.5 x 11)	\$0.10	\$0.10	\$0.10	No Change
Photocopies B/W (11 x 17)	\$0.30	\$0.30	\$0.30	No Change
Photocopies Color (8.5 x 11)	\$1.50	\$1.50	\$1.50	No Change
Photocopies Color (11 x 17)	\$2.00	\$2.00	\$2.00	No Change
Foam Board Exhibit (36 x 48)		\$50.00	\$50.00	No Change
Cardstock Color (8.5 x 11)		\$1.10	\$1.10	No Change
BlueLine Prints (23 x 36)		\$5.00	\$5.00	No Change
Bond Paper Plot (BlueLine/Blackline)		\$0.25	\$0.25	No Change
Plots (B/W on Bond)		\$0.50	\$0.50	No Change
Plots (Color on Bond)		\$1.50	\$1.50	No Change
Plots (Color on Photographic Paper)		\$9.00	\$9.00	No Change
Photocopies (Large Roll Plot)	\$30.00		\$30.00	No Change
GPS Rental	\$100.00	\$100.00	\$100.00	No Change
GEOKIT (field)	\$45.00	\$45.00	\$45.00	No Change
Research	\$750.00	\$750.00	\$750.00	No Change
TARL Curation Fee	\$61.00		\$61.00	No Change
Curator (Drawer & Tx Archaeological Research Lab For artifact & report)	\$3,720.00		3720	No Change
CD Archive	\$5.00	\$5.00	\$5.00	No Change
Miscellaneous (Copies, Supplies, and Postage)	\$250.00		\$250.00	No Change
Lamination		\$3.00	\$3.00	No Change
Personal Protective Equipment (hat, vest, gloves, boots, hearing prot., glasses) (per employee)	\$125.000		\$125.000	No Change
Traffic Control Services, Arrow Boards, Attenuator trucks- Medium Project (includes labor, equipment and fuel (per day)	\$2,700.00		\$2,700.00	No Change
California Bearing Ratio (Single Sample without MD Curve)- ASTM D1883 (per Each)	\$320.00		\$320.00	No Change
Soil Boring/Rock Coring without TCP (<60 ft) (per LF)	\$38.00		\$38.00	No Change
Unconfined Compressive Strength (Soil)- ASTM D2166 (per each)	\$55.00		\$55.00	No Change
Determining Moisture Content in Soil Materials - Tex-103-E (per each)	\$12.00		\$12.00	No Change
Determining Liquid Limits of Solid- Tex-104-E (per each)	\$35.00		\$35.00	No Change
Determining Plastic Limits of Soils - Tex - 105-E (per each)	\$35.00		\$35.00	No Change
Particle Size Analysis of Soils - Tex- 110-E (per each)	\$85.00		\$85.00	No Change
Determining the Amount of Material in Soils Finer than the 75 micrometer (No. 200) Sieve- Tex-111-E (per each)	\$45.00		\$45.00	No Change
Laboratory Compaction Characteristics and Moisture- Density Relationship of Subgrade, Embankment Soils, and Backfill Materials - Tex-114-E (per each)	\$270.00		\$270.00	No Change
Bentonite Grouting of Boreholes - Bentonite Chips (per LF)	\$9.00		\$9.00	No Change
Determing Sulfate Content in Soils - Colorimetric Method Tex-145-E (per each)	\$45.00		\$45.00	No Change
Mobilization of Drilling Rig (Trip Less than 100 miles from office to site) (per each)	\$450.00		\$450.00	No Change

CPI Adjustment Calculation

BASE (1982-84) = 100	100
August 2019 (PSA Execution)	246.953
June 2023 (Proposed)	296.789
Percent Increase	20.18%



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding, P.E., Transportation Director

Sponsor:

Commissioner Shell

Agenda Item:

Discussion and possible action to authorize the Court to execute Contract Amendment No. 6 to increase the contract compensation cap by \$20,000.00 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 \$20,000.00 from \$4,900,000.00 to \$4,920,000.00. This will allow for the execution of Supplemental No. 2 to Work Authorization No. 4 in the amount of \$19,918.00, which authorizes utility coordination with three utilities on the Phase 1 intersection improvements (0805-04-038) and provide utility information as requested by the Texas Department of Transportation (TxDOT).

Fiscal Impact:

Amount Requested: \$20,000.00

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

\$20,000 - Increase RM3237 Engineering 020-710-00-767.5621_400

(\$20,000) - Decrease Road Materials 020-710-00.5351

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: discretionary exemption pursuant to Texas Local Government Code Ch. 262.024(a)(4) a personal or professional service & pre-qualified under Request for Qualifications (RFQ) 2016-P13 Professional Engineering Services

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

Attachments

RM3237Safety-ASI-Amendment06

CONTRACT AMENDMENT NO. 6
TO
HAYS COUNTY
CONTRACT FOR ENGINEERING SERVICES

HAYS COUNTY ROAD BOND PROJECT: PS&E Services for the FM 3237 Safety
Improvement Project from RM 150 to RM 12 ("Project")

THIS CONTRACT AMENDMENT NO. 6 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 NO. 2 on May 12, 2020; and AMENDMENT NO. 3 on December 21, 2021; and AMENDMENT NO. 4 on July 11, 2023; and AMENDMENT NO. 5 on November 21, 2023

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 \$4,900,000.00;

WHEREAS, the Rate Schedule in Exhibit D of the Contract are limited to the rates noted in said Exhibit D; and,

WHEREAS, it has become necessary to amend the Contract.

AGREEMENT

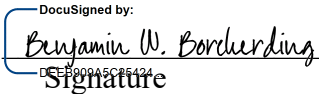
NOW, THEREFORE, premises considered, the County and the Engineer agree that the Contract is amended as follows:

- I. The Compensation Cap under Article 5 of the Contract is hereby increased from \$4,900,000.00 to \$4,920,000.00.

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, in duplicate, to be effective as of the date of the last party’s execution below.

ENGINEER:

By:  _____
Signature

Benjamin Borcharding
Printed Name

Vice President / Partner
Title

12/26/2023
Date

COUNTY:

By: _____
Signature

Printed Name

Title

Date


1/24/2024



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding, P.E., Transportation Director

Sponsor:

Commissioner Ingalsbe

Co-Sponsor:

Commissioner Cohen

Agenda Item

Discussion and possible action to authorize the Court to execute Contract Amendment No. 1 amending the Exhibit D billing rates in the Professional Services Agreement between Hays County and WSB & Associates, Inc. dba WSB Engineers and Surveyors, Inc. for the East Side Corridor project in Precincts 1 and 2. There is no cost increase associated with this contract document. **INGALSBE/COHEN/BORCHERDING**

Summary

The requested Contract Amendment No. 1 proposes to update the Exhibit D - Rate Schedule from the original contract executed May 10, 2022 utilizing the CPI rate adjustment language in the master contract. This project is funded by the Transportation Department.

Attachments

EastSideCorridor-WSB-Amendment01

CONTRACT AMENDMENT NO. 1
TO
HAYS COUNTY
CONTRACT FOR ENGINEERING SERVICES

HAYS COUNTY ROAD BOND PROJECT: East Side Corridor (“Project”)

THIS CONTRACT AMENDMENT NO. 1 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 **WSB & Associates, Inc. dba WSB Engineers and Surveyors, 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 **May 10, 2022** (the “Contract”);

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 **\$996,900.00**; and,

WHEREAS, the Rate Schedule in Exhibit D of the Contract are limited to the rates noted in said Exhibit D; 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 hourly Rates in the original Exhibit D of the Contract are hereby amended as shown in the attached revised Exhibit D (must be attached).

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: _____
Signature

Daniel A. Rogers
Printed Name

Principal
Title

1/24/2024
Date

COUNTY:

By: _____
Signature

Printed Name

Title

Date

Attachments: Exhibit D



1/24/2024

EXHIBIT D - RATE SCHEDULE

CPI ADJUSTMENT CALCULATION

BASE (1982-84) = 100
 May 2022 PSA SIGNED
 November 2023
 DELTA

100
 283.307 <https://www.bls.gov/regions/southeast/news-release/2022/>
 298.930 <https://www.bls.gov/regions/southeast/news-release/consu>
 5.51%

WSB & Associates East Side Corridor Project		
	RATE SCHEDULE IN PSA EXHIBIT D (per hour)	PROPOSED RATE (per hour)
Principal	\$ 275.00	\$ 290.16
Project Manager	\$ 240.00	\$ 253.23
Senior Project Engineer	\$ 210.00	\$ 221.58
Project Engineer III	\$ 195.00	\$ 205.75
Project Engineer II	\$ 175.00	\$ 184.65
Project Engineer I	\$ 150.00	\$ 158.27
Graduate Engineer III	\$ 120.00	\$ 126.62
Graduate Engineer II	\$ 115.00	\$ 121.34
Graduate Engineer I	\$ 110.00	\$ 116.07
Senior Engineering Technician	\$ 160.00	\$ 168.82
Engineering Tech III	\$ 135.00	\$ 142.44
Engineering Tech II	\$ 110.00	\$ 116.07
Engineering Tech I	\$ 90.00	\$ 94.96
Senior Landscape Architect	\$ 165.00	\$ 174.10
Landscape Architect	\$ 150.00	\$ 158.27
Senior Planner	\$ 195.00	\$ 205.75
Planner III	\$ 140.00	\$ 147.72
Planner II	\$ 120.00	\$ 126.62
Planner I	\$ 100.00	\$ 105.51
Senior Environmental Scientist	\$ 195.00	\$ 205.75
Environmental Scientist III	\$ 175.00	\$ 184.65
Environmental Scientist II	\$ 150.00	\$ 158.27
Environmental Scientist I	\$ 125.00	\$ 131.89
Senior GIS Specialist	\$ 125.00	\$ 131.89
GIS Specialist III	\$ 100.00	\$ 105.51
GIS Specialist II	\$ 90.00	\$ 94.96
GIS Specialist I	\$ 80.00	\$ 84.41
ROW Project Manager	\$ 210.00	\$ 221.58
Senior ROW Relocation Agent	\$ 195.00	\$ 205.75
Project Analyst II	\$ 115.00	\$ 121.34
Administrative Assistant II	\$ 80.00	\$ 84.41
Administrative Assistant I	\$ 70.00	\$ 73.86
CD&P (Sub-Consultant)		
Principal	\$ 200.00	\$ 211.03
PI Manager	\$ 175.00	\$ 184.65
Lead PI Specialist	\$ 150.00	\$ 158.27
PI Specialist	\$ 125.00	\$ 131.89
PI Coordinator	\$ 90.00	\$ 94.96

CPI Rate Adjustments: Rates will remain firm for the initial first year of the Contract and such rates shall be deemed the “Initial Base Rates”. Engineer must request rate adjustments, in writing, at least thirty (30) days prior to each annual anniversary date of the Contract and any rate changes will take effect on the first day following the prior year. If Engineer fails to request a CPI rate adjustment, as set forth herein, the adjustment will be effective thirty (30) days after the County receives Engineer’s written request. No retroactive rate adjustments will be allowed.

EXHIBIT D - RATE SCHEDULE

Price adjustments will be made in accordance with changes in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, South Region (Base 1982-84 = 100).

The rate adjustment will be determined by multiplying the Initial Base Rates by a fraction, the numerator of which is the index number for most recently released index before each annual anniversary date of the Contract and the denominator of which is the index number for the first month of the Contract (the index number for the month in which the Contract was originally executed). If the products are greater than the Initial Base Rates, County will pay the greater amounts as the rates during the successive year until the next rate adjustment. Rates for each successive year will never be less than the Initial Base Rates.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry H. Borcharding

Sponsor:

Commissioner Ingalsbe

Agenda Item

Discussion and possible action to approve the selection of HDR, Inc for the purpose of performing an intersection warrant study at the FM110/Yarrington Road eastern intersection and authorize staff to negotiate a contract after receiving scope and fee documents. **INGALSBE/BORCHERDING**

Summary

A warrant study is needed at the intersection of FM 110 and Yarrington Road due to accidents at this location.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

Agenda Item

Discussion and possible action to consider the acceptance of road construction & surface drainage improvements, release the subdivision bond #9426154 in the amount of \$2,576,049.56, and acceptance of the 2-year maintenance bond #341693Q in the amount of \$140,202.02 for Waterstone Unit A. **INGALSBIE/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. A construction bond was not issued for this project, so there isn't anything to release at this time.

Attachments

Waterstone Unit A Backup

**HAYS COUNTY
TRANSPORTATION DEPARTMENT**



P.O. BOX 906
San Marcos, TX 78667

512/393-7385
FAX: 512/393-7393

January 30, 2024

Honorable Ruben Becerra
111 E. San Antonio Street
San Marcos, Texas 78666

RE: Waterstone Unit A

Dear Commissioners and Judge:

Jacob Harris, P.E. with Doucet & Associates, Inc., is requesting that Hays County accept construction of the roads and surface drainage improvements for Waterstone Unit A, release the subdivision bond #9426154 in the amount of \$2,576,049.56, and accept the 2-year maintenance bond #341693Q in the amount of \$140,202.02. 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



7401B Highway 71 West, Suite 160
Austin, TX 78735
Office: 512.583.2600
Fax: 800.587.2817
DoucetEngineers.com

**ENGINEER'S CONCURRENCE LETTER FOR
FINAL INSPECTION OF THE HAYS COUNTY
INFRASTRUCTURE**

Date: 08/30/2023

TO WHOM IT MAY CONCERN

Project: Waterstone Unit A – Hays County (Engineer's Project # 1636-009A)

Owner/Developer's Name and Address:

Lennar Homes of Texas Land & Construction, LTD
13620 N FM 620, Bldf. B, Suite 150
Austin, TX 78717

Contractor's Name and Address:

JL Gray Construction
408 Fannin Ave
Round Rock, TX 78664

We (Doucet & Associates, Inc.), as a consulting engineer for the above-referenced project, designed the construction plans and provided regular construction observation as well as construction administration support during the course of construction.

As of this day, a Doucet field representative made a final visual inspection of the project site and is in full agreement that all Hays County roadway improvements including residential and collector streets (as required by the plans) were constructed per the approved construction plans with no significant deviation. Therefore, we verify that the work performed under this contract is complete and this letter serves a concurrence for the final inspection/acceptance of the project.

Please feel free to contact us with any questions or concerns.

Sincerely,

Jacob Harris, P.E.
Project Manager
Doucet & Associates, Inc.
TBPELS Firm #F-3937
TBPELS Surveying Firm #10194551



08/30/2023

**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company** at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company**:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND

Bond No.: 341693Q

KNOW ALL PERSONS BY THESE PRESENTS, that we, JL Gray Construction, Inc., as Principal and Westfield Insurance Company, a corporation organized and doing business under and by virtue of the laws of the State of Ohio and duly licensed to conduct surety business in the State of Texas, as Surety, are held and firmly bound unto Hays County as Obligee, in the sum of One Hundred Forty Thousand Two Hundred Two & 02/100 (\$140,202.02) Dollars, for which payment, will and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITIONS OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee(s) to: Waterstone Unit A

WHEREAS, said agreement provided that Principal shall guarantee replacement and repair of improvements as described therein for a period of 2 year(s) following final acceptance of said improvements: Waterstone Unit A - Street & Drainage Improvements

NOW THEREFORE, if the above Principal shall indemnify the Obligee for all loss that Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of 2 year (s) from and after acceptance of said improvements by Obligee, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact.

This 3rd day of August, 2023.

JL Gray Construction, Inc.
Principal

By:  _____

Westfield Insurance Company
Surety

Seal

Local Recording Agency:
K & S Insurance
P O Box 277
Rockwall, TX 75087

By:  _____
Jack Nottingham, Attorney-in-fact

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 05/25/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 4220012 14

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 25th day of MAY A.D., 2022.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this 25th day of MAY A.D., 2022, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio
County of Medina ss.:

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 3rd day of August A.D., 2023.



Frank A. Carrino, Secretary

BOND #: 9426154

KNOW ALL MEN BY THESE PRESENTS, That we, Lennar Homes of Texas Land and Construction, Ltd.
as **Principal** and Fidelity and Deposit Company of Maryland

a Corporation of the State of Illinois, authorized to write Surety Bonds in the State of Texas,
as **Surety**, are jointly and severally held and firmly bound unto HAYS COUNTY, in the sum of: _____

Two million five hundred seventy six thousand forty nine and 56/

Cents Lawful money of the United States of America, for which payment well and truly to be
made, we bind ourselves, executors, administrator, heirs, successors, and assigns, jointly and severally
by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT,

WHEREAS, the HAYS COUNTY has required the **Principal** to post fiscal surety for the following purpose:

To ensure completion of roadway and drainage improvements as itemized by the Subdivision Fiscal
Estimate in connection with the Waterstone Unit A

We understand and agree that the only requirement necessary for drawing any part or all the total
amount of this bond is a letter of request from the HAYS COUNTY signed by the HAYS COUNTY JUDGE, or
designee, stating that the HAYS COUNTY considers such a drawing on this bond amount necessary. No
further substantiation of the necessity of the draw is required by the bond.

NOW, THEREFORE, if the said **Principal** shall furnish, install and complete, under the inspection and to
the satisfaction of the HAYS COUNTY and in accordance with the above described specifications, the
Improvements aforesaid in said project as hereinbefore listed, then this obligation be null and void;
otherwise, it shall remain in full force and effect.

Signed, sealed and dated this 18th day of March, 2023

PRINCIPAL: Lennar Homes of Texas Land and Construction, Ltd., a
Texas limited partnership By: U.S. Home, LLC, a
Delaware limited liability company, its General Partner

SURETY: Fidelity and Deposit Company of Maryland

1299 Zurich Way, 5th Floor

Schaumburg, IL 60196-1056

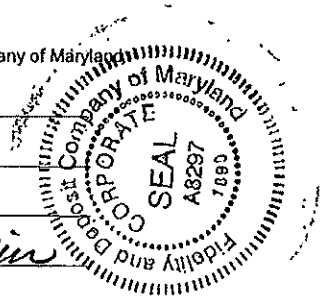
By: Kenneth Blaken

Name and Title: KENNETH BLAKEN
AUTHORIZED AGENT

By: Mary Ann Garcia

Name and Title: Mary Ann Garcia

Attorney-in-Fact



NOTE: Attach original Power of Attorney for Surety signatory

Name, mailing address and email address of registered agent of Surety in Texas:

Mary Ann Garcia - Marsh USA LLC

2929 Allen Parkway, Suite 2500

Houston, Texas 77019

Email: mary.ann.garcia@marsh.com

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**


KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Mary Ann Garcia, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

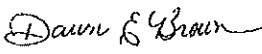
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 11th day of July, A.D. 2019.



ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND


By: **Robert D. Murray**
Vice President

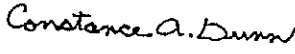

By: **Dawn E. Brown**
Secretary

**State of Maryland
County of Baltimore**

On this 11th day of July, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President** and **Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.




Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

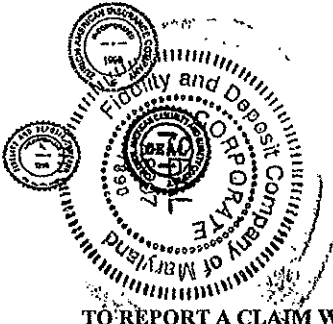
This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 16th day of March, 2023.



Brian M. Hodges

Brian M. Hodges, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577



Texas Important Notice

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Zurich North America's toll-free telephone number for information or to make a complaint at:

1-800-382-2150

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104

Austin, TX 78714-9104

Fax: (512) 490-1007

Web: www.tdi.texas.gov

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener información o para presentar una queja:

Usted puede llamar al número de teléfono gratuito de Zurich North America's para obtener información o para presentar una queja al:

1-800-382-2150

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a:

P.O. Box 149104

Austin, TX 78714-9104

Fax: (512) 490-1007

Sitio web: www.tdi.texas.gov

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS POR PRIMAS DE SEGUROS O RECLAMACIONES:

Si tiene una disputa relacionada con su prima de seguro o con una reclamación, usted debe comunicarse con la compañía primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas.

ADJUNTE ESTE AVISO A SU PÓLIZA: Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto.

**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.

23010454 BOND
03/30/2023 08:21:01 AM Total Fees: \$0.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas





Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Jerry Borcharding

Sponsor:

Commissioner Ingalsbe

Agenda Item

Discussion and possible action to consider the acceptance of road construction & surface drainage improvements, release the Letter of Credit #FTFC-23233 in the amount of \$2,252,601.83, acceptance of the 2-year maintenance bond #355371J in the amount of \$103,974.35, and accept the 1-year revegetation bond #355373G in the amount of \$4,709.55 for Waterstone Unit C. **INGALSBE/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. A construction bond was not issued for this project, so there isn't anything to release at this time.

Attachments

Waterstone Unit C Backup

**HAYS COUNTY
TRANSPORTATION DEPARTMENT**



P.O. BOX 906
San Marcos, TX 78667

512/393-7385
FAX: 512/393-7393

January 30, 2024

Honorable Ruben Becerra
111 E. San Antonio Street
San Marcos, Texas 78666

RE: Waterstone Unit C

Dear Commissioners and Judge:

Jacob Harris, P.E. with Doucet & Associates, Inc., is requesting that Hays County accept construction of the roads and surface drainage improvements for Waterstone, Unit C, release the Letter of Credit #FTFC-23233 in the amount of \$2,252,601.83, accept the 2-year maintenance bond #355371J in the amount of \$103,974.35, and accept the 1-year revegetation bond #355373G in the amount of \$4,709.55. 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



7401B Highway 71 West, Suite 160
Austin, TX 78735
Office: 512.583.2600
Fax: 800.587.2817
DoucetEngineers.com

**ENGINEER'S CONCURRENCE LETTER FOR
FINAL INSPECTION OF THE HAYS COUNTY
INFRASTRUCTURE**

Date: 09/18/2023

TO WHOM IT MAY CONCERN

Project: Waterstone Unit C – Hays County (Engineer's Project # 1636-009A)

Owner/Developer's Name and Address:

Lennar Homes of Texas Land & Construction, LTD
13620 N FM 620, Bldf. B, Suite 150
Austin, TX 78717

Contractor's Name and Address:

JL Gray Construction
408 Fannin Ave
Round Rock, TX 78664

We (Doucet & Associates, Inc.), as a consulting engineer for the above-referenced project, designed the construction plans and provided regular construction observation as well as construction administration support during the course of construction.

As of this day, a Doucet field representative made a final visual inspection of the project site and is in full agreement that all Hays County roadway improvements including residential and collector streets (as required by the plans) were constructed per the approved construction plans with no significant deviation. Therefore, we verify that the work performed under this contract is complete and this letter serves a concurrence for the final inspection/acceptance of the project.

Please feel free to contact us with any questions or concerns.

Sincerely,

Jacob Harris, P.E.
Project Manager
Doucet & Associates, Inc.
TBPELS Firm #F-3937
TBPELS Surveying Firm #10194551



9/18/2023

**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company** at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company**:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND

Bond No.: 355371J

KNOW ALL PERSONS BY THESE PRESENTS, that we, JL Gray Construction, Inc., as Principal and Westfield Insurance Company, a corporation organized and doing business under and by virtue of the laws of the State of Ohio and duly licensed to conduct surety business in the State of Texas, as Surety, are held and firmly bound unto Hays County as Obligee, in the sum of One Hundred Three Thousand Nine Hundred Seventy-four & 35/100 (\$103,974.35) Dollars, for which payment, will and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITIONS OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee(s) to: Waterstone Unit C

WHEREAS, said agreement provided that Principal shall guarantee replacement and repair of improvements as described therein for a period of 2 year(s) following final acceptance of said improvements: Waterstone Unit C - Street & Drainage Improvements

NOW THEREFORE, if the above Principal shall indemnify the Obligee for all loss that Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of 2 year (s) from and after acceptance of said improvements by Obligee, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact.

This 20th day of September, 2023.

JL Gray Construction, Inc.
Principal

By: _____

Westfield Insurance Company
Surety

Seal

Local Recording Agency:
K & S Insurance
P O Box 277
Rockwall, TX 75087

By: _____
Jack Nottingham, Attorney-in-fact

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 05/25/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 4220012 14

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint

TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this **25th** day of **MAY** A.D., 2022.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this **25th** day of **MAY** A.D., 2022, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



State of Ohio
County of Medina ss.:

David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this **20th** day of **September** A.D., 2023.



Frank A. Carrino, Secretary

**IMPORTANT NOTICE
STATE OF TEXAS
COMPLAINT PROCEDURES**

1. IMPORTANT NOTICE

To obtain information or make a complaint:

2. You may contact your agent.

3. You may call **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** toll-free telephone number for information or to make a complaint at:

1-800-243-0210

4. You may also write to **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company** at:

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6. You may write to the Texas Department of Insurance, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

7. PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent, Westfield Insurance Company, Westfield National Insurance Company, or Ohio Farmers Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8. ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con su (title) al (telephone number).

Usted puede llamar al numero de telefono gratis de **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company's** para informacion o para someter una queja al:

1-800-243-0210

Usted tambien puede escribir a **Westfield Insurance Company, Westfield National Insurance Company, and/or Ohio Farmers Insurance Company:**

**Attn: Bond Claims
One Park Circle
P O Box 5001
Westfield Center, OH 44251-5001
Fax #330-887-0840**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companies, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas, Consumer Protection Section (MC 111-1A):

P.O. Box 149091
Austin, TX 78714-9091
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente, Westfield Insurance Company, Westfield National Insurance Company, o Ohio Farmers Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

MAINTENANCE BOND

Bond No.: 355373G

KNOW ALL PERSONS BY THESE PRESENTS, that we, JL Gray Construction, Inc., as Principal and Westfield Insurance Company, a corporation organized and doing business under and by virtue of the laws of the State of Ohio and duly licensed to conduct surety business in the State of Texas, as Surety, are held and firmly bound unto Hays County as Obligee, in the sum of Four Thousand Seven Hundred Nine & 55/100 (\$4,709.55) Dollars, for which payment, will and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these presents.

THE CONDITIONS OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal entered into an agreement or agreements with said Obligee(s) to: Waterstone Unit C (Revegetation)

WHEREAS, said agreement provided that Principal shall guarantee replacement and repair of improvements as described therein for a period of 1 year(s) following final acceptance of said improvements: Waterstone Unit C (Revegetation)

NOW THEREFORE, if the above Principal shall indemnify the Obligee for all loss that Obligee may sustain by reason of any defective materials or workmanship which become apparent during the period of 1 year (s) from and after acceptance of said improvements by Obligee, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact.

This 17th day of October, 2023.

JL Gray Construction, Inc.
Principal

By: _____

Westfield Insurance Company
Surety

Seal

Local Recording Agency:
K & S Insurance
P O Box 277
Rockwall, TX 75087

By: _____

Jack Nottingham, Attorney-in-fact

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
TONY FIERRO, JOHNNY MOSS, JAY JORDAN, MISTIE BECK, JEREMY BARNETT, JADE PORTER, ROBERT G. KANUTH, JARRETT WILLSON, JACK NOTTINGHAM, BRADY WILSON, BRENNAN WILLIAMSON, JOINTLY OR SEVERALLY

of **ROCKWALL** and State of **TX** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship in any penal limit.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact, may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their **National Surety Leader** and **Senior Executive** and their corporate seals to be hereto affixed this 25th day of **MAY** A.D., 2022.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By:
Gary W. Stumper, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this 25th day of **MAY** A.D., 2022, before me personally came **Gary W. Stumper** to me known, who, being by me duly sworn, did depose and say, that he resides in **Medina, OH**; that he is **National Surety Leader and Senior Executive** of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



State of Ohio
County of Medina ss.:

David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, **Frank A. Carrino**, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 17th day of **October** A.D., 2023.



Frank A. Carrino, Secretary

FIRST TEXAS FIDELITY COMPANY

5505 BLUE LAGOON DRIVE, 7TH FLOOR W
MIAMI, FLORIDA 33126
PHONE (305) 553-8724



23025270 LETTER OF CREDIT Total Pages: 3
Filed and Recorded: 07/13/2023 01:46:33 PM

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

23025270 Page 2 of 3



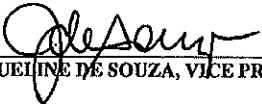
THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NO. FTFC-23233

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

**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.

23025270 LETTEROFCREDIT
07/13/2023 01:46:33 PM Total Fees: \$0.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas

Elaine H. Cárdenas





AGENDA ITEM REQUEST FORM: J. 1.

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Colby Machacek, County Planner

Sponsor:

Commissioner Shell

Agenda Item

PLN-2413-PC; Call for a Public Hearing on February 27th, 2024, followed by discussion and possible action regarding The Cliffs of Onion Creek, Lot 1, Replat. **SHELL/PACHECO**

Summary

Cliffs of Onion Creek is a platted subdivision located off of Loop 165 within the subdivision in Dripping Springs and within Commissioner Precinct 3.

The Replat will establish two (2) lots across 22.49 acres. This consists of a portion of Lot 1 being replatted to Lot 1A to generate access to to-be-platted raw acreage to be known as Lot 1B.

Water utility is provided by individual private wells. Wastewater utility will be accomplished by individual on-site sewage facilities.

Attachments

Cover Letter

Plat

Location Map



Hays County Commissioners Court Agenda Request

Meeting Date: January 30th, 2024

Requested By: Colby Machacek, County Planner

Prepared By: Colby Machacek, County Planner

Department Director: Marcus Pacheco

Sponsoring Court Member: Commissioner Lon Shell, Precinct 3

AGENDA ITEM LANGUAGE:

PLN-2413-PC; Call for a Public Hearing on February 27th, 2024 followed by discussion and possible action regarding the Cliffs of Onion Creek, Lot 1, Replat.

BACKGROUND/SUMMARY OF REQUEST:

- A) Cliffs of Onion Creek is a platted subdivision located off of Loop 165 within the subdivision in Dripping Springs and within Commissioner Precinct 3.
- B) The Replat will establish two (2) lots across 22.49 acres. This consists of a portion of Lot 1 being replatted to Lot 1A to generate access to to-be-platted raw acreage to be known as Lot 1B.
- C) Water utility is provided by individual private wells. Wastewater utility will be accomplished by individual on-site sewage facilities.

STAFF COMMENTS:

Staff has begun review pursuant to Texas Local Government Code Chapter 232 and the current Development Regulations of Hays County as set forth. At such time, the application has no variances requested.

The actions remaining are to complete review, hold a public hearing on February 27th, 2024 and seek Commissioners Court final determination based on staff recommendation.

ATTACHMENTS/EXHIBITS:

Plat

Location Map

THE CLIFFS OF ONION CREEK
BEING ALL OF THAT CERTAIN 11.56 ACRE TRACT OF LAND SITUATED IN THE J. MASSEY SURVEY
NO. 11, ABSTRACT NO. 306, HAYS COUNTY, TEXAS AND RECORDED IN DOCUMENT NO. 23037885,
OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS AND ALL OF LOT 1, THE CLIFFS OF ONION CREEK
RECORDED IN VOLUME 6, PAGES 143-144, PLAT RECORDS, HAYS COUNTY, TEXAS
ESTABLISHING LOT 1A AND LOT 1B

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 WIMBERLEY FOR SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE
CITY OF WIMBERLEY.

MARCUS PACHECO
DIRECTOR
HAYS COUNTY DEVELOPMENT SERVICES

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.

NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL
HAYS COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

ERIC VAN GAASBEEK, R.S., C.F.M.
HAYS COUNTY FLOODPLAIN ADMINISTRATOR

DATE

MARCUS PACHECO,
DIRECTOR
HAYS COUNTY DEVELOPMENT SERVICES

DATE

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 ____, 20____
AT ____ O'CLOCK ____ M., AND DULY RECORDED ON THE ____ DAY
OF ____, A.D., 20____ AT ____ O'CLOCK ____ M., IN THE
OFFICIAL PUBLIC 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

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS,
HEREBY STATE THAT TO THE BEST OF MY SKILL AND KNOWLEDGE THIS PLAT IS TRUE AND
CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER
MY SUPERVISION ON THE GROUND AND THE CORNER MONUMENTS WERE PROPERLY PLACED
UNDER MY SUPERVISION.

PRELIMINARY, NOT TO BE RECORDED OR ANY PURPOSE.

10/09/2023

REGISTERED PROFESSIONAL LAND SURVEYOR
CHRISTOPHER JURICA, R.P.L.S. NO. 6344

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT I, ANN LIVINGSTON, OWNER OF LOT 1, THE CLIFFS OF
ONION CREEK RECORDED IN VOLUME 6, PAGES 143-144, PLAT RECORDS, HAYS COUNTY, TEXAS AS
CONVEYED TO ME BY DEED RECORDED IN VOLUME 1135, PAGE 201, OFFICIAL PUBLIC RECORDS, HAYS
COUNTY, TEXAS, DO HEREBY PLAT THIS PROPERTY TO BE KNOWN AS LOT 1A AND LOT 1B, THE
CLIFFS OF ONION CREEK, IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND
ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC
THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

ANN LIVINGSTON
801 LOOP 160
DRIPPING SPRINGS, TEXAS 78620

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED ANN LIVINGSTON,
KNOWN TO ME TO BE PERSONS WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS
THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE OF, THIS THE ____ DAY OF
____, A.D., 20____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



EXISTING CONFIGURATION
1" = 200'

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT I, KELLI DE LA TORRE, OWNER OF THAT CERTAIN 11.56
ACRE TRACT OF LAND AS CONVEYED TO ME BY DEED RECORDED IN DOCUMENT NO. 23037885,
OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, DO HEREBY PLAT THIS PROPERTY TO BE KNOWN
AS LOT 1B, THE CLIFFS OF ONION CREEK, IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT
TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE
TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

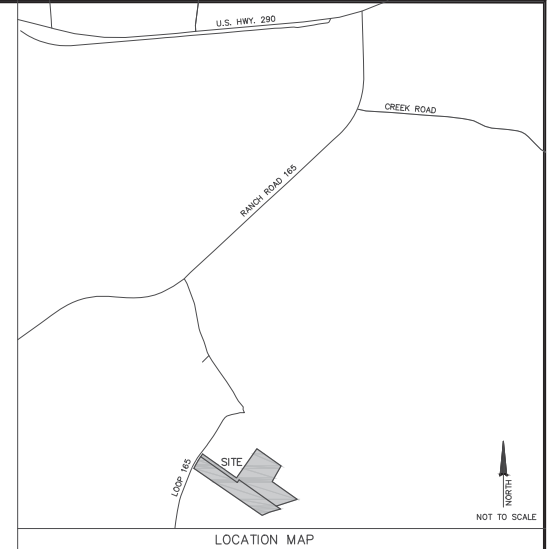
KELLI DE LA TORRE

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED KELLI DE LA
TORRE, KNOWN TO ME TO BE PERSONS WHOSE NAME IS SUBSCRIBED TO THE FOREGOING
INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FOR THE PURPOSES AND
CONSIDERATIONS THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE OF, THIS THE ____ DAY OF
____, A.D., 20____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



UTILITY INFORMATION

WATER: ON-SITE INDIVIDUAL WELL
SEWER: INDIVIDUAL ON-SITE SEWAGE FACILITIES
ELECTRICITY: FEDERALES ELECTRIC COOPERATIVE, INC.

PLAT INFORMATION

TOTAL NUMBER OF LOTS:	2
AVERAGE SIZE OF LOTS:	11.24 ACRES
NUMBER OF LOTS OVER 10 ACRES:	1
NUMBER OF LOTS 5-10 ACRES:	1
NUMBER OF LOTS 2-5 ACRES:	0
NUMBER OF LOTS 1-2 ACRES:	0
NUMBER OF LOTS LESS THAN 1 ACRE:	0

DRIVEWAY PERMIT STATEMENT

"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 PUBLIC ROADWAY UNLESS (A) A PERMIT FOR USE OF THE COUNTY ROADWAY RIGHT-OF-WAY HAS
BEEN ISSUED UNDER CHAPTER 751, AND, (B) THE DRIVEWAY SATISFIES THE MINIMUM SPACING
REQUIREMENT SET FORTH IN CHAPTER 751 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS."

GENERAL NOTES

- 1) MAILBOXES PLACED WITHIN THE ROW, SHALL BE AN APPROVED TxDOT OR FHWA DESIGN.
- 2) THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE CONTRIBUTING ZONE OF THE EDWARDS AQUIFER.
- 3) THIS SUBDIVISION DOES NOT LIE WITHIN THE BOUNDARIES OF THE RECHARGE ZONE OF THE EDWARDS AQUIFER.
- 4) A PORTION OF THIS SUBDIVISION LIES WITHIN A SPECIAL FLOOD HAZARD AREA (ZONE A), AS DELINEATED ON FLOOD INSURANCE RATE MAP, PANEL #4209C0100F, DATED SEPTEMBER 2, 2005. ANY DEPICTION OR NOTE ON THIS SURVEY OR ANY STATEMENT CONTAINED ON THIS SURVEY CONCERNING SPECIAL FLOOD HAZARD AREAS DOES NOT CONSTITUTE A REPRESENTATION OR WARRANTY BY THE SURVEYOR THAT THE PROPERTY AND/OR STRUCTURES LOCATED ABOVE SPECIAL FLOOD HAZARD AREAS WILL BE FREE FROM FLOODING OR FLOOD DAMAGE OR THAT FLOODING DOES NOT OCCUR ABOVE SPECIAL FLOOD HAZARD AREAS. THE SPECIAL FLOOD HAZARD AREA SHOWN HEREON WAS DIGITIZED (SCALED AND APPROXIMATE) FROM SAID NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP AND WAS NOT SURVEYED ON THE GROUND. SPECIAL FLOOD HAZARD AREAS ARE SUBJECT TO CHANGE AS DETAILED STUDIES OCCUR AND/OR WATERSHED OR CHANNEL CONDITIONS CHANGE. THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAP (FIRM) IS FOR USE IN ADMINISTERING THE NFIP. IT DOES NOT NECESSARILY IDENTIFY ALL AREAS SUBJECT TO FLOODING, PARTICULARLY FROM LOCAL DRAINAGE SOURCES OF SMALL SIZE, OR ALL PLANIMETRIC FEATURES OUTSIDE SPECIAL FLOOD HAZARD AREAS.
- 5) NO PORTION OF THIS TRACT LIES WITHIN THE BOUNDARIES OF ANY MUNICIPALITY'S CORPORATE CITY LIMITS OR AREA OF EXTRA TERRITORIAL JURISDICTION.
- 6) THIS SUBDIVISION LIES WITHIN THE JOHNSON CITY INDEPENDENT SCHOOL DISTRICT.
- 7) ALL CULVERTS, WHEN REQUIRED SHALL COMPLY WITH THE CURRENT HAYS COUNTY STANDARD, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 705, SUBCHAPTER 8.03.
- 8) THIS SUBDIVISION IS LOCATED WITHIN EMERGENCY SERVICE DISTRICT #1 AND #6.
- 9) BASIS OF BEARING: TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83.
- 10) ADJOINERS ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY.
- 11) IMPROVEMENTS NOT SHOWN HEREON NOR LOCATED BY THIS SURVEY.
- 12) THIS SUBDIVISION LIES WITHIN THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT.
- 13) THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, THEREFORE ALL SETBACKS, EASEMENTS, COVENANTS, ENCUMBRANCES ZONING OR LAND USE REGULATIONS MAY NOT BE SHOWN HEREON. THE SURVEYOR DID NOT COMPLETE AN ABSTRACT OF TITLE.

WCR
LAND SURVEYING
P.O. BOX 481 BLANCO, TX 78606
830-833-3010 INFO@WCR.LANDSURVEYING.COM
TOPICS: FIRM #1014135

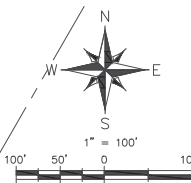
JOB NO.: 2078-23

DRAWN BY: CJJ

CHECKED BY: CJJ

SHEET: 1 OF 2

- LEGEND**
- () RECORD CALL PER PLAT
 - SET 1/2" IRON ROD W/ A YELLOW "WCR" PLASTIC CAP
 - ⊙ SET MAG NAIL W/ A YELLOW "WCR" PLASTIC WASHER
 - FOUND 1/2" IRON ROD (UNLESS OTHERWISE NOTED)
 - ⦿ FOUND 5/8" IRON ROD
 - ⊗ FOUND MAG NAIL
 - ⊙ FOUND COTTON SPINDLE
 - ⦿ FOUND IRON ROD W/ A YELLOW "ALLSTAR 5729" PLASTIC CAP



HUDSON RANCH PARTNERS, LLC
CALLED 10.03 ACRES
VOL. 3407 PG. 342
OFFICIAL PUBLIC RECORDS
PROPERTY ID: 127742
H.C.C.A.D.

10' PUBLIC UTILITY EASEMENT
VOL. 1139 PG. 201
OFFICIAL PUBLIC RECORDS

DEDICATED PUBLIC
RIGHT-OF-WAY
VOL. 6, PG. 143-144
PLAT RECORDS

L=60.02' (305.33' R6)
R=1367.07' (1367.07' R6)
Δ=002°30'55" (1247°48' R6)
CB=N36°22'47"E (N31°25'06"E R6)
CD=60.01' (304.69' R6)

L=245.37' (305.33' R6)
R=1367.07' (1367.07' R6)
Δ=010°17'02" (1247°48' R6)
CB=N29°58'49"E (N31°25'06"E R6)
CD=245.04' (304.69' R6)

MATTHEW FORD AND TINA FORD
CALLED 11.57 ACRES
DOC. NO. 19037359
OFFICIAL PUBLIC RECORDS
(R9)
PROPERTY ID: 162592
H.C.C.A.D.

LINDA DAVENPORT BREWER
REMAINDER OF 26.44 ACRES
VOL. 3171 PG. 295
OFFICIAL PUBLIC RECORDS
PROPERTY ID: 127481
H.C.C.A.D.

LINDA DAVENPORT BREWER
REMAINDER OF CALLED 48.47 ACRES
VOL. 1682 PG. 469
OFFICIAL PUBLIC RECORDS
PROPERTY ID: 16405
H.C.C.A.D.

LOT 2
THE CLIFFS OF ONION CREEK
VOL. 6 PG. 143-144
PLAT RECORDS
PROPERTY ID: 60326
H.C.C.A.D.

LOT 2
SHEPLEY RANCH
VOL. 9 PGS. 181-182
PLAT RECORDS
HUDSON RANCH PARTNERS, LLC
PROPERTY ID: 96139
H.C.C.A.D.

LOT 1A
9.81 ACRES

LOT 1B
12.68 ACRES
RELLI DE LA TORRE
1.56 ACRES
DOC. NO. 23037885
OFFICIAL PUBLIC RECORDS

FOUND 1/2" IRON ROD
W/ PLASTIC CAP

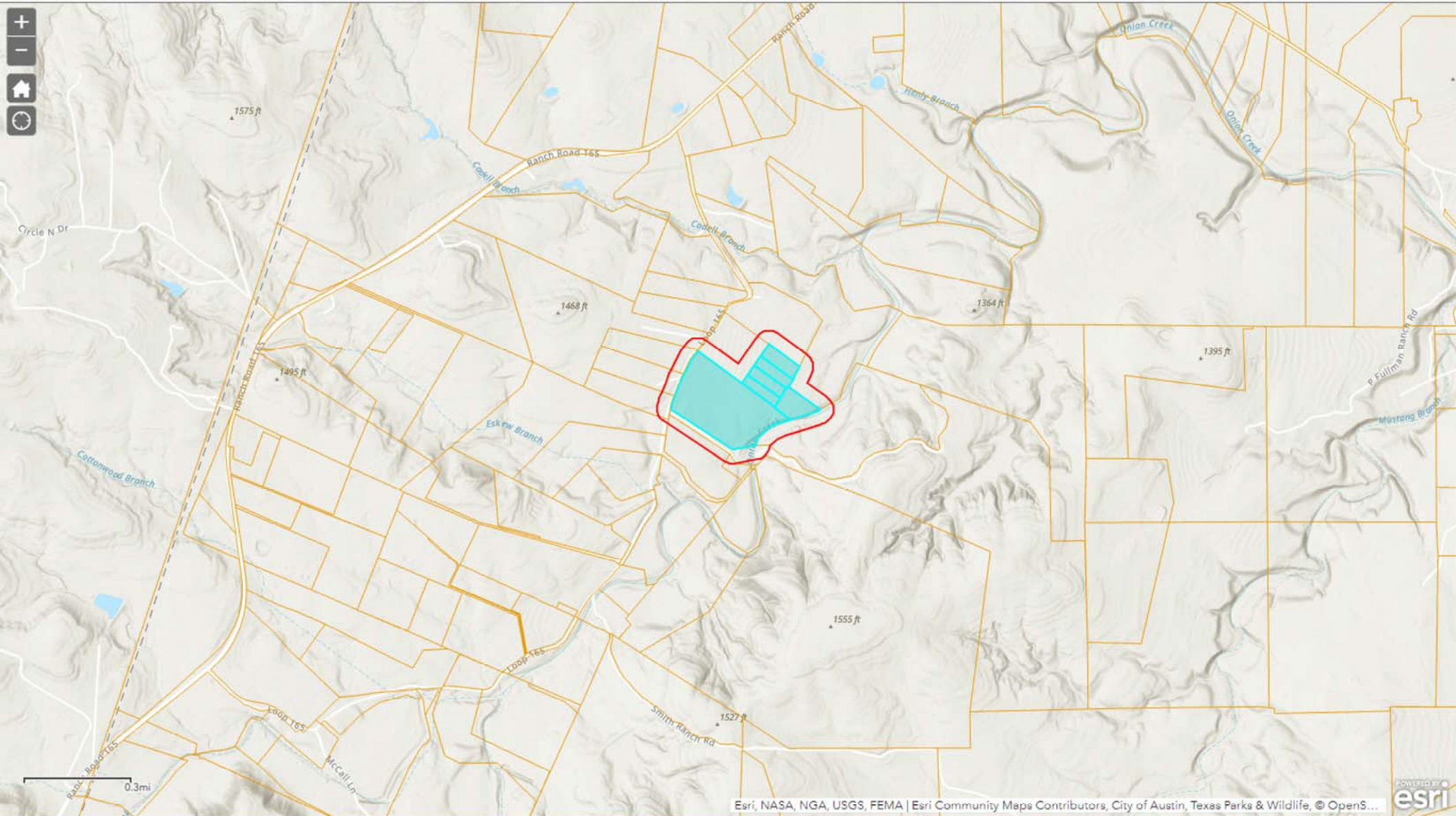
APPROXIMATE/SCALED LOCATION ZONE A

FOUND IRON PIPE

ONION CREEK

WCR
LAND SURVEYING
P.O. BOX 481 BLANCO, TX 78606
830-633-3010 INFO@WCRLANDSURVEYING.COM
TIPPEL'S FIRM #10194135

JOB NO.: 2078-23
DRAWN BY: CJJ
CHECKED BY: CJJ
SHEET: 2 OF 2





Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Marcus Pacheco, Director

Sponsor:

Commissioner Ingalsbe

Agenda Item

PLN-2401-PC; Hold a Public Hearing, followed by discussion and possible action regarding the Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A. **INGALSBE/PACHECO**

Summary

Kia Vista Estates, Sec 1, Replat of Lot 36, and Reserve Tract A is a proposed subdivision plat consisting of 2 lots across 3.18 acres located along Marks Way in Kyle and Precinct 1. Water utility will be accomplished by GoForth Water Supply Corp. Wastewater supply will be accomplished by individual on-site sewage facilities.

Attachments

Cover Letter

Plat

Location Map

Application Disapproved Letter



Hays County Commissioners Court Agenda Request

Meeting Date: January 30th, 2024

Requested By: Marcus Pacheco, Director

Prepared By: Efren Chavez, County Planner

Department Director: Marcus Pacheco

Sponsoring Court Member: Commissioner Debbie Ingalsbe, Precinct 1

AGENDA ITEM LANGUAGE:

PLN-2401-PC; Hold a Public Hearing, followed by discussion and possible action regarding the Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A.

BACKGROUND/SUMMARY OF REQUEST:

- A) Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract A is a proposed subdivision plat consisting of 2 lots across 3.18 acres located along Marks Way in Kyle and Precinct 1.
- B) Water utility will be accomplished by Goforth Water Supply Corp.
- C) Wastewater utility will be accomplished by individual 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 actions remaining are to hold a public hearing, followed by discussion and possible action on the determination for the Replat.

The application has no variances requested.

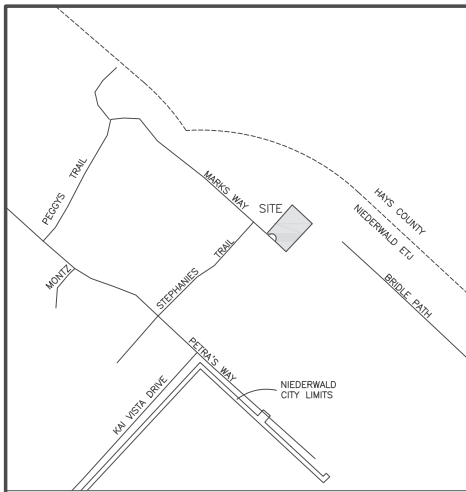
Staff recommends Disapproval for Kai Vista Estates, Sec 1, Replat of Lot 36 and Reserve Tract "A" based on the deficiencies as outlined in the backup.

ATTACHMENTS/EXHIBITS:

Plat

Location Map

Application Disapproval Letter



VICINITY MAP - 1"=1000'

SURVEYORS NOTES

1. FENCES MEANDER.
2. BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
3. ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0315F, DATED 9/2/2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
4. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT, THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
5. ORIGINAL SURVEY LINES SHOWN HEREON ARE APPROXIMATE ONLY AND WERE NOT LOCATED ON THE GROUND. THIS SURVEYOR DID NOT DETERMINE THE EXISTENCE OF ANY VACANCY, EXCESS, OR SHORTAGE OF AREA IN ANY OF THE ORIGINAL GRANTS SHOWN HEREON.
6. ACCORDING TO SCALING FROM TCEC MAPS NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE AND NO PORTION OF THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE CONTRIBUTING ZONE OF THE BARTON SPRINGS SEGMENT OF THE EDWARDS AQUIFER.
7. THIS SUBDIVISION LIES WITHIN THE BOUNDARIES OF THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
8. ALL OF THIS LOT LIES WITHIN THE BOUNDARIES OF THE CITY OF NIEDERWALD EXTRA TERRITORIAL JURISDICTION.
9. THIS SUBDIVISION LIES WITHIN HAYS ESD NO. 9 AND CALDWELL ESD NO. 1.
10. THIS SUBDIVISION LIES WITHIN THE PLUM CREEK GROUNDWATER CONSERVATION DISTRICT.
11. THIS TRACT IS SUBJECT TO RESTRICTIONS RECORDED IN VOLUME 349, PAGE 533 OF THE HAYS COUNTY DEED RECORDS. ACCORDING TO THE RESTRICTIONS THE BUILDING SETBACKS ARE: FRONT - 40', SIDES - 25'.
12. THIS TRACT IS SUBJECT TO AN ELECTRIC EASEMENT RECORDED IN VOLUME 348, PAGE 864 OF THE HAYS COUNTY DEED RECORDS. THERE ARE NO PLOTTABLE ITEMS CONTAINED IN THE DEED.
13. THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

STATE OF TEXAS*
COUNTY OF HAYS*

I, THE UNDERSIGNED OWNER OF LAND SHOWN ON THIS PLAT, AND DESIGNATED HEREIN AS REPLAT OF LOT 36 AND RESERVE TRACT "A", KAI VISTA ESTATES, SECTION 1, IN THE ETJ OF THE CITY OF NIEDERWALD, TEXAS AND WHOSE NAME IS SUBSCRIBED HERETO, HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS PARKS, WATER COURSES, DRAINS, EASEMENTS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

BEVERLY ANN WATTS, OWNER

STATE OF TEXAS*
COUNTY OF HAYS*

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED BEVERLY ANN WATTS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF _____, A.D., 20____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

STATE OF TEXAS *
COUNTY OF HAYS *

I, ELAINE CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, 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 SAID COURT IN

BOOK _____, PAGE _____.

RUBEN BECERRA
COUNTY JUDGE
HAYS COUNTY, TEXAS

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 THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON THE ____ DAY OF _____, 20____, AT ____ O'CLOCK ____M., AND DULY RECORDED ON THE ____ DAY OF _____, 20____, AT ____ O'CLOCK ____M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN BOOK _____, PAGE _____.

ELAINE H. CARDENAS, COUNTY CLERK
HAYS COUNTY, TEXAS

THIS REPLAT OF LOT 36 AND RESERVE TRACT "A", KAI VISTA ESTATES, SECTION 1, HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS, AND IS HEREBY APPROVED BY SUCH COUNCIL.

MAYOR

CITY SECRETARY

GOFORTH WATER SUPPLY CORPORATION, AN APPROVED PUBLIC WATER SUPPLY SYSTEM HAS ADEQUATE QUANTITY TO PROVIDE SERVICE TO EACH LOT IN ACCORDANCE WITH THE POLICIES OF THE WATER SUPPLY SYSTEM.

GENERAL MANAGER, GOFORTH WATER SUPPLY CORPORATION

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY STATE THAT TO THE BEST OF MY SKILL AND KNOWLEDGE THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED UNDER MY SUPERVISION.

REGISTERED PROFESSIONAL LAND SURVEYOR
KYLE SMITH, R.P.L.S. NO. 5307



LA MIRAJ, LTD. TO
ARMANDO T. ESTRADA ET AL
4/5/2011 (19.967 AC.)

REPLAT

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 ENVIRONMENTAL HEALTH.

NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL HAYS COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

MARCUS PACHECO, DIRECTOR,
HAYS COUNTY DEVELOPMENT SERVICES

ERIC VAN GAASBEEK, R.S., C.F.M.
HAYS COUNTY FLOODPLAIN ADMINISTRATOR

DATE

DATE

LEGEND

- HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
- HAYS COUNTY PLAT RECORDS
- 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND OR DIAMETER NOTED
- BUILDING SETBACK LINE
- PUBLIC UTILITY EASEMENT
- PLAT RECORDED IN

CURVE	RADIUS	DELTA	ANGLE	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	35.00'	65°35'44"	40.07'	S 79°32'49" E	37.92'	
C2	50.00'	101°07'06"	88.24'	S 61°48'15" E	77.23'	
C3	50.00'	138°30'45"	120.88'	S 58°00'41" W	193.52'	

ORIGINAL SCALE
1" = 100'

LOT SIZE CATEGORIES

- TOTAL AREA = 3.18 AC.
- TOTAL NUMBER OF LOTS = 2
- AVERAGE LOT SIZE = 1.59 AC.
- NUMBER OF LOTS OVER 10 ACRES = 0
- NUMBER OF LOTS 5 - 10 ACRES = 0
- NUMBER OF LOTS 2 - 5 ACRES = 1
- NUMBER OF LOTS 1 - 2 ACRES = 1
- NUMBER OF LOTS LESS THAN 1 ACRE = 0

UTILITIES:
ELECTRIC-PEDERNALES ELECTRIC COOPERATIVE
WATER-GOFORTH WATER SUPPLY CORP.
SEWER-INDIVIDUAL ON-SITE SEWAGE FACILITIES

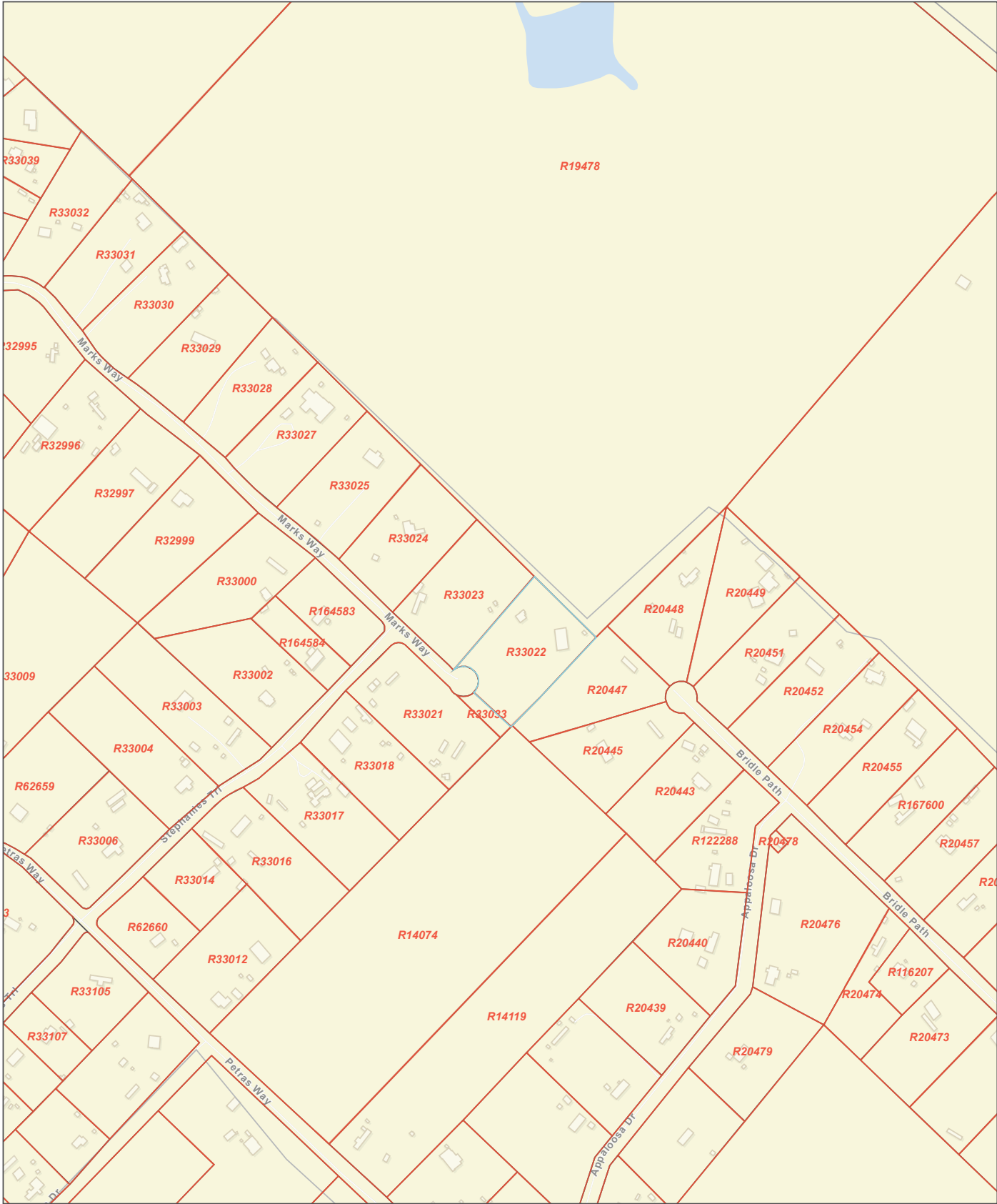
DRIVEWAY PERMIT STATEMENT:
DRIVEWAYS SHALL COMPLY WITH CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS, AND BE PERMITTED THROUGH THE TRANSPORTATION DEPARTMENT OF HAYS COUNTY UNDER CHAPTER 751.

CLIENT: RODRIGUEZ, MARCELO
DATE: 3/22/2023
OFFICE: K. SMITH
CREW: C. SMITH, BANKS
FB/PG: 778/28
PLAT NO. 28166-23-c

BYRN & ASSOCIATES, INC.
SURVEYING
P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945
FIRM NO. 10070500

REPLAT OF LOT 36 AND
RESERVE TRACT "A",
KAI VISTA ESTATES, SECTION 1,
HAYS COUNTY, TEXAS

Hays CAD Web Map

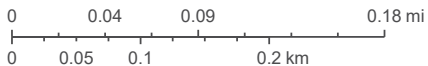


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Parcels

— Lot Lines

1:4,514



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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 Development Services

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) www.hayscountytexas.com

Application Disapproved Letter

Owner Information:

Beverley Watt

700 Marks Way, Kyle TX 78640

Date: 1/24/2024

Project ID: PLN-2401-PC

Project Name: Kai Vista Estates, Section 1, Replat
of Lot 36 and Reserve Tract "A"

Application Status: Application Disapproved

To whom it may concern,

Hays County staff has completed a detailed review for the above Application. The Application has been disapproved. A list of comments / deficiencies is outlined below. A written response to each comment / deficiency is required. In addition to the written response, any updated documents, files, or other information must be uploaded to the [MGO Connect Customer Portal](#). Acceptance of any documents, files, or other information shall not be construed as approval.

Floodplain Review

1. PLN-2401-PC - §3.07. Identification of Special Flood Hazard Areas. (B) A drainage area of sixty-four (64) acres or greater within a contributing watershed for which a Regulatory floodplain has not previously been identified shall require the identification of a local floodplain. For areas of flow with less than sixty-four (64) acres of contributing area, the identification of a local flood plain is not required; however, any concentrated flow necessitates the dedication of a drainage easement.

As there are 172 acres of upland drainage coming through this lot, you must create a Localized Floodplain and place it in a drainage easement (DE). If you do not want to place the Localize Floodplain in a drainage easement you will need to provide Finished Floor Elevations (FFE), and a permanent benchmark.

Planning Review

1. **General:** Please revise the PUE BSLs to 10' as the original plat states.
2. **Per Hays County Development Regulations Chapter 701 § 9.04 and 705 § 12.03** – Conduct and provide proof of Posted Notice.
Per Hays County Development Regulations Chapter 701 § 9.09 and 705 § 12.05 – Conduct and provide proof of Published 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.

Thank you,

Efren Chavez



Hays County Development Services

2171 Yarrington Rd, Suite 100, Kyle TX 78640

(P) 512-393-2150 (Web) www.hayscountytexas.com

Planning Division

Hays County Development Services



AGENDA ITEM REQUEST FORM: J. 3.

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Marcus Pacheco, Director

Sponsor:

Commissioner Smith

Agenda Item

PLN-2208-PC; Discussion and possible action regarding Carol Oaks, Lot 6, Replat. **SMITH/PACHECO**

Summary

Carol Oaks, Lot 6, Replat is a proposed subdivision plat consisting of 2 lots across 4.93 acres located along Carol Ann Drive in Austin and Precinct 4. Water utility will be accomplished by private wells. Wastewater utility will be accomplished by individual on-site sewage facilities.

Attachments

Cover Letter

Location Map

Plat



Hays County Commissioners Court Agenda Request

Meeting Date: January 30th, 2024

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-2208-PC; Discussion and possible action regarding the Carol Oaks, Lot 6, Replat.

BACKGROUND/SUMMARY OF REQUEST:

- A) Carol Oaks, Lot 6, Replat is a proposed subdivision plat located off Carol Ann Drive in Austin and Precinct 4.
- B) The proposed replat will establish 2 lots across 4.93 acres.
- C) Water utility will be accomplished by private wells. Wastewater utility will be accomplished by individual 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 item remaining is action on final determination for the Replat.

The application has no variances requested.

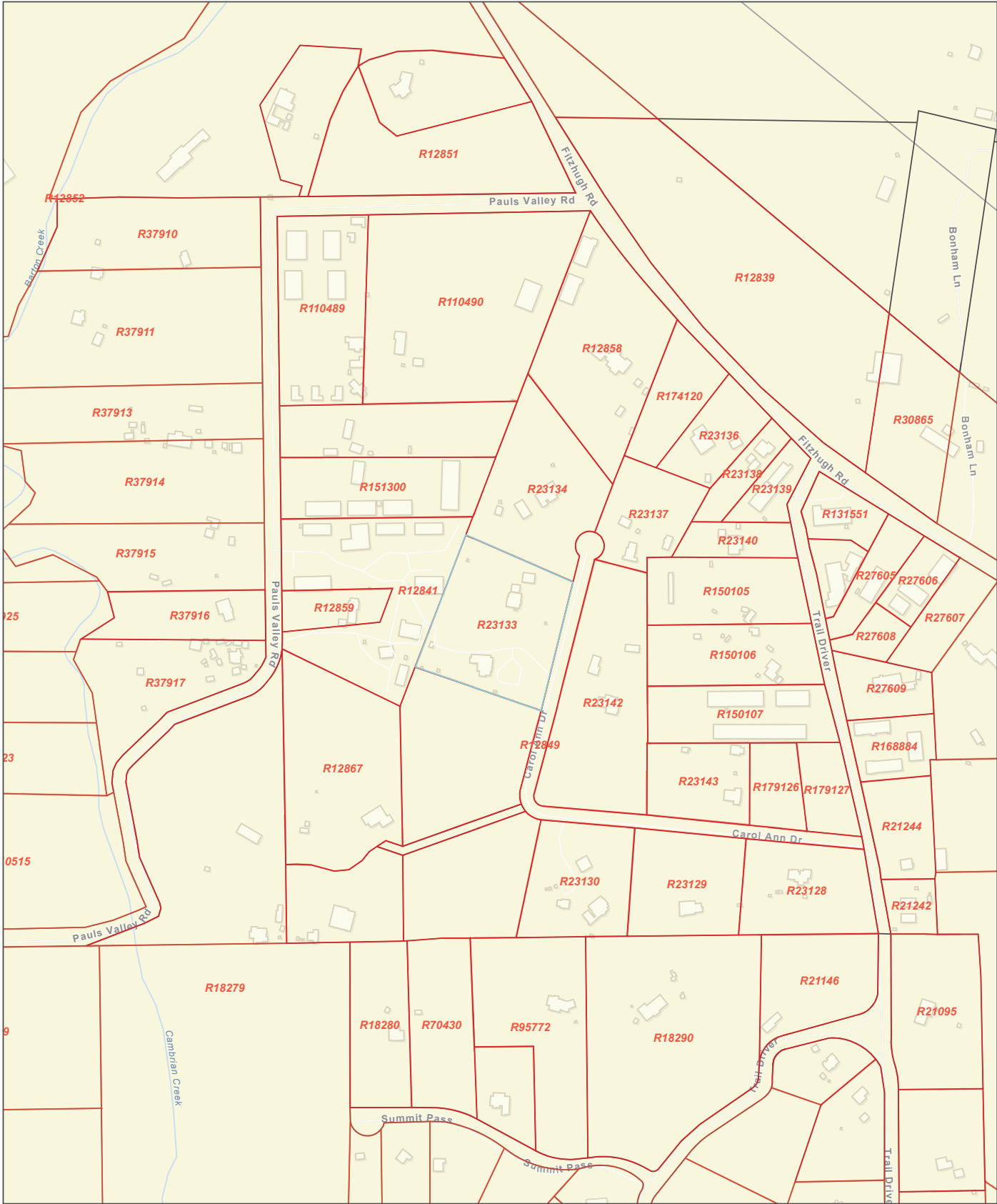
Staff recommends Approval for Carol Oaks, Lot 6, Replat.

ATTACHMENTS/EXHIBITS:

Plat

Location Map

Hays CAD Web Map

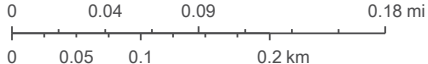


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Parcels

— Lot Lines

1:4,514



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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

RESUBDIVISION OF LOT 6
CAROL OAKS

TOTAL AREA: 4.93 ACRES
TOTAL NUMBER OF LOTS: 2
AVERAGE SIZE OF LOTS: 2.46 ACRES
NUMBER OF LOTS OVER 10 ACRES: 0
NUMBER OF LOTS 5-10 ACRES: 0
NUMBER OF LOTS 2-5 ACRES: 2
NUMBER OF LOTS 1-2 ACRES: 0
NUMBER OF LOTS LESS THAN 1 ACRE: 0

TOTAL AREA: 4.93 ACRES
TOTAL NUMBER OF LOTS: 2
AVERAGE SIZE OF LOTS: 2.46 ACRES
NUMBER OF LOTS OVER 10 ACRES: 0
NUMBER OF LOTS 5-10 ACRES: 0
NUMBER OF LOTS 2-5 ACRES: 2
NUMBER OF LOTS 1-2 ACRES: 0
NUMBER OF LOTS LESS THAN 1 ACRE: 0

Hemphill Subdivision
Instrument No. 16031218

Arlin Park, LLC
(6.33 Acres)
Volume 4867 Page 286
formerly
(7.43 Acres)
Volume 4867 Page 286
described in
Volume 249 Page 41

CAROL OAKS
Volume 2 Page 48
Hays County Plat Records

LOT 7

LOT 9

LOT 10

6B
2.32 Acres

6 A
2.61 Acres

LOT 5

LOT 12

LOT 13

CAROL ANN DRIVE (50')

ORIENTATION NOTE:
The orientation for this plat was based upon
the State Plane Coordinate System.
(4204 -- Texas South Central Zone)

SCALE: 1" = 100'

- Legend

- ⊗ ½" Iron Rod Found
- ◇ ½" Iron Rod Found with plastic cap imprinted with "Carson and Bush"
- ½" Iron Rod Set with plastic cap imprinted with "Holt Carson, Inc."
- IPF ⊗ ½" Iron Pipe Found
- ▲ 60D Nail Found

0 100 200 300

graphic scale



IPF ② ½" Iron
▲ 60D No

FITZHUGH ROAD

S43°16'23"E
direct tie

476.05

TRAIL DRIVER

CAROL ANN DRIVE

1032140

RESUBDIVISION OF LOT 6 CAROL OAKS

THE STATE OF TEXAS
THE COUNTY OF HAYS
KNOW ALL MEN BY THESE PRESENTS:
THAT WE, DELTON ARLIN GLASS AND MICHELLE GLASS, OWNERS OF LOT 6, CAROL OAKS,
A SUBDIVISION IN HAYS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT
THEREOF RECORDED IN VOLUME 2 PAGE 48 OF THE PLAT RECORDS OF
HAYS COUNTY, TEXAS, AS CONVEYED TO US BY GENERAL WARRANTY DEED
RECORDED IN INSTRUMENT No. 19020899 OF THE OFFICIAL PUBLIC RECORDS
OF HAYS COUNTY, TEXAS,
DO HEREBY RESUBDIVIDE SAID LOT 6 IN ACCORDANCE WITH THE
ATTACHED MAP OR PLAT TO BE KNOWN AS

RESUBDIVISION OF LOT 6 CAROL OAKS

SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETOFORE GRANTED AND
NOT RELEASED, AND DO HEREBY DEDICATE TO THE PUBLIC USE OF THE STREETS
AND EASEMENTS SHOWN HEREON.

WITNESS MY HAND THIS THE ____ DAY OF _____ A.D., 20__.

DELTON ARLIN GLASS

WITNESS MY HAND THIS THE ____ DAY OF _____ A.D., 20__.

MICHELLE GLASS

THE STATE OF TEXAS
THE COUNTY OF HAYS
BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED DELTON ARLIN GLASS
KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT AND HE ACKNOWLEDGED TO ME THAT SHE
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

THE STATE OF TEXAS
THE COUNTY OF HAYS
BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED MICHELLE GLASS
KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT AND SHE ACKNOWLEDGED TO ME THAT SHE
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

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. 2022, 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. 2022.

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. 2022.

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
CONDITIONS OF PUBLIC ROADWAYS, NO DRIVEWAY CONSTRUCTED ON ANY LOT
WITHIN THIS SUBDIVISION SHALL BE PERMITTED ACCESS ONTO A 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
OF HAYS COUNTY, TEXAS, ASSUME NO OBLIGATION TO BUILD THE STREETS,
ROADS, OR OTHER PUBLIC THOROUGHFARES SHOWN ON THIS PLAT OR OF
CONSTRUCTING ANY BRIDGES OR CULVERTS IN CONNECTION THEREWITH.

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.

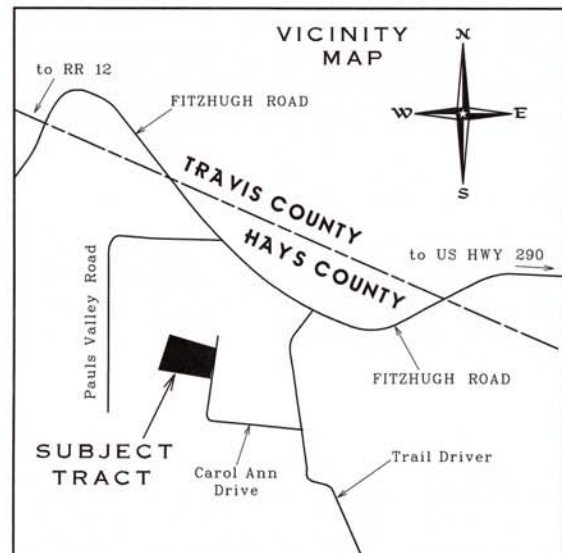
NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL
ALL HAYS COUNTY DEVELOPMENT AUTHORIZATION REQUIREMENTS HAVE BEEN SATISFIED.

MARCUS PACHECO DIRECTOR
HAYS COUNTY DEVELOPMENT
SERVICES DEPARTMENT

ERIC VAN GAASBEEK
HAYS COUNTY FLOODPLAIN ADMINISTRATOR

FINAL 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. NO PORTION OF THIS PROPERTY IS LOCATED WITHIN A DESIGNATED 100 YEAR
FLOOD PLAIN AS DELINEATED ON THE FLOOD INSURANCE RATE MAP PANEL No.
48209C D107 F, EFFECTIVE DATE OF SEPTEMBER 2, 2008, AS PREPARED BY THE
FEDERAL EMERGENCY MANAGEMENT AGENCY.
6. WATER SERVICE WILL BE PROVIDED TO EACH LOT FROM PRIVATE WATER WELLS.
7. WASTEWATER SERVICE WILL BE PROVIDED TO EACH LOT BY AN ON-SITE SEWAGE FACILITY.
8. ELECTRIC SERVICE WILL BE PROVIDED BY THE PEDERNALES ELECTRIC COOPERATIVE.
9. IN ORDER TO PROMOTE SAFE USE OF ROADWAYS AND TO 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 DRIVEWAY PERMIT HAS BEEN ISSUED BY HAYS COUNTY.
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. THIS SUBDIVISION LIES WITHIN THE HAYS COUNTY EMERGENCY SERVICES
DISTRICT No. 1 AND 6.



STATE OF TEXAS
COUNTY OF TRAVIS
KNOW ALL MEN BY THESE PRESENTS:
THAT I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS,
HEREBY CERTIFY THAT THIS PLAT COMPLIES WITH THE SURVEY RELATED REQUIREMENTS OF THE
HAYS COUNTY SUBDIVISION REGULATIONS AND FURTHER CERTIFY THAT THIS PLAT IS TRUE AND
CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER
MY SUPERVISION ON THE GROUND AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED
UNDER MY SUPERVISION.

HOLT CARSON
REGISTERED PROFESSIONAL LAND SURVEYOR No. 5166
HOLT CARSON, INC.
1904 FORTVIEW ROAD AUSTIN, TEXAS 78704
FIRM 10050700

DATE



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Mike Jones

Sponsor:

Judge Becerra

Co-Sponsor:

Commissioner Shell

Agenda Item:

Discussion and possible action to accept a Proposal from Water & Earth Technologies (WET) related to the replacement of the live feed camera station at National Resources Conservation Service (NRCS) Dam # 5; authorize a discretionary exemption pursuant to Texas Local Government Code 262.024 (a)(7)(D) and amend the budget accordingly.

BECERRA/SHELL/MIKE JONES

Summary:

High winds on January 8, 2024 damaged the live feed camera station at NRCS Dam #5. The aluminum pole broke where it was joined to the aluminum base, causing the entire pole to fall onto the rip-rap on the downstream face of the dam. The sharp rip-rap rocks damaged the majority of the components of the camera station. Water & Earth Technologies, Inc. (WET) recommends that the aluminum pole and aluminum base be replaced with a heavier duty steel pole and steel base, as well as reduce the height of the pole. This should prevent this failure from happening again. WET will remove the damaged camera station and purchase all the necessary replacement hardware. WET will then fabricate a new camera pole and mount all the camera station components to it. Once fully programmed and bench tested, WET will then install the camera station onto the existing foundation and field test the camera station to confirm that it is working correctly.

Fiscal Impact:

Amount Requested: \$11,230

Line Item Number: 001-656-00.5719_700

Budget Office:

Source of Funds: General Fund

Budget Amendment Required Y/N?: Yes

Comments: N/A

\$11,230 - Increase Misc. Equipment_Capital 001-656-00.5719_700

(\$11,230) - Decrease Equipment Maintenance & Repair 001-656-00.5411

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Discretionary Exemption Texas Local Government Code 262.024 (a)(7)(D) captive replacement parts or components for equipment.

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

Attachments

WET Quote XPHC056

Discretionary Exemption Certification



1/12/2024

Quotation XPHC056

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

3/12/2024

Prepared by:

Water & Earth Technologies, Inc.

40504 Weld County Road 17
Severance, CO 80524
Phone (970) 225-6080
email: RNiedenzu@wetec.us

Quote Title: XPHC056 - Dam 5 Camera Station Replacement

Quote Information

High winds on January 8, 2024 damaged the live feed camera station at NRCS Dam #5. The aluminum pole broke where it was joined to the aluminum base, causing the entire pole to fall onto the riprap on the downstream face of the dam. The sharp riprap rocks damaged the majority of the components of the camera station. Water & Earth Technologies, Inc. (WET) recommends that the aluminum pole and aluminum base be replaced with a heavier duty steel pole and steel base, as well as reduce the height of the pole. This should prevent this failure from happening again. WET will remove the damaged camera station and purchase all the necessary replacement hardware. WET will then fabricate a new camera pole and mount all the camera station components to it. Once fully programmed and bench tested, WET will then install the camera station onto the existing foundation and field test the camera station to confirm that it is working correctly.

Item Description	Model No.	Unit Price	Qty	Amount
IP Camera		\$ 810.00	1	\$ 810.00
NEMA Enclosure	026522	\$ 950.00	1	\$ 950.00
10 ft Steel Traffic Pole	7537	\$ 300.00	1	\$ 300.00
Steel Traffic Pole Base	7332	\$ 550.00	1	\$ 550.00
Traffic Pole Collar, Cabinet Mount & Misc Hardware		\$ 220.00	1	\$ 220.00
160 Watt Solar Panel	SLP-160S-12	\$ 380.00	2	\$ 760.00
Solar Panel Pole Mount	UNI-SP/02	\$ 240.00	1	\$ 240.00
30 Amp Solar Regulator	PS-30M	\$ 220.00	1	\$ 220.00
100 Amp Battery	SLA1189	\$ 350.00	4	\$ 1,400.00
Terminal Blocks		\$ 70.00	1	\$ 70.00
Cellular Modem	RV50	\$ 860.00	1	\$ 860.00
Cellular Antenna	PY-M-BNF00-07W	\$ 180.00	2	\$ 360.00
			Items Total	\$ 6,740.00

Labor Description	ENG I Hours	Field Tech II Hours	Amount
Remove the damaged pole	3	0	\$ 450.00
Purchasing replacement hardware	4	0	\$ 600.00
Fabricate new camera pole	12	2	\$ 2,040.00
Setup new camera & modem	2	0	\$ 300.00
Bench test camera station	2	0	\$ 300.00
Install & field test camera station	8	0	\$ 800.00
		Labor Total	\$ 4,490.00

Total Cost \$ 11,230.00

Thank you for your consideration!

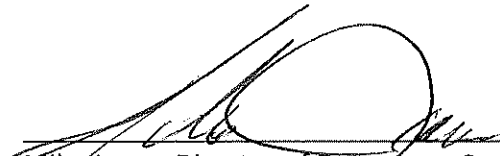
Hays County Commissioners Court

January 30, 2024

Water & Earth Technologies: National Resources Conservation Service (NRCS) Dam #5

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 recognizes 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: 01/30/2024

Requested By:

T. Crumley

Sponsor:

Commissioner Shell

Agenda Item:

Discussion and possible action to approve one new Data Program Specialist position with equipment in the Hays County Health Department effective February 1, 2024, and amend the budget accordingly. **SHELL/T.CRUMLEY**

Summary:

Director of Countywide Operations is requesting a new Data Program Specialist position at grade 120 and supporting equipment with a start date of February 1, 2024. This position is being requested to assist the Hays County Health Department with collecting information and data and to manage records. In addition, the position will compare and analyze statistical information for general and public health related matters. The following equipment is needed:

- 1 Laptop
- 2 Monitors
- 1 Adobe Pro License
- 1 Desk phone

Fiscal Impact:

Amount Requested: \$54,598 - FY24

Line Item Number: 011-763-99-187]

Budget Office:

Source of Funds: American Rescue Plan Act (ARPA) Fund

Budget Amendment Required Y/N?: Yes

Comments: Position funding for a two period was identified during the annual budget process within the Commissioner Pct. 3 ARPA revenue loss allocation.

Data Analyst				
Grade 120				
Request		Budget Amendment		
53,688	Base Salary	35,792	011-763-99-187.5021	Increase Staff Salaries
11,403	Fringe	2,219	011-763-99-187.5101_100	Increase FICA
12,230	Insurances	519	011-763-99-187.5101_200	Increase Medicare
77,321	Total Annualized	4,865	011-763-99-187.5101_300	Increase Retirement
51,548	FY24 (eff 2/1/24)	7,840	011-763-99-187.5160_400	Increase Medical
1,500	Laptop	270	011-763-99-187.5160_500	Increase Dental
750	Monitors	43	011-763-99-187.5160_600	Increase Life
200	Adobe	1,500	011-763-99-187.5712_400	Increase Computer Eqpt_Ops
600	Telephone	750	011-763-99-187.5202	Increase Data Supplies
54,598	Total Request	200	011-763-99-187.5429	Increase Software Licenses
		600	011-763-99-187.5489	Increase Telephone Exp
		(54,598)	011-763-99-187.4301	Increase Intergovernmental Revenue

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD for equipment purchased

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: Yes, \$54,598 from ARPA 2nd tranche

Comments:

**Hays County Commissioners Court**

Date: 01/30/2024

Requested By:

T. Crumley

Sponsor:

Commissioner Cohen

Co-Sponsor:

Commissioner Shell

Agenda Item:

Discussion and possible action to approve a new Behavioral Health Coordinator position with equipment in the Hays County Health Department effective February 1, 2024, and amend the budget accordingly.

COHEN/SHELL/T.CRUMLEY**Summary:**

The Director of Countywide Operations is requesting a new Behavior Health Coordinator position at grade 121 and supporting equipment with a start date of February 1, 2024. Hays County is experiencing insufficient mental health resources, particularly impacting low-income individuals. This position would provide guidance on behavioral health matters, coordinate with state, county and community organizations for the benefit of the citizens of Hays County. The following equipment is needed:

- 1 laptop
- 2 Monitors
- 1 Desk phone

Fiscal Impact:

Amount Requested: \$56,768 - FY24

Line Item Number: TBD

Budget Office:

Source of Funds: TBD

Budget Amendment Required Y/N?: Yes

Comments: Potential funding source, Opioid Settlement Fund. If approved, the annualized cost of the position (\$80,577) will be added to the FY25 budget.

Behavioral Health Coordinator				
Grade 121				
Request		Budget Amendment		
56,373	Base Salary	37,582	122-749-00.5021	Increase Staff Salaries
11,974	Fringe	2,330	122-749-00.5101_100	Increase FICA
12,230	Insurances	545	122-749-00.5101_200	Increase Medicare
80,577	Total Annualized	5,108	122-749-00.5101_300	Increase Retirement
53,718	FY24 (eff 2/1/24)	7,840	122-749-00.5160_400	Increase Medical
1,500	Laptop	270	122-749-00.5160_500	Increase Dental
750	Monitors	43	122-749-00.5160_600	Increase Life
200	Adobe	1,500	122-749-00.5712_400	Increase Computer Eqpt_Ops
600	Telephone	750	122-749-00.5202	Increase Data Supplies
56,768	Total Request	200	122-749-00.5429	Increase Software Licenses
		600	122-749-00.5489	Increase Telephone Exp
		(56,768)	122-749-00.5448	Decrease Contract Services

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD

Comments: TBD for equipment purchases

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Miller

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Discussion and possible action to authorize the purchase of consumables for employee training hosted by Human Resources. **INGALSBE/MILLER**

Summary:

The Human Resources office is hosting monthly new employee orientation training sessions and would like to purchase drink and snack consumables for the attendees. The purchases would be made from the existing training budget.

Fiscal Impact:

Amount Requested: NTE \$500 annually
Line Item Number: 001-677-00.5336

Budget Office:

Source of Funds: General Fund
Budget Amendment Required Y/N?: No
Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: TBD
Comments:

Auditor's Office

G/L Account Validated Y/N?: Yes, Employment Training and Supplies Expense
New Revenue Y/N?: N/A
Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Albert Sierra

Sponsor:

Commissioner Ingalsbe

Agenda Item:

Discussion and possible action to authorize the County Judge to execute a contract with Evoke Wellness related to substance-use treatment for participants in the Judicial Services Department and amend the budget accordingly. **INGALSBE**

Summary:

The contract will provide Judicial Services participants with residential, detox, and IOP substance-use services, and will serve those without insurance. Evoke will provide scholarships for five (5) individuals per year who meet the criteria for services and financial assessment.

Fiscal Impact:

Amount Requested: \$45,000

Line Item Number: 011-763-99-165.5448

Budget Office:

Source of Funds: American Rescue Plan Act (ARPA) Funds

Budget Amendment Required Y/N?: Yes

Comments: Salary savings due to delayed start dates of new budgeted positions are available to fund this request.

\$45,000 - Increase Contract Services 011-763-99-165.5448

(\$45,000) - Decrease Staff Salaries 011-763-99-165.5021

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Government Code Chapter 2254, Professional Services

Auditor's Office:

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:

Attachments

Contract - Judicial Services

Contract for Substance Use Treatment
Between
Hays County
And
Evoke Wellness

Contract Initiation Date: February 1, 2024

Hays County hereby referred to as the “County” enters into a contract with Evoke Wellness hereby referred to as “EW”. The purpose of this contract is to establish a collaborative contractual relationship for providing substance use services and treatment for adults participating in the Hays County Judicial Services Program hereby referred to as “HCJS”.

COLLABORATION: The County, HCJS, and EW are committed to providing the highest quality behavioral health and substance use services. The County, HCJS, and EW agree to develop this contractual relationship in a manner that promotes communication, mutual trust, and respect with the goal of benefiting the clients they each serve. HCJS and EW will strive to resolve problems at the clinical level, ensuring that decisions can be made quickly and appropriately. HCJS and EW will, whenever clinically appropriate, utilize a Coordination/Consultative approach to empower the assigned clinicians and treatment team with EW and HCJS to better address the behavioral and mental health needs of their patients and help meet established treatment goals.

CONDITIONS PERTAINING TO SUBSTANCE USE SERVICES FOR HCJS CLIENTS

1. For clients referred to EW and upon meeting the criteria for admission for a 30-day residential stay, clinicians will provide a clinical biopsychosocial assessment, creation of a comprehensive treatment plan, group, and individual counseling services, as well as such other services typically included in a residential treatment stay.
2. For clients referred to EW and upon meeting criteria for admission to the IOP (telehealth or in person), clinicians will provide clinical biopsychosocial assessment, creation of a comprehensive treatment plan, group, and individual counseling services, 24 sessions in total with 3 sessions a week for 8 weeks, individual sessions will be conducted every 2 week or as clinically necessary.
3. For clients referred to EW and upon meeting criteria for admission to Detox services, clinicians will provide clinical biopsychosocial assessment, creation of a comprehensive treatment plan, medical-assisted detox, as well as such other services typically included in a stay for medically managed detox services in a residential setting.
4. EW shall provide the services outlined above in accordance with (i) the same standard of care, skill and diligence customarily used by similar providers in the community in which such services are rendered, (ii) the requirements of applicable law, and (iii) in the same manner as provided to other RSHC clients.
5. EW will request a signed release of information that will allow clinicians to reach out to program staff in the event of change in treatment.

6. EW Clinicians reserve the right to refuse clinical services after a clinical assessment if the clinician in their professional judgment feels that client:
 - a. Would not benefit from clinical services
 - b. Does not meet criteria
 - c. Does not currently have capacity for progress in an individual therapeutic setting due to cognitive functioning and limitations and/or medical needs are beyond what the facility can manage
 - d. Needs higher medication management as evidenced by unmanaged severe mental health symptoms impeding ability to engage in treatment
7. EW will bill for all sessions in accordance with the fee for service payment arrangement attached to this contract
8. EW and HCJS will share treatment plan records. EW will share weekly to biweekly with HCJS staff and community mental health providers via phone or email updates of the court participants engagement in treatment and if progressing or regressing. HCJS will work with EW to ensure appropriate authorizations are in place pursuant to HIPAA and 42 CFR Part 2 to enable such information sharing.
9. HCJS clients will be seen by a licensed clinician while engaged in EW services who will hold one of the following licensures: LMFT, LPC, LMFT-A, LMSW, LCDC A/I or LPC-Associate. Any clinician who is currently licensed under supervision will also provide credentials of their clinical supervisor and agree to maintain supervision while providing services to HCJS clients.

PAYMENT FOR BEHAVIORAL HEALTH SERVICES

1. Judicial Services Staff will complete a financial assessment with the court participant to assess if they have insurance and the ability to pay.
2. If the court participant does have insurance accepted by Evoke, the court participant will be required to use that insurance to cover the cost.
3. If the court participant:
 - A) does not have insurance
 - B) does not have the ability to pay out of pocket for treatment

Then the County will provide the financial support to cover the full cost of treatment that the court participant needs to comply with the requirements of the court.

EW will invoice the County monthly for all services by the tenth (10th) calendar day of the month. Invoices will be net 30 days. Invoices will be sent to accountspayable@co.hays.tx.us.

4. Payments will not exceed \$45,000 during the contract period.
5. As indicated, HCJS will issue an IRS form 1099.

6. EW reserves the right to terminate services if payment is not received within 30 calendar days of invoice date.

7. Based off the Financial Assessment HCJS clients who cannot pay for treatment out-of-pocket or cannot pay the co-pay with commercial insurance may qualify for a scholarship from Evoke Wellness to receive treatment at no cost to the county. The number of people that Evoke Wellness can provide scholarships for will be maximum 5 individuals per year. These individuals will be staffed with Evoke staff and evaluated by their staff to determine that they meet criteria for their treatment services before this decision is made.

SUPPLEMENTAL TERMS AND CONDITIONS

1. HCJS and EW agree to explore in good faith all evident supplemental terms and conditions which may be of benefit to the clients, family members, and the communities served by HCJS and EW.

2. The County, HCJS, and EW agree to maintain all appropriate and applicable licenses required to perform the work as stated in this Contract

3. During the performance of this Contract, the County, HCJS, and EW agree that they shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, Vietnam era or disabled veteran status, presence of HIV/AIDS or AIDS-related illnesses, or the presence of any sensory, mental or physical handicap or genetic information. HCJS and EW further agree that they shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit such discrimination.

4. EW agrees to notify HCJS in writing within three (3) calendar days if a clinician license is suspended, revoked, voluntarily relinquished, or subject to terms of probation or other restrictions. The County, HCJS, and RSHC further agree that they will notify the other if any other situation occurs which will materially affect their ability to carry out their duties and obligations under this Contract.

5. This Contract may be subject to funding or reimbursement from one or more federal programs. Accordingly, to the extent required by OMB Circular A-102 (grants and cooperative agreements with state and local governments) or other federal law or regulation, EW will comply with all applicable regulations as listed in Exhibit "A" – Contract Provisions for Non-Federal Entity Contract Under Federal Awards.

6. EW may not be debarred or suspended nor otherwise have an exclusion record created in the System for Award Management (SAM.gov). Certification and registration required as outlines in Exhibit "B".

INSURANCE REQUIREMENTS

1. EW shall maintain for the duration of this Contract, insurance (as specified in subparagraph d. of this Section) against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance or work hereunder by EW, their agents, representatives, employees, and/or subcontractors.

2. Coverage (as specified in subparagraph d. of this Section) shall be at least as broad as:

- a. General Liability: COMMERCIAL GENERAL LIABILITY
- b. Professional liability, Errors, and Omissions Coverage: If services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided.
- c. For this Contract section, "Professional Services" shall mean any services provided by a licensed professional.
- d. Minimum Limits of Insurance: Professional Liability, Errors, and Omissions: \$1,000,000/\$3,000,000.

TERM OF THE AGREEMENT

1. The period of performance of this agreement shall be from 02/1/2024 until 1/31/2025.

AMENDMENT

1. This contract may be amended through the mutual agreement of EW and the County. Either organization may initiate a proposed amendment.
2. All agreed upon amendments shall be communicated in writing and signed by both the County and EW.

TERMINATION

1. It is the intention of HCJS and EW to make all reasonable efforts to successfully comply with the terms of this Contract. Whenever possible EW and the County will extend a thirty (30) day time period to one another to remedy any situation that is found by either party to not be in accordance with this Contract.
2. This Contract may be terminated without cause by either party providing the other party is given thirty (30) days advance written notice of the termination.
3. EW and the County shall each have the right to terminate this Contract immediately upon the occurrence of any of the following events:
 - a. EW or HCJS commits a material breach of this Contract.

GOVERNING LAW AND ORDER OF PRECEDENCE

1. This Contract shall be governed by the laws of the State of Texas. Venue for any case or controversy arising from or in connection with this Contract shall lie in a court of competent jurisdiction in Hays County, Texas or in the United States District Court for the Western District of Texas – Austin Division, if applicable.
2. In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: Applicable Federal Statutes and Regulations in regards to federal funding only; Texas State Statutes and Regulations; Express Terms of this Contract; Exhibits of this Contract.

3. If any provision of this Contract is held to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect, unless the provisions held invalid or unenforceable shall substantially impair the benefits of the remaining portions of this Contract.

ENTIRE CONTRACT

1. This Contract and the documents attached hereto and herein referenced, as duly modified from time to time, contain the entire Contract.

2. None of the provisions of this Contract are intended or deemed to create any relationship between the parties hereto other than that of independent entities contracting with each other hereunder solely for the purpose of affecting the provisions of this Contract. Neither of the parties hereto, nor any of their respective employees, shall be construed to be the agent, employer, representative, or joint venture of the other.

3. In witness whereof, the parties hereto have executed this Contract as of the Initiation Date.

Signature (Evoke Wellness)

Date:

Name:

Title:

Signature (Hays County Judicial Services)

Date:

Name: Ruben Beccera

Title: Hays County Judge

Exhibit A:

Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, 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.

(B) 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 effected and the basis for settlement.

(C) 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.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). 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 Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages 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. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) 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.

(F) 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.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - 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 Clean Air Act ([42 U.S.C. 7401-7671q](#)) and 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) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 covered by [31 U.S.C. 1352](#). 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.

(J) Procurement of recovered materials (§ 200.323) - 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.

(K) Prohibition on certain telecommunications and video surveillance services or equipment (§200.216)

(a) Recipients and subrecipients are 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) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

(L) (§ 200.322) Domestic preferences for procurements –

(a) As appropriate and to the extent consistent with law, the non-Federal entity 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 non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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.

Exhibit B:

System for Award Management (SAM)

Vendor may not be debarred or suspended not otherwise have an exclusion record created in the System for Award Management (SAM.gov). 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). Enclose a printout of the Entity Registration page that shows your firm is in active status and is not expired.

Authorizes 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 document is an authorized person to sign for and legally bind the corporation or entity.



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Tammy Crumley

Sponsor:

Judge Becerra

Agenda Item:

Discussion and possible action to award a contract for IFB 2024-B02 Lawn and Landscape Services to Olympia Landscape Development Inc. **BECERRA/T.CRUMLEY**

Summary:

On December 5, 2023, the Hays County Commissioners Court approved Purchasing to solicit bids for IFB 2024-B02 Lawn and Landscape Services. Purchasing received nine (9) bids from the following companies:

Corza Construction, LLC
Cutrite Landscaping, LLC
CY Services
FH McCants, LLC
Green World Care, Inc.
JEC Concrete & Landscape, LLC
Kyle Landscaping Services, LLC
Olympia Landscape Development, Inc.
Texan Landscape, LLC.

It is the staff's recommendation to award to Olympia Landscape Development Inc.

Fiscal Impact:

Amount Requested: Per bid tab

Line Item Number: 001-695-00.5455, 001-618-03.5455, 070-685-00.5455

Budget Office:

Source of Funds: General Fund & Juvenile Detention Fund

Budget Amendment Required Y/N?: No

Comments: N/A

Purchasing Office:

Purchasing Guidelines Followed Y/N?: Yes

Comments: Invitation for Bid (IFB) 2024-B02 Lawn and Landscape Services

Auditor's Office

G/L Account Validated Y/N?: Yes, Ground Maintenance and Repair Expense

New Revenue Y/N?: N/A

Comments:

Attachments

IFB 2024-B02 Contract



SOLICITATION, OFFER AND AWARD

Hays County
Purchasing Office
712 S. Stagecoach Trail, Suite 1012
San Marcos, Texas 78666

Solicitation No.:
IFB 2024—B02 Lawn and Landscape Services

Date Issued: December 7, 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 December 28, 2023.

Proposals received after the time and date set for submission will be returned unopened.

For information please email:
purchasing@co.hays.tx.us

Questions concerning this RFP must be received in writing no later than 5:00 December 14, 2023.

Phone No.: (512) 393-2278

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:	Olympia Landscape Development Inc.	Name:	Jose Moreno
Mailing Address:	P.O. Box 450747 Laredo Texas 78045	Title:	President / Owner
		Email Address:	jmoreno@olympialandscape.com
		Phone No.:	956 522 9467
Signature:		Date:	12/23/23
Name, Email Address and Phone No. of person authorized to conduct negotiations on behalf of Respondent:	Jose G. Moreno (956) 712 9800 jmoreno@olympialandscape.com		

NOTICE OF AWARD (To be completed by County)

Funding Source:	Awarded as to item(s):	Contract Amount:
	per the bid form	See attached Bid form
Vendor:		Term of Contract:
Olympia Landscape Dev.		1yr- w/ 4-1yr renewal
This contract issued pursuant to award made by Commissioners Court on:	Date:	Agenda Item:
	January 30, 2024	
Important: Award notice may be made on this form or by other Authorized official written notice.	Hays County Judge	Date
	Hays County Clerk	Date

IFB 2024-B02 Lawn & Landscape Services
Attachment A: Bid Form

Total cost of Regular Maintenance per location for the following services:

(Includes mowing, edging, trimming, shrub & ground cover trimming, weeds, and plant debris/litter control)

- **Elections/IT Building**
120 Stagecoach Trail
San Marcos, TX 78666
\$ 1,450.00 per month
- **Government Center**
712 S. Stagecoach Trail
San Marcos, TX 78666
\$ 2,500.00 per month
- **Health Department & Countywide**
101 Thermon Drive
San Marcos, TX 78666
\$ 1,000.00 per month
- **Hays County Courthouse**
111 E. San Antonio Street
San Marcos, TX 78666
\$ 1,100.00 per month
- **Jail**
1307 Uhland Road
San Marcos, TX 78666
\$ 1,500.00 per month
- **Juvenile Detention Center**
2250 Clovis Barker Road
San Marcos, TX 78666
\$ 800.00 per month
- **Public Safety Building**
810 S. Stagecoach Trail
San Marcos, TX 78666
\$ 1,700.00 per month

Total cost of Fertilization per location:

(Includes turf fertilization, post-emergent, pre-emergent, and shrub fertilization. Services would be provided upon request by Hays County, but no more than what is stated on the frequency charts. Fertilization Services will be paid on a time and material basis. The vendor shall be reimbursed for all materials used for the fertilization services provided at cost, verified by the supplier's invoice)

- Foreman/Crew Leader \$ 25.00 per Hour
- Holidays & Weekends \$ 37.50 per Hour

- Worker/Labor \$ 18.00 per Hour
- Holidays & Weekends \$ 27.00 per Hour

Total cost of Mulch per location:

(provided upon request by Hays County, but no more than what is stated on the frequency charts. Mulching Services will be paid on a time and material basis. The vendor shall be reimbursed for all materials used for the removal and replacement of mulch beds at cost, verified by the supplier's invoice)

- Foreman/Crew Leader \$ 25.00 per Hour
- Holidays & Weekends \$ 37.50 per Hour

- Worker/Labor \$ 18.00 per Hour
- Holidays & Weekends \$ 27.00 per Hour

Total cost of Fire Ant Control per location:

(provided upon request by Hays County, but no more than what is stated on the frequency charts. Fire Ant Control Services will be paid on a time and material basis. The vendor shall be reimbursed for all materials used of the fire ant control treatment at cost, verified by the supplier's invoice)

- Foreman/Crew Leader \$ 25.00 per Hour
- Holidays & Weekends \$ 37.50 per Hour

- Worker/Labor \$ 18.00 per Hour
- Holidays & Weekends \$ 27.00 per Hour

Total cost of Tree Services per location:

(provided upon request by Hays County, but no more than what is stated on the frequency charts. Price needs to be quoted per hour)

- Foreman/Crew Leader \$ 35.00 per Hour
- Holidays & Weekends \$ 52.50 per Hour

- Worker/Labor \$ 35.00 per Hour
- Holidays & Weekends \$ 52.50 per Hour

Total cost of Preventative Maintenance of Irrigation System per location:

(Provide prices for a Preventative Maintenance (PM) of the sprinkler system for each location. A PM will only be required at each location twice a year, spring and fall. Prices need to include labor and materials needed to complete the PM)

- **Hays County Courthouse**
111 E. San Antonio Street
San Marcos, TX 78666
\$ 600 per Spring PM
\$ 600 per Fall PM
- **Government Center**
712 S. Stagecoach Trail
San Marcos, TX 78666
\$ 600 per Spring PM
\$ 600 per Fall PM
- **Public Safety Building**
810 S. Stagecoach Trail
San Marcos, TX 78666
\$ 600 per Spring PM
\$ 600 per Fall PM

Total cost of service and repairs of the Irrigation System:

(Provide pricing for service and repairs of the Irrigation System. Service and repair calls will be paid on a time and material basis. The vendor shall be reimbursed for all parts used in the repair of the irrigation system at cost, verified by the supplier's invoice)

- **Irrigation Specialist/Technician**
\$ 42.00 per Hour
- **Holidays & Weekends**
\$ 60.00 per Hour
- **Worker/Labor**
\$ 25.00 per Hour
- **Holidays & Weekends**
\$ 37.50 per Hour

I. IFB 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
- ☒ 2. Attachment A: IFB 2024-B02 Bid Form
- ☒ 3. Vendor Reference Form

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) 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, within 24 hours of proposal 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 1012, 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 1012, San Marcos, TX 78666

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: San Antonio Housing Authority
Address: 818 S. Flores St.
Contact Person and Title: George Ayala
Phone Number: 210-477-6254
Scope & Duration of Contract: Grounds maintenance & irrigation services June 2019 - present.
Email: george_ayala@saha.org

REFERENCE TWO

Company Name: San Antonio Water Systems
Address: 2800 US Hwy 281 North
Contact Person and Title: Sonia Gaeta
Phone Number: 210-233-3526
Scope & Duration of Contract: Grounds maintenance over 120 properties April 2018 - Aug 2023
Email: Sonia.gaeta@saws.org

REFERENCE THREE

Company Name: City of Laredo
Address: 5512 Thomas St.
Contact Person and Title: Miguel Pescador, Purchasing Agent
Phone Number: (956) 790 1800
Scope & Duration of Contract: Grounds maintenance various city offices
Email: mpescador@ci.laredo.us.tx

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 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

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.

Olympia Landscape Development Inc.

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.

N/A

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.

N/A

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.

N/A

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 Elena C. Moreno

Signature of vendor doing business with the governmental entity

10/22/23

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. 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: Elena C. Moreno

PRINT NAME & TITLE: Elena Moreno Vice President

COMPANY NAME: Olympia Landscape Development Inc.

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:

Elena C. Muench
Signature

12/23/23
Date

X. Hays County House Bill 89 Verification

I, Jose G. Moreno (Person name), the undersigned representative of Olympia Landscape Development Inc. (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:

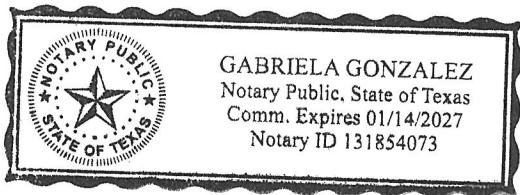
1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled 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]
Signature of Company Representative

12/27/23
Date

On this 27 day of December, 2023, personally appeared Jose G. Moreno, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL



Gabriela B
Notary Public in and for the State of Texas

(if other than Texas, Write state in here _____)

12/27/2023
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.

Olympia Landscape Development Inc.

Company Name

Elena C. Moreno

Print Name of Company Representative

Elena C. Moreno

Signature of Company Representative

12/23/23

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.

Stephanie Hunt

Print Name of Hays County Purchasing Representative

Stephanie Hunt

Signature of Hays County Purchasing Representative

January 2, 2024

Date

IFB 2024-B02

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:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
- 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;
- 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;
- 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;
- Are registered and licensed in the State of Texas to perform the professional services which are necessary for the project; and
- Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Olympic Landscape Development, Inc
Name of Firm

[Signature]
Signature of Certifying Official

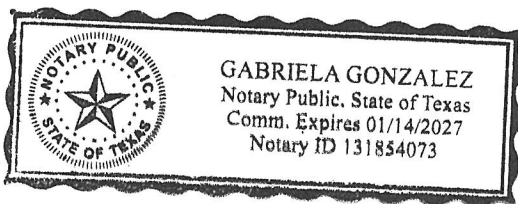
Jose G. Moreno
Printed Name of Certifying Official

Owner/President
Title of Certifying Official

12/27/23
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 Jose G. Moreno on this the day of 27, 2023, on behalf of said Firm.



Gabriela B
Notary Public in and for the State of Texas
(if other than Texas, Write state in here _____)

My commission expires: 01/14/2027

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

Olympia Landscape Development Inc.
Name of Contracting Company

If taxable property is owned in Hays County, list property ID numbers:

Elena C. Moreno
Signature of Company Official Authorizing Bid/Offer

Elena C. Moreno
Printed Name

jmoreno@olympiandscape.com
Email Address

Vice President
Title

956 712 9800
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 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: Elena C. Moreno
Printed Name & Title: Elena Moreno Vice President
Respondent's Tax ID: 20-0952535 Telephone: 954 712 9800

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 2nd degree of consanguinity or affinity to either of the above⁽¹⁾ (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

N/A

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

N/A

Hays Employee/Former Hays Employee Name Title

Name of Person Related Title Relationship

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:

No known relationships

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

Olympia Landscape Development Inc.

Name of Vendor

Elena Moreno

Signature of Certifying Official

Elena Moreno

Printed Name of Certifying Official

Vice President

Title of Certifying Official

12/23/23

Date

⁽¹⁾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*
Person	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
Person	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.

 An official website of the United States government [Here's how you know](#)



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Register Entity

Core Data

Assertions

Representations and
Certifications

Points of Contact

Small Business Certification

Submit Registration

✓ Entity Review

➔ Confirmation Page

Submit Registration

OLYMPIA LANDSCAPE DEVELOPMENT

Confirmation Page

Unique Entity ID: HWD7HUDKL8B4 CAGE Code: 75BT7

Registration Submitted - Confirmation

Thu Dec 28 07:17:36 EST 2023

You successfully submitted your entity registration. This registration record will remain in Submitted status until all external validations are complete. This process is entirely FREE to you. It is FREE to register and maintain your registration in SAM. It is FREE to get help with your registration.

What happens next?

- 1 If you provided a Taxpayer Identification Number (TIN), the Internal Revenue Service (IRS) will conduct a validation of your TIN and Taxpayer Name. This could take two business days. You will get an email from @sam.gov when that review is complete.
- 2 Your registration will then be sent to the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Code system for assignment or validation of your CAGE Code. This also is a FREE service. This step averages two business days, but the DLA CAGE team can take up to ten business days, or longer, in peak periods. You will get an email from @sam.gov when that review is complete.
- 3 If the DLA CAGE team has any questions, they will contact the individual you listed as the Government Business Point of Contact (POC) via email. The email will come from an @dla.mil address. Please tell your Government Business POC to respond right away to any requests from an @dla.mil email. If a timely response is not received, your registration will be returned to SAM and your registration status changed to Work in Progress. You will have to resubmit and provide the requested information to DLA CAGE to continue.
- 4 You will get an email from @sam.gov when your registration passes these external validations and becomes Active. While you are waiting, select Check Status on the SAM.gov homepage to see where your registration is in the review process.
- 5 Remember, it is FREE to register and maintain your registration in SAM. If you get an email from any address that does not end in .gov or .mil, be cautious. If you get an email, text message, or phone call asking for money or payment of any amount, be very cautious. These parties do not represent the U.S. government. You engage third party vendors at your own risk.
- 6 You can get FREE help with your registration by contacting our supporting [Federal Service Desk \(FSD\)](#). In addition, if you are a small business located in the U.S. and its outlying areas, you can get FREE support from your local [APEX Accelerator](#) (formerly known as PTAC), an official resource for government contracting assistance. Go to <https://www.apexaccelerators.us> to find your closest office

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Feedback



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Elaine Cardenas, Hays County Clerk

Sponsor:

Judge Becerra

Agenda Item:

Discussion and possible action to allow the Hays County Clerk's Office to Double Fill Deputy Clerk II Position, Slot 0454-003, for a Period Not to Exceed 12 Weeks. **BECERRA/CARDENAS**

Summary:

This will have no fiscal impact and allow coverage while an employee is out of office for 12 weeks.

Fiscal Impact:

Amount Requested: None

Line Item Number: 101-617-10

Budget Office:

Source of Funds: Records Management & Archive Fund

Budget Amendment Required Y/N?: No

Comments: Position on leave will have no accruals and will be on LWOP, therefore, no additional funding is required for double-fill.

Purchasing Office:

Purchasing Guidelines Followed Y/N?: N/A

Comments:

Auditor's Office

G/L Account Validated Y/N?: Yes

New Revenue Y/N?: N/A

Comments:



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Tammy Crumley

Sponsor:

Judge Becerra

Agenda Item

Discussion and possible action to award a contract for RFP 2024-P06 HVAC - Preventative Maintenance and Repair Services, Countywide to SI Mechanical, LLC. and authorize staff and the District Attorney, Civil Division to negotiate a contract. **BECERRA/T.CRUMLEY**

Summary

On December 5, 2023, the Commissioners Court approves specifications and authorized Purchasing to solicit for RFP 2024-P06 HVAC - Preventative Maintenance and Repair Services, Countywide. Purchasing received the following three (3) Proposals:

Better Service Co.
JM Engineering, LLC.
SI Mechanical, LLC.

After evaluation of the proposals, the evaluation committee's recommendation is to pursue negotiations with SI Mechanical, LLC. Upon successful negotiations, a contract will be brought back before court to approve and finalize the contract award.

Attachments

Final Tabulation

RFP 2024-P06 HVAC Preventative Maintenance & Repair Services Countywide
Final Tabulation

Firm	Averages	
	Score	Rank
Better Service Company	58	3
JME Engineering, LLC	75	2
SI Mechanical, LLC	82	1



AGENDA ITEM REQUEST FORM: K. 9.

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Judge Becerra

Agenda Item

Discussion and possible action to re-organize the Compensation Committee. **BECERRA**

Summary



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

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Judge Becerra

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.



AGENDA ITEM REQUEST FORM: L. 2.

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor: Commissioner Ingalsbe

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 Cotton Gin Road in Precinct 1. Possible discussion and/or action may follow in open court. **INGALSBE**

Summary



AGENDA ITEM REQUEST FORM: **L. 3.**

Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Sponsor:

Commissioner Cohen

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 Hillside Terrace in Precinct 1. Possible discussion and/or action may follow in open court. **COHEN**

Summary



Hays County Commissioners Court

Date: 01/30/2024

Requested By:

Vickie Dorsett, Budget Officer

Sponsor:

Judge Becerra

Agenda Item

Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding employment, performance and duties of the Chief Juvenile Probation Officer, Director of Information Technology, Director of Transportation, Juvenile Facility Director, Chief Budget Officer, Elections Administrator, Director of Human Resources, Director of Emergency Services, Director of County Wide Operations, Director of Development Services, Combined Emergency Communications Director, Veterans Services Officer, County Auditor and Extension Agents. **BECERRA**

Summary
