

Commissioners Court March 31, 2020  
 NOTICE OF A MEETING OF THE  
 COMMISSIONERS COURT OF HAYS COUNTY, TEXAS  
[publiccomments@co.hays.tx.us](mailto:publiccomments@co.hays.tx.us)



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNON'S TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **31<sup>st</sup> day of March 2020**, in the Hays County Courthouse, Room 301, San Marcos, Texas. An Open Meeting will be held concerning the following subjects:

**CALL TO ORDER**

**INVOCATION**

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

**ROLL CALL**

**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, or email: [publiccomments@co.hays.tx.us](mailto:publiccomments@co.hays.tx.us). Please Complete the Public Participation/ Witness Form in its Entirety.

NO ACTION MAY BE TAKEN BY THE COURT DURING PUBLIC COMMENTS.

**PRESENTATIONS & PROCLAMATIONS**

1	4	Update from the County Judge and staff regarding the Local Disaster Declaration and COVID-19. <b>BECERRA</b>
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**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.

2	5	Approve payments of County invoices. <b>VILLARREAL-ALONZO</b>
3	6	Approve the payment of United Healthcare claims. <b>VILLARREAL-ALONZO</b>
4	7-32	Approve Commissioners Court Minutes of March 3, 2020, March 10, 2020, March 16, 2020 and March 24, 2020. <b>BECERRA/CARDENAS</b>
5	33-38	Authorize the Sheriff's Office to purchase computer equipment with Sheriff Drug Forfeiture Funds and amend the budget accordingly. <b>INGALSBE/CUTLER</b>
6	39	Authorize the Sheriff's Office to purchase two (2) shop fans (portable cooler) for the Vehicle Maintenance and Building Maintenance shops and amend the budget accordingly. <b>JONES/CUTLER</b>
7	40-41	Authorize the Building Maintenance Department to replace the generator radiator at the Local Health Department in the amount of \$7,790.19 and amend the budget accordingly.
8	42-43	Authorize the County Judge to execute a letter to Texas Department of Transportation (TxDOT) designating Janice Jones to finalize DocuSign documents between Hays County and TxDOT, once approved in Commissioners Court. <b>BECERRA</b>
9	44-97	Approve specifications for RFP 2020-P09 CDBG Mitigation Funding and authorize Purchasing to solicit for proposals and advertise. <b>SHELL/T.CRUMLEY</b>

**ACTION ITEMS**

**ROADS**

10	98-104	Discussion and possible action to consider the acceptance of site improvement performance bond #LICX1192181 for street excavation, drainage, and erosion control improvements in the amount of \$937,314.16 for the Caliterra subdivision, Phase 3, Section 9. <b>SMITH/BORCHERDING</b>
11	105-123	Discussion and possible action to approve an Advance Funding Agreement for Locally Funded Highway Improvement Project On-System (RM 12 at Winters Mill Pkwy. and RM 3237 at Winters Mill Pkwy.) and authorize the County Judge to execute the Advance Funding Agreement on behalf of Hays County. <b>SHELL/BORCHERDING</b>
12	124-130	Discussion and possible action to authorize the County Judge to execute a Construction Contract with Intermountain Slurry Seal, Inc. for the Transportation Department related to road improvements. <b>INGALSBE/SHELL/BORCHERDING</b>

## MISCELLANEOUS

13	131	Discussion and possible action to accept the Fiscal Year 2019 Hays County Comprehensive Annual Financial Report (CAFR) as audited by ABIP, PC Certified Public Accountants. <b>BECERRA/INGALSBE/VILLARREAL-ALONZO</b>
14	132	Discussion and possible action to provide direction regarding enforcement of the Hays County Fire Code, adopted by the Commissioners Court on or about December 17, 2019. <b>SMITH</b>
15	133	Discussion and possible action to allow the Development Services staff to take work vehicles to their homes, requested per the County Property and Employee Responsibility chapter of the HR Policy. <b>JONES/INGALSBE/STRICKLAND</b>
16	134-136	Discussion and possible action to authorize the County Judge to execute Amendment No. 2 to the Stop Loss Policy between Hays County and United Healthcare Insurance Company. <b>BECERRA/MILLER</b>
17	137-152	Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement (PSA) between Hays County and W.F. Smith Company for appraiser services for the County's GLO Disaster Housing Assistance Program (HAP). <b>BECERRA/MCCLUNE/T.CRUMLEY</b>
18	153-168	Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement (PSA) between Hays County and Spot on Surveying, Inc. (SOS) regarding surveying services for the County's GLO Disaster Housing Assistance Program (HAP). <b>BECERRA/MCCLUNE/T.CRUMLEY</b>
19	169-175	Discussion and possible action authorizing the County Judge to execute a Temporary License Agreement between Hays County and Unbeaten, LLC, in support of the Room 2 Hope project for the benefit of victim witnesses at the Hays County Government Center. <b>SHELL</b>

## EXECUTIVE SESSIONS

The Commissioners Court will announce 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.

20	176	Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding the duties of all individual positions within the Office of Emergency Services, including but not limited to the Hays County Fire Marshal. <b>SMITH</b>
21	177	Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding all individual positions in Hays County Victim Services, C.I.D., Patrol, Dispatch, and Crime Scene Investigation Unit. Possible discussion and/or action may follow in open Court. <b>INGALSBE</b>

## 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.

22	Discussion and possible action related to the burn ban and/or disaster declaration. <b>BECERRA/RAVEN</b>
23	Discussion related to the Hays County inmate population, to include current population counts and costs. <b>BECERRA</b>
24	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. <b>INGALSBE/CUTLER</b>
25	Discussion of issues related to the road bond projects, including updates from Mike Weaver, Prime Strategies, Wade Benton, HNTB and Allen Crozier, HDR. Possible action may follow. <b>BECERRA</b>
26	Discussion of issues related to Electro Purification including updates on the filed application. Possible action may follow. <b>SHELL</b>

## ADJOURNMENT

**Posted by 5:00 o'clock P.M. on the 27<sup>th</sup> day of March, 2020**

**COMMISSIONERS COURT, HAYS COUNTY, TEXAS**

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**CLERK OF THE COURT**

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

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Update from the County Judge and staff regarding the Local Disaster Declaration and COVID-19.

#### ITEM TYPE

PROCLAMATIONS/PRESENTATIONS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

#### SPONSOR

#### CO-SPONSOR

BECERRA

N/A

#### SUMMARY

Information will be presented during Court.

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Approve payment of County invoices.

#### ITEM TYPE

CONSENT

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR APPROVAL: N/A

#### REQUESTED BY

Auditor's Office

#### SPONSOR

VILLARREAL-  
ALONZO

#### CO-SPONSOR

N/A

#### SUMMARY

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Approve the payment of United Healthcare claims.

#### ITEM TYPE

CONSENT

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR APPROVAL: N/A

#### REQUESTED BY

Auditor's Office

#### SPONSOR

VILLARREAL-  
ALONZO

#### CO-SPONSOR

N/A

#### SUMMARY

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Approve Commissioners Court Minutes of March 3, 2020, March 10, 2020, March 16, 2020 and March 24, 2020.

#### ITEM TYPE

CONSENT

#### MEETING DATE

March 24, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

CARDENAS

#### SPONSOR

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY



MARCH 3, 2020

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 3<sup>RD</sup> DAY OF MARCH A.D., 2020, IN THE HAYS COUNTY COURTHOUSE, 111 E. SAN ANTONIO ST., SUITE 301, SAN MARCOS, TEXAS, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

DEBBIE GONZALES INGALSBE	COMMISSIONER, PCT. 1
MARK JONES	COMMISSIONER, PCT. 2
LON SHELL	COMMISSIONER, PCT. 3
WALT SMITH	COMMISSIONER, PCT. 4
ELAINE H. CÁRDENAS	COUNTY CLERK

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

**WITH JUDGE BECERRA BEING ABSENT AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:**

Reverend Javier Maldonado, 7<sup>th</sup> Day Adventist Church, gave the invocation. Commissioner Ingalsbe led the court in the Pledge of Allegiance to the United States and Texas flags. Commissioner Ingalsbe called the meeting to order.

#### **PUBLIC COMMENTS**

Dan Lyon, Hays County resident, gave public comments. He read from the 1st Amendment of Constitution when commenting on rules of decorum in the Court and objected to miscellaneous disbursements. Rodrigo Amaya, Hays County resident, gave a public comment, he quoted from Jeremiah 18:15, and related it to oaths of office and financial stewardship.

#### **1 PRESENTATION REGARDING THE EMERALD CROWN TRAIL.**

Dan Lyon, Hays County resident, made a public comment endorsing the plan, and recommending it be funded through private donations. Mr. Sherwood Bishop, Board President of the San Marcos Greenbelt Alliance, gave a power point presentation to the Court. **No action was taken.**

#### **34910 APPROVE PAYMENTS OF COUNTY INVOICES.**

A motion was made by Commissioner Shell seconded by Commissioner Smith to approve payments of County invoices. All present voted "Aye." **MOTION PASSED.**

#### **34911 APPROVE PAYMENTS OF JUROR CHECKS.**

A motion was made by Commissioner Shell seconded by Commissioner Smith to approve payments of Juror checks. All present voted "Aye." **MOTION PASSED.**

#### **34912 APPROVE THE PAYMENT OF UNITED HEALTHCARE CLAIMS.**

A motion was made by Commissioner Shell seconded by Commissioner Smith to approve the payment of United Healthcare claims. All present voted "Aye." **MOTION PASSED.**

#### **34913 APPROVE COMMISSIONERS COURT MINUTES OF FEBRUARY 25, 2020.**

A motion was made by Commissioner Shell seconded by Commissioner Smith to approve Commissioners Court Minutes of February 25, 2020. All present voted "Aye." **MOTION PASSED.**

#### **34914 AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR A DUPLEX LOCATED AT 207 OAKWOOD LOOP, SAN MARCOS, TEXAS 78666.**





MARCH 3, 2020

A motion was made by Commissioner Shell seconded by Commissioner Smith to authorize On-Site Sewage Facility Permit for a duplex located at 207 Oakwood Loop, San Marcos, Texas 78666. All present voted "Aye." MOTION PASSED.

**34915                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE A RENEWAL AGREEMENT BETWEEN HAYS COUNTY AND JOHNSON CONTROLS IN THE AMOUNT OF \$3,496.**

A motion was made by Commissioner Shell seconded by Commissioner Smith to authorize the County Judge to execute a renewal agreement between Hays County and Johnson Controls in the amount of \$3,496. All present voted "Aye." MOTION PASSED.

**34916                    ACCEPT A PROPOSAL FROM WATER & EARTH TECHNOLOGIES (WET) RELATED TO THE FLOOD WARNING SYSTEM EXPANSION PROJECT AS BUDGETED, ADDITIONAL SITE REPAIRS FOR OLD BASTROP HIGHWAY AND LIME KILN ROAD AND AUTHORIZE A DISCRETIONARY EXEMPTION PURSUANT TO TEXAS LOCAL GOVERNMENT CODE, CH. 262.024(A)(7)(D).**

Rodrigo Amaya, Hays County resident, made a public comment. He asked who is responsible for signs at low water crossing behind the jail. He recommended better monitoring of signs, which have been left out too long. A motion was made by Commissioner Smith seconded by Commissioner Jones to accept a Proposal from Water & Earth Technologies (WET) related to the Flood Warning System Expansion Project as budgeted, additional Site Repairs for Old Bastrop Highway and Lime Kiln Road and authorize a discretionary exemption pursuant to Texas Local Government Code, Ch. 262.024(a)(7)(D). All present voted "Aye." MOTION PASSED.

**34917                    AUTHORIZE THE EXECUTION OF THE 5TH AMENDMENT TO THE EXISTING LEASE BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS FOR THE WOMEN, INFANTS AND CHILDREN ("WIC") PROGRAM OFFICE LOCATED AT 150 LOCKHART STREET IN KYLE.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize the execution of the 5th Amendment to the existing lease between Hays County and the City of San Marcos for the Women, Infants and Children ("WIC") Program office located at 150 Lockhart Street in Kyle. All present voted "Aye." MOTION PASSED.

**34918                    AUTHORIZE THE EXECUTION OF THE FIRST AMENDMENT TO A CHAPTER 381 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN HAYS COUNTY AND KATERRA CONSTRUCTION LLC EXECUTED ON OR ABOUT OCTOBER 24, 2019.**

Rodrigo Amaya, Hays County resident, made a public comment that the scope of changes to schedule, and number of jobs created, constitute a renegotiation, rather than an amendment. A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize the execution of the First Amendment to a Chapter 381 Economic Development Incentive Agreement between Hays County and Katerra Construction LLC executed on or about October 24, 2019. All present voted "Aye." MOTION PASSED.

**34919                    AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR A SELF-STORAGE FACILITY AND APARTMENT LOCATED AT 9900 DARDEN HILL ROAD, AUSTIN, TEXAS 78737.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize On-Site Sewage Facility Permit for a self-storage facility and apartment located at 9900 Darden Hill Road, Austin, Texas 78737. All present voted "Aye." MOTION PASSED.

**34920                    AUTHORIZE THE EXECUTION OF CHANGE ORDER NO. 2 WITH MONTOYA ANDERSON CONSTRUCTION, INC. (MAC) FOR \$58,623.88 RELATED TO A WATERLINE EXTENSION FUNDED BY**



MARCH 3, 2020

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**THE HAYS CISD ON THE OLD SAN ANTONIO ROAD IMPROVEMENTS FOR PROJECT CLOSEOUT.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize the execution of Change Order No. 2 with Montoya Anderson Construction, Inc. (MAC) for \$58,623.88 related to a waterline extension funded by the Hays CISD on the Old San Antonio Road improvements for project closeout. All present voted "Aye." MOTION PASSED.

**34921                    APPROVE SPECIFICATIONS FOR IFB 2020-B05 US 290 @ TRAUTWEIN ROAD - TEMPORARY SIGNAL AND AUTHORIZE PURCHASING TO SOLICIT FOR BIDS AND ADVERTISE.**

Commissioner Smith and Mark Kennedy, General Counsel, noted that the back-up mistakenly mentioned concrete. A motion was made by Commissioner Jones seconded by Commissioner Smith to approve specifications for IFB 2020-B05 US 290 @ Trautwein Road - Temporary Signal and authorize Purchasing to solicit for bids and advertise. All present voted "Aye." MOTION PASSED.

**34922                    APPROVE OUT OF STATE TRAVEL UTILIZING THE SHERIFF'S OFFICE CONTINUING EDUCATION FUNDS FOR CRIME SCENE SPECIALIST MELODY JARAMIO TO ATTEND THE ADVANCED FORENSIC TECHNIQUES IN CRIME SCENE INVESTIGATIONS II COURSE IN GLYNCO, GEORGIA ON MARCH 16-27, 2020.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to approve out of state travel utilizing the Sheriff's Office Continuing Education Funds for Crime Scene Specialist Melody Jaramio to attend the Advanced Forensic Techniques in Crime Scene Investigations II Course in Glynco, Georgia on March 16-27, 2020. All present voted "Aye." MOTION PASSED.

**34923                    AUTHORIZE PAYMENT TO RICOH USA, INC. FOR \$774.54 FOR THE SHERIFF'S OFFICE RELATED TO COPIER REPAIRS WHERE NO PURCHASE ORDER WAS ISSUED AS REQUIRED PER THE COUNTY PURCHASING POLICY.**

Rodrigo Amaya, Hays County resident, expressed concern about purchases where no purchase order was issued and encouraged Commissioners to question such requests. A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize payment to Ricoh USA, Inc. for \$774.54 for the Sheriff's Office related to copier repairs where no purchase order was issued as required per the County Purchasing Policy. All present voted "Aye." MOTION PASSED.

**34924                    APPROVE AND ACCEPT THE 2019 RACIAL PROFILING REPORT FOR THE HAYS COUNTY CONSTABLE OFFICE, PRECINCT 3.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to approve and accept the 2019 Racial Profiling Report for the Hays County Constable Office, Precinct 3. All present voted "Aye." MOTION PASSED.

**34925                    AUTHORIZE THE EXECUTION OF PROPOSALS FROM BECKWITH ELECTRONIC SYSTEMS, LLC FOR THE AV VIDEO/AUDIO UPGRADE & ANNOTATION EQUIPMENT FOR DISTRICT COURTROOM #5 AS BUDGETED AND ALLOW AN EXEMPTION FROM THE BIDDING PROCESS PURSUANT TO TEXAS LOCAL GOVERNMENT CODE 262.024A (7) (D).**

A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize the execution of Proposals from Beckwith Electronic Systems, LLC for the AV video/audio upgrade & Annotation Equipment for District Courtroom #5 as budgeted and allow an exemption from the bidding process pursuant to Texas Local Government Code 262.024A (7) (D). All present voted "Aye." MOTION PASSED.

**34926                    AMEND VARIOUS DEPARTMENTAL OPERATING, SPECIAL REVENUE AND CAPITAL PROJECT BUDGETS IN PREPARATION FOR FISCAL YEAR 2020 1ST QUARTER FINANCIAL REPORTING.**



MARCH 3, 2020

A motion was made by Commissioner Jones seconded by Commissioner Smith to amend various departmental operating, special revenue and capital project budgets in preparation for Fiscal Year 2020 1st Quarter financial reporting. All present voted "Aye." MOTION PASSED.

**34927                    AUTHORIZE PAYMENT TO KONE INC. FOR \$790.14 FOR THE BUILDING MAINTENANCE DEPARTMENT RELATED TO ELEVATOR REPAIRS LOCATED AT THE GOVERNMENT CENTER IN WHICH NO PURCHASE ORDER WAS ISSUED AS REQUIRED PER COUNTY PURCHASING POLICY.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize payment to KONE Inc. for \$790.14 for the Building Maintenance Department related to elevator repairs located at the Government Center in which no purchase order was issued as required per County Purchasing Policy. All present voted "Aye." MOTION PASSED.

**34928                    AUTHORIZE THE EXECUTION OF THE REVISED FY 2020 TEXAS INDIGENT DEFENSE COMMISSION (TIDC) INDIGENT DEFENSE COORDINATOR (IDC) STATEMENT OF GRANT AWARD.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize the execution of the Revised FY 2020 Texas Indigent Defense Commission (TIDC) Indigent Defense Coordinator (IDC) Statement of Grant Award. All present voted "Aye." MOTION PASSED.

**34929                    AUTHORIZE AN AMENDMENT TO THE CONTRACT WITH WEST THOMSON REUTERS FOR ONLINE LEGAL RESEARCH SERVICES AS BUDGETED FOR THE LAW LIBRARY.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize an amendment to the contract with West Thomson Reuters for online legal research services as budgeted for the Law Library. All present voted "Aye." MOTION PASSED.

**34930                    APPROVE SPECIFICATIONS FOR RFP 2020-P07 BANK DEPOSITORY AND AUTHORIZE PURCHASING TO SOLICIT FOR PROPOSALS AND ADVERTISE.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to approve specifications for RFP 2020-P07 Bank Depository and authorize Purchasing to solicit for proposals and advertise. All present voted "Aye." MOTION PASSED.

**34931                    AUTHORIZE THE PURCHASE OF CONSUMABLE AND RECREATIONAL ITEMS FOR THE 2020 CENSUS OUTREACH PROGRAM UTILIZING THE UNITED WAY GRANT CONTRIBUTION AND AMEND THE BUDGET ACCORDINGLY.**

Marisol Villarreal-Alonzo, Auditor, asked for clarification on the types of consumables and other materials. Anita Collins, County Judge's Executive Assistant, said the consumables would include food such as hot dogs, depending on the event, and that other materials would be art supplies for activities for children, bracelets saying "I count," posters or other materials for Dripping Springs Founder's Day Parade, including a possible float with a sign saying "It's not too late." Commissioner Jones requested that Census Coordinator meet with Commissioners to discuss the plans. Anita Collins pointed out the Coordinator only works 20 hours a week, but plans to visit the Precinct offices. Tammy Crumley, County Wide Operations, said the plan was for the Coordinator to meet with the Commissioners on Tuesdays following Commissioners Court, starting March 9<sup>th</sup>. **A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the purchase of consumable and recreational items for the 2020 Census Outreach Program utilizing the United Way grant contribution and amend the budget accordingly. All present voted "Aye." MOTION PASSED.**

**34932                    AUTHORIZE THE PURCHASE OF TEN (10) TABLETS AND PRINTED MATERIALS FOR THE 2020 CENSUS OUTREACH PROGRAM UTILIZING COUNTY FUNDS AND AMEND THE BUDGET ACCORDINGLY.**



MARCH 3, 2020

A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the purchase of ten (10) tablets and printed materials for the 2020 Census Outreach Program utilizing County Funds and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**34933                    AUTHORIZE THE EXECUTION OF A LETTER AMENDMENT TO THE INTERLOCAL FUNDING AGREEMENT BETWEEN HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT (HCISD) AND HAYS COUNTY RELATED TO THE CONSTRUCTION OF TURN LANES ON HCISD PROJECTS IN PRECINCT 2 ORIGINALLY EXECUTED ON OR ABOUT JANUARY 23, 2018.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the execution of a Letter Amendment to the Interlocal Funding Agreement between Hays Consolidated Independent School District (HCISD) and Hays County related to the construction of turn lanes on HCISD projects in Precinct 2 originally executed on or about January 23, 2018. All present voted "Aye." MOTION PASSED.

**34934                    AUTHORIZE THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT (PSA) BETWEEN HAYS COUNTY AND COSTELLO, INC. TO PROVIDE SCHEMATIC DESIGN, ENVIRONMENTAL DOCUMENTATION, PLANS, SPECIFICATIONS & ESTIMATES (PS&E) AND CONSTRUCTION PHASE INSPECTION SERVICES FOR PROPOSED CULVERT IMPROVEMENTS LOCATED 500 LF SOUTH OF MEADOW WOODS DRIVE ON FM 2770 IN KYLE, TX.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the execution of a Professional Services Agreement (PSA) between Hays County and Costello, Inc. to provide schematic design, environmental documentation, Plans, Specifications & Estimates (PS&E) and construction phase inspection services for proposed culvert improvements located 500 LF south of Meadow Woods Drive on FM 2770 in Kyle, TX. All present voted "Aye." MOTION PASSED.

**34935                    ACCEPT ROAD CONSTRUCTION & DRAINAGE IMPROVEMENTS, ACCEPT THE 2-YEAR MAINTENANCE BOND #107170496 IN THE AMOUNT OF \$86,517.66, AND ACCEPT THE 1-YEAR REVEGETATION BOND #107170497 IN THE AMOUNT OF \$4,211.20 FOR 6 CREEKS SUBD., PHASE 1, SECTION 3.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to accept road construction & drainage improvements, accept the 2-year maintenance bond #107170496 in the amount of \$86,517.66, and accept the 1-year revegetation bond #107170497 in the amount of \$4,211.20 for 6 Creeks Subd., Phase 1, Section 3. All present voted "Aye." MOTION PASSED.

**28                        CONSIDER A VARIANCE FROM SECTION 721.5.07 (C) OF THE HAYS COUNTY DEVELOPMENT REGULATIONS AND APPROVAL OF FINAL PLAT; HOLD PUBLIC HEARING FOR REPLAT OF LOT 10, INDIAN HILLS RANCH SUBDIVISION, PLN-1401.**

Commissioner Ingalsbe opened the public hearing at 9:55 a.m. No comments were made. Commissioner Ingalsbe closed the public hearing at 9:55 a.m. Commissioner Jones noted insufficient notification to the public. The Court will announce March 9<sup>th</sup> for a public hearing scheduled to be held March 24<sup>th</sup>. No action was taken.

**34936                    AUTHORIZE THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT (PSA) BETWEEN HAYS COUNTY AND VISTA PLANNING & DESIGN RELATED TO A PROPOSAL FOR A MASTER PLAN FOR EL RANCHO CIMA.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize the execution of a Professional Services Agreement (PSA) between Hays County and Vista Planning & Design related to a proposal for a Master Plan for El Rancho Cima. All present voted "Aye." MOTION PASSED.



MARCH 3, 2020

**34937 APPROVE A RESOLUTION IN SUPPORT OF THE EMERALD CROWN TRAIL.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to approve a resolution in support of the Emerald Crown Trail. All present voted "Aye." MOTION PASSED.

**34938 AUTHORIZE THE EXECUTION OF AN AMENDMENT NO. 5 WITH WELLPATH, LLC TO EXTEND THE CONTRACT TERM AND ADD EMT SERVICES RELATED TO THE HEALTHCARE PROGRAM AT THE JAIL DIVISION; AUTHORIZE A DISCRETIONARY EXEMPTION PURSUANT TO TEXAS LOCAL GOVERNMENT CODE, CH. 262.024(A)(4) AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Jones seconded by Commissioner Smith to authorize the execution of an Amendment No. 5 with Wellpath, LLC to extend the contract term and add EMT services related to the healthcare program at the Jail Division; authorize a discretionary exemption pursuant to Texas Local Government Code, Ch. 262.024(a)(4) and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**34939 APPROVE THE CHARTER FOR THE HAYS COUNTY PARKS & OPEN SPACE ADVISORY COMMISSION (POSAC); AND TO PROVIDE OTHER DIRECTION TO THE COMMISSION.**

Karen Ford, Hays County Parks & Open Space Advisory Commission member, said the first meeting will be held Saturday from Noon – 4 pm. Nine out of ten of the appointees will be able to attend. The Commission will draft bylaws that will be discussed. The meeting will be held at the Government Center or Precinct 2 office. A motion was made by Commissioner Shell seconded by Commissioner Jones to approve the Charter for the Hays County Parks & Open Space Advisory Commission (POSAC); and to provide other direction to the Commission. All present voted "Aye." MOTION PASSED.

**34940 AUTHORIZE THE SUBMITTAL OF A PROJECT INFORMATION FORM (PIF) TO THE TEXAS WATER DEVELOPMENT BOARD TO ALLOW FOR THE FUTURE CONSIDERATION OF A FORMAL APPLICATION FOR AN AMOUNT OF UP TO \$30 MILLION THROUGH THE CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM TO FACILITATE THE ACQUISITION OF WATER QUALITY PROTECTION LANDS.**

Commissioner Shell said submission of this form will put Hays County's name on the list, so that it will be in a position to capitalize on various benefits in the future should the Commissioners Court decide to pursue them. Potential benefits include debt forgiveness up to \$1 million. A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize the submittal of a Project Information Form (PIF) to the Texas Water Development Board to allow for the future consideration of a formal application for an amount of up to \$30 Million through the Clean Water State Revolving Fund (CWSRF) Program to facilitate the acquisition of Water Quality Protection Lands. All present voted "Aye." MOTION PASSED.

**34941 EXECUTE A \$56,186.75 PROPOSAL WITH KOFILTE TECHNOLOGIES RELATED TO THE PRESERVATION OF MICROFILM AS BUDGETED.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to execute a \$56,186.75 Proposal with Kofilte Technologies related to the preservation of microfilm as budgeted. All present voted "Aye." MOTION PASSED.

**34942 EXECUTE A \$249,991.32 PROPOSAL WITH KOFILTE TECHNOLOGIES RELATED TO THE PRESERVATION OF PROBATE CASE FILES AS BUDGETED.**



MARCH 3, 2020

A motion was made by Commissioner Jones seconded by Commissioner Shell to execute a \$249,991.32 Proposal with Kofile Technologies related to the preservation of probate case files as budgeted. All present voted "Aye." MOTION PASSED.

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.087 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS ASSOCIATED WITH PROJECT THREAD AND PROJECT DAVIS. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

No action was taken.

**EXECUTIVE SESSION PURSUANT TO SECTION 551.071 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL REGARDING LA CIMA PUBLIC IMPROVEMENT DISTRICT. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

No action was taken.

**DISCUSSION AND POSSIBLE ACTION RELATED TO THE BURN BAN AND/OR DISASTER DECLARATION.**

Commissioner Ingalsbe noted the burn ban was still lifted. **No action taken.**

**DISCUSSION RELATED TO THE HAYS COUNTY INMATE POPULATION, TO INCLUDE CURRENT POPULATION COUNTS AND COSTS.**

Commissioner Ingalsbe read the Sheriff's update of the inmate population. **No action taken.**

**Clerk's Note Agenda Item #40 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 #41 RE:** *DISCUSSION OF ISSUES RELATED TO THE ROAD BOND PROJECTS, INCLUDING UPDATES FROM MIKE WEAVER, PRIME STRATEGIES, WADE BENTON, HNTB AND ALLEN CROZIER, HDR. POSSIBLE ACTION MAY FOLLOW. - WAS PULLED.*

**Clerk's Note Agenda Item #42 RE:** *DISCUSSION OF ISSUES RELATED TO ELECTRO PURIFICATION INCLUDING UPDATES ON THE FILED APPLICATION. POSSIBLE ACTION MAY FOLLOW. - WAS PULLED.*

## ADJOURNMENT

A motion was made by Ingalsbe, seconded by Commissioner Jones to adjourn court at 11:02 a.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 March 3, 2020.



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





MARCH 10, 2020

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 10<sup>th</sup> DAY OF MARCH A.D., 2020, IN THE HAYS COUNTY COURTHOUSE, 111 E. SAN ANTONIO ST., SUITE 301, SAN MARCOS, TEXAS, 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
MARK JONES	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:**

Reverend Esperanza Baltazar-Ramirez, United Methodist Church, San Marcos, TX, gave the invocation. Judge Becerra led the court in the Pledge of Allegiance to the United States and Texas flags. Judge Becerra called the meeting to order.

**PUBLIC COMMENTS**

Jennifer Anderson, Hays County Elections Administrator, gave a public comment regarding recent Primary election. Rodrigo Amaya, Hays County resident, gave a public comment regarding accountability. Dan Lyon, Hays County resident, gave a public comment regarding Coronavirus, debt, and disbursements.

**34943 APPROVE PAYMENTS OF COUNTY INVOICES.**

Marisol Villarreal-Alonzo, Auditor, added an invoice for W.E. Jupe for \$1,050.00 for delivery of mobile shelters previously approved in Commissioners Court. A motion was made by Commissioner Jones seconded by Commissioner Smith to approve payments of County invoices. All present voted "Aye." MOTION PASSED.

**34944 APPROVE PAYMENTS OF JUROR CHECKS.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to approve payments of Juror checks. All present voted "Aye." MOTION PASSED.

**34945 APPROVE THE PAYMENT OF THE MARCH 15, 2020 PAYROLL DISBURSEMENTS IN AN AMOUNT NOT TO EXCEED \$2,900,000.00 EFFECTIVE MARCH 13, 2020 AND POST TOTALS FOR WAGES, WITHHOLDINGS, DEDUCTIONS AND BENEFITS ON THE HAYS COUNTY WEBSITE ONCE FINALIZED.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to approve the payment of the March 15, 2020 payroll disbursements in an amount not to exceed \$2,900,000.00 effective March 13, 2020 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized. All present voted "Aye." MOTION PASSED.

**34946 AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR A FIVE-BEDROOM BED & BREAKFAST AND 4 SHORT TERM RENTAL CASITAS LOCATED AT 398 B PEABODY PLACE DRIVE, DRIPPING SPRINGS, TEXAS 78620.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize On-Site Sewage Facility Permit for a five-bedroom bed & breakfast and 4 short term rental casitas located at 398 B Peabody Place Drive, Dripping Springs, Texas 78620. All present voted "Aye." MOTION PASSED.



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MARCH 10, 2020

- 34947                    AUTHORIZE BUILDING MAINTENANCE TO INSTALL A NEW DOOR IN THE LOCAL HEALTH DEPARTMENT TB AREA IN THE AMOUNT OF \$4,513 IN ORDER TO MEET REGULATIONS REGARDING MINIMUM VENTILATION REQUIREMENTS AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize Building Maintenance to install a new door in the Local Health Department TB area in the amount of \$4,513 in order to meet regulations regarding minimum ventilation requirements and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34948                    APPROVE THE APPOINTMENT OF JOHN WHITE TO THE BOARD OF COMMISSIONERS FOR HAYS COUNTY EMERGENCY SERVICES DISTRICT #4 FOR A TERM ENDING DECEMBER 31, 2020 TO FILL THE VACANCY CREATED BY THE RESIGNATION OF KEN DOWNING.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to approve the appointment of John White to the Board of Commissioners for Hays County Emergency Services District #4 for a term ending December 31, 2020 to fill the vacancy created by the resignation of Ken Downing. All present voted "Aye." MOTION PASSED.

- 34949                    ACCEPT THE DELIVERY OF THE COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT'S (CSCD) FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDING ON AUGUST 31, 2019 FOR FILING WITH THE HAYS COUNTY COMMISSIONERS COURT PURSUANT TO LOCAL GOVERNMENT CODE, SECTION 140.004(D) AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE-COMMUNITY JUSTICE ASSISTANCE DIVISIONS FINANCIAL MANAGEMENT MANUAL.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to accept the delivery of the Community Supervision and Corrections Department's (CSCD) Financial Statements for the Fiscal Year ending on August 31, 2019 for filing with the Hays County Commissioners Court pursuant to Local Government Code, Section 140.004(d) and the Texas Department of Criminal Justice-Community Justice Assistance Divisions Financial Management Manual. All present voted "Aye." MOTION PASSED.

- 34950                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE CHANGE ORDER NO. 3 FOR A TIME EXTENSION FOR M&S ENGINEERING, LLC REGARDING DESIGN OF LOW WATER CROSSINGS, PRECINCT 4 (BEAR CREEK PASS/SYCAMORE CREEK ROAD).**

A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize the County Judge to execute Change Order No. 3 for a time extension for M&S Engineering, LLC regarding design of Low Water Crossings, Precinct 4 (Bear Creek Pass/Sycamore Creek Road). All present voted "Aye." MOTION PASSED.

- 34951                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE FURNITURE PROPOSALS AS REQUIRED FOR THE JAIL & PUBLIC SAFETY BUILDING FURNITURE, FIXTURE AND EQUIPMENT (FFE) PURCHASES AND AMEND THE BUDGET ACCORDINGLY.**

Mark Kennedy, General Counsel, noted a discretionary exemption per Local Government Code Ch. 262.024(a)(7)(D). A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize the County Judge to execute Furniture Proposals as required for the Jail & Public Safety Building Furniture, Fixture and Equipment (FFE) purchases and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34952                    APPROVE RENEWAL OF RFP 2018-P10 COUNTY WIDE ELECTRICAL SERVICES WITH CT ELECTRIC AND TED BREIHAN ELECTRIC FOR ONE (1) ADDITIONAL YEAR AS STATED IN THE ORIGINAL BID.**





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A motion was made by Commissioner Smith seconded by Commissioner Shell to approve renewal of RFP 2018-P10 County Wide Electrical Services with CT Electric and Ted Breihan Electric for one (1) additional year as stated in the original bid. All present voted "Aye." MOTION PASSED.

**34953                    AUTHORIZE THE EXECUTION OF A FACILITIES USE AGREEMENT WITH SAN MARCOS ACADEMY FOR THE BASIC PEACE OFFICER GRADUATION.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize the execution of a Facilities Use Agreement with San Marcos Academy for the Basic Peace Officer graduation. All present voted "Aye." MOTION PASSED.

**34954                    AUTHORIZE THE SHERIFF'S OFFICE TO ACCEPT A DONATION OF \$500.00 FROM THE HAYS COUNTY CITIZEN'S SHERIFF'S ACADEMY TO UTILIZE FOR SUPPLIES AND MATERIALS FOR THE DRONE PROGRAM AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize the Sheriff's Office to accept a donation of \$500.00 from the Hays County Citizen's Sheriff's Academy to utilize for supplies and materials for the Drone Program and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**34955                    AUTHORIZE PAYMENT TO AMTEX SCALE FOR \$1458.00 FOR THE DPS LICENSE AND WEIGHT DEPARTMENT RELATED TO SCALES CALIBRATION WHERE NO PURCHASE ORDER WAS ISSUED AS REQUIRED PER THE COUNTY PURCHASING POLICY.**

Rodrigo Amaya, Hays County resident, made a public comment asking how money brought in from the scales is monitored by the County. A motion was made by Commissioner Shell seconded by Commissioner Smith to authorize payment to Amtex Scale for \$1458.00 for the DPS License and Weight Department related to scales calibration where no purchase order was issued as required per the County Purchasing Policy. All present voted "Aye." MOTION PASSED.

**34956                    AUTHORIZE THE ACCEPTANCE OF THE FY20 FORMULA GRANT AWARD FROM THE TEXAS INDIGENT DEFENSE COMMISSION (TIDC) IN THE AMOUNT OF \$154,991.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize the acceptance of the FY20 Formula Grant Award from the Texas Indigent Defense Commission (TIDC) in the amount of \$154,991. All present voted "Aye." MOTION PASSED.

**34957                    AMEND THE CONSTABLE PRECINCT 5 BUDGET FOR (\$516.65) ADDITIONAL FUNDS NEEDED FOR THE PURCHASE OF A XG-25M 700/800 P25 MOBILE RADIO APPROVED IN THE FY20 BUDGET.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to amend the Constable Precinct 5 budget for (\$516.65) additional funds needed for the purchase of a XG-25M 700/800 P25 mobile radio approved in the FY20 budget. All present voted "Aye." MOTION PASSED.

**34958                    AUTHORIZE A WAIVER TO THE PURCHASING POLICY FOR THE HUMAN RESOURCES DEPARTMENT TO UTILIZE HILL COUNTRY TROPHY RELATED TO EMPLOYEE AND RETIREMENT SERVICE AWARDS.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize a waiver to the purchasing policy for the Human Resources Department to utilize Hill Country Trophy related to employee and retirement service awards. All present voted "Aye." MOTION PASSED.



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MARCH 10, 2020

- 34959                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE 2ND AMENDMENT TO THE CITY OF DRIPPING SPRINGS AND COUNTY OF HAYS AGREEMENT REGARDING THE DRIPPING SPRINGS TAX INCREMENT REINVESTMENT ZONE NUMBER ONE AND TAX INCREMENT REINVESTMENT ZONE NUMBER TWO.**

A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize the County Judge to execute the 2nd Amendment to the City of Dripping Springs and County of Hays Agreement regarding the Dripping Springs Tax Increment Reinvestment Zone Number One and Tax Increment Reinvestment Zone Number Two. All present voted "Aye." MOTION PASSED.

- 34960                    APPROVE AMENDMENT # 1 TO ADVANCE FUNDING AGREEMENT BETWEEN HAYS COUNTY AND THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) FOR SH 80 AT OLD BASTROP HIGHWAY (CR 266) PROJECT AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE ADVANCE FUNDING AGREEMENT AMENDMENT #1 ON BEHALF OF HAYS COUNTY.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to approve Amendment # 1 to Advance Funding Agreement between Hays County and the Texas Department of Transportation (TxDOT) for SH 80 at Old Bastrop Highway (CR 266) project and authorize the County Judge to execute the Advance Funding Agreement Amendment #1 on behalf of Hays County. All present voted "Aye." MOTION PASSED.

- 34961                    APPROVE AMENDMENT # 1 TO ADVANCE FUNDING AGREEMENT BETWEEN HAYS COUNTY AND THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) FOR RM 12 AT RM 3237 INTERSECTION IMPROVEMENT PROJECT AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE ADVANCE FUNDING AGREEMENT AMENDMENT # 1 ON BEHALF OF HAYS COUNTY.**

A motion was made by Commissioner Shell seconded by Commissioner Ingalsbe to approve Amendment # 1 to Advance Funding Agreement between Hays County and the Texas Department of Transportation (TxDOT) for RM 12 at RM 3237 Intersection Improvement project and authorize the County Judge to execute Advance Funding Agreement Amendment # 1 on behalf of Hays County. All present voted "Aye." MOTION PASSED.

- 34962                    HOLD A PUBLIC HEARING WITH POSSIBLE ACTION TO ESTABLISH A SPEED LIMIT OF 20 MPH IN SUNFIELD SUBD., PHASE 1, SECTIONS 1-2, AND A 35 MPH SPEED LIMIT ON SUNBRIGHT BLVD.**

A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to hold a public hearing with possible action to establish a speed limit of 20 MPH in Sunfield subd., Phase 1, Sections 1-2, and a 35 MPH speed limit on Sunbright Blvd. All present voted "Aye." MOTION PASSED.

- 34963                    AUTHORIZE THE TRANSPORTATION DEPARTMENT TO PURCHASE FIVE (5) "SAFETY-IN-A-BOX" SIGN BASES & TWO (2) POLES RELATED TO THE INSTALLATION OF RADAR SIGNS AND SCHOOL ZONE FLASHER SIGNS AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Shell to authorize the Transportation Department to purchase five (5) "Safety-in-a-box" sign bases & two (2) poles related to the installation of radar signs and school zone flasher signs and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34964                    RELEASE OF THE LETTER OF CREDIT (LOC) #1023 IN THE AMOUNT OF \$1,009,327.60 FOR 6 CREEKS SUBDIVISION, PHASE 1, SECTION 3.**

A motion was made by Commissioner Smith seconded by Commissioner Jones to release of the Letter of Credit (LOC) #1023 in the amount of \$1,009,327.60 for 6 Creeks subdivision, Phase 1, Section 3. All present voted "Aye." MOTION PASSED.



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MARCH 10, 2020

- 34965                    APPROVE THE REIMBURSEMENT AGREEMENT FOR PRELIMINARY ENGINEERING SERVICES WITH THE UNION PACIFIC RAILROAD COMPANY FOR THE POSEY ROAD CORRIDOR IMPROVEMENTS PROJECT AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE AGREEMENT ON BEHALF OF HAYS COUNTY.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to approve the Reimbursement Agreement for Preliminary Engineering Services with the Union Pacific Railroad Company for the Posey Road Corridor Improvements Project and authorize the County Judge to execute the Agreement on behalf of Hays County. All present voted "Aye." MOTION PASSED.

- 34966                    RELEASE OF THE LETTER OF CREDIT (LOC) #5308 IN THE AMOUNT OF \$92,515.91 FOR LA CIMA, PHASE 1, SECTION 2.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to release of the Letter of Credit (LOC) #5308 in the amount of \$92,515.91 for La Cima, Phase 1, Section 2. All present voted "Aye." MOTION PASSED.

- 34967                    CALL FOR A PUBLIC HEARING ON MARCH 24, 2020 TO DISCUSS FINAL PLAT APPROVAL OF THE REPLAT OF LOT 10, INDIAN HILLS SUBDIVISION; PLN-1401.**

A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to call for a public hearing on March 24, 2020 to discuss final plat approval of the Replat of Lot 10, Indian Hills Subdivision; PLN-1401. All present voted "Aye." MOTION PASSED.

- 34968                    AUTHORIZE SI MECHANICAL, LLC TO DEMO AND RENOVATE THE HVAC SYSTEM IN THE PCT 4 BUILDING IN THE AMOUNT OF \$97,343 AND AMEND THE BUDGET ACCORDINGLY.**

Dan Lyon, Hays County resident, commented on the cost of the HVAC. A motion was made by Commissioner Smith seconded by Commissioner Shell to authorize SI Mechanical, LLC to demo and renovate the HVAC system in the PCT 4 building in the amount of \$97,343 and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34969                    AUTHORIZE THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE HAYS COUNTY VETERAN'S TREATMENT COURT AND RESTORATIVE PATHWAYS, LLC RELATED TO COUNSELING SERVICES TO INDIVIDUAL VETERANS AND/OR THEIR FAMILY MEMBERS.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the execution of a Memorandum of Understanding between the Hays County Veteran's Treatment Court and Restorative Pathways, LLC related to counseling services to individual veterans and/or their family members. All present voted "Aye." MOTION PASSED.

- 34970                    AUTHORIZE EXECUTION OF A TECHNICAL ASSISTANCE LETTER REGARDING THE DEVELOPMENT OF A PROGRAM TO FINANCE LAND CONSERVATION AND RECREATION WITHIN HAYS COUNTY.**

Katherine Romans, Executive Director of the Hill Country Alliance, thanked Judge Becerra and Commissioners for approving the Alliance and gave a short report on planned activities. A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize execution of a technical assistance letter regarding the development of a program to finance land conservation and recreation within Hays County. All present voted "Aye." MOTION PASSED.

**Clerk's Note Agenda Item #29 RE: EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.074 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING EMPLOYMENT AND DUTIES OF EACH INDIVIDUAL POSITION WITHIN THE HUMAN RESOURCES OFFICE. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT. - WAS PULLED.**



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MARCH 10, 2020

**34971 EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.074 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING ALL INDIVIDUAL POSITIONS IN HAYS COUNTY VICTIM SERVICES, C.I.D., PATROL, DISPATCH, AND CRIME SCENE INVESTIGATION UNIT. POSSIBLE DISCUSSION AND/OR ACTION MAY FOLLOW IN OPEN COURT.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the County Judge to execute a Professional Services Agreement between Hays County and Tonya Glenn in Associates Related to Counseling for Designated First Responders as discussed in Executive Session. All present voted "Aye." MOTION PASSED.

**Clerk's Note Agenda Item #31 RE: DISCUSSION AND POSSIBLE ACTION RELATED TO THE BURN BAN AND/OR DISASTER DECLARATION. - WAS PULLED.**

### **3DISCUSSION RELATED TO THE HAYS COUNTY INMATE POPULATION, TO INCLUDE CURRENT POPULATION COUNTS AND COSTS.**

Judge Becerra read the Sheriff's update of the inmate population. Jail Capacity was 311 inmates, the average was 552, and the peak was 557. There were 198 men, and 9 women. Inmates were outsourced to 7 counties. Estimated cost of \$82,193 for March 1-7. **No action taken.**

**Clerk's Note Agenda Item #33 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 #34 RE: DISCUSSION OF ISSUES RELATED TO THE ROAD BOND PROJECTS, INCLUDING UPDATES FROM MIKE WEAVER, PRIME STRATEGIES, WADE BENTON, HNTB AND ALLEN CROZIER, HDR. POSSIBLE ACTION MAY FOLLOW. - WAS PULLED.**

**Clerk's Note Agenda Item #35 RE: DISCUSSION OF ISSUES RELATED TO ELECTRO PURIFICATION INCLUDING UPDATES ON THE FILED APPLICATION. POSSIBLE ACTION MAY FOLLOW. - WAS PULLED.**

### **ADJOURNMENT**

A motion was made by Judge Becerra, seconded by Commissioner Jones to adjourn court at 10:47 a.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 March 10, 2020.**



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





MARCH 16, 2020

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 16<sup>th</sup> DAY OF MARCH A.D., 2020, IN THE HAYS COUNTY COURTHOUSE, 111 E. SAN ANTONIO ST., SUITE 301, SAN MARCOS, TEXAS, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN SPECIAL MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

RUBEN BECERRA	COUNTY JUDGE
DEBBIE GONZALES INGALSBE	COMMISSIONER, PCT. 1
MARK JONES	COMMISSIONER, PCT. 2
LON A. SHELL	COMMISSIONER, PCT. 3
ELAINE H. CÁRDENAS	COUNTY CLERK

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

WITH COMMISSIONER PCT. 4 WALT SMITH BEING ABSENT AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

#### PUBLIC COMMENTS

No comments were made.

**34972 ADOPT A RESOLUTION EXTENDING THE LOCAL DISASTER DECLARATION EXECUTED BY THE HAYS COUNTY JUDGE ON MARCH 15, 2020, RELATED TO THE PUBLIC HEALTH RESPONSE TO COVID – 19.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to adopt a resolution extending the Local Disaster Declaration executed by the Hays County Judge on March 15, 2020, related to the public health response to COVID – 19. All present voted "Aye." MOTION PASSED.

**EXECUTIVE SESSION PURSUANT TO CHAPTER 551.071, 551.076, AND 551.089 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUSEL AND DELIBERATION REGARDING THE DEPLOYMENT AND IMPLEMENTATION OF SECURITY PERSONNEL, DEVICES AND /OR CRITICAL INFRASTRUCTURE RELATED TO THE PUBLIC HEALTH RESPONSE TO COVID – 19. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

No action taken.

#### COMMISSIONERS' AND JUDGE'S COMMENTS

Judge Becerra said an administration plan is being developed in cooperation with Human Resources and will be presented at Commissioners Court on March 24. Judge Becerra said he suspending all work related travel regarding county operations.

Commissioner Shell recommended reaching out to the local Chambers of Commerce on how businesses can access resources during this difficult time.

Commissioner Ingalsbe and Commissioner Jones advised the Public to go to Hays Informed for latest information and resources.

#### ADJOURNMENT

A motion was made by Judge Becerra, seconded by Commissioner Jones to adjourn court at 5:09 p.m.

HAYS COUNTY COMMISSIONERS' COURT MINUTES



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MARCH 16, 2020

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 March 16, 2020.



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





MARCH 24, 2020

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 24<sup>th</sup> DAY OF MARCH A.D., 2020, IN THE HAYS COUNTY COURTHOUSE, 111 E. SAN ANTONIO ST., SUITE 301, SAN MARCOS, TEXAS, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

RUBEN BECERRA  
DEBBIE GONZALES INGALSBE  
MARK JONES  
LON A. SHELL  
WALT SMITH  
VALERIE VALDEZ

COUNTY JUDGE  
COMMISSIONER, PCT. 1  
COMMISSIONER, PCT. 2  
COMMISSIONER, PCT. 3  
COMMISSIONER, PCT. 4  
DEPUTY 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:

Reverend Javier Maldonado, 7<sup>th</sup> Day Adventist Church, gave the invocation. Judge Becerra led the court in the Pledge of Allegiance to the United States and Texas flags. Judge Becerra called the meeting to order.

#### PUBLIC COMMENTS

Rodrigo Amaya, Hays County resident, gave public comments regarding the courtroom technology and suggested I.T. department help with that on-going issue. He noted that the lights around the flagpole were still on at 7:40 and said it is a waste of energy. He said he submitted open records request to General Counsel and said he has not been responded to in a timely manner. Dan Lyon, Hays County resident, gave public comments, he quoted Psalm 91 and thanked Attorney General Ken Paxton for his moratorium on abortion. He stated the Order issued on March 15 by Judge Becerra goes against the First Amendment which defines the right to peacefully assemble.

#### UPDATE FROM THE COUNTY JUDGE AND STAFF REGARDING THE LOCAL DISASTER DECLARATION AND COVID-19.

Judge Becerra said Hays County is following the State's guidance and supported by the Federal Government. He stated that he is reluctant to issue a Shelter in Place Order. The Judge thanked several departments and staff members for their efforts and assistance during this time. Judge Becerra said there is a shortage of Personal Protective Equipment (PPE), and he and his staff are working to obtain those supplies for the County. He also talked about releasing some inmates from jail to diminish the load on that front. Alex Villalobos, Chief of Staff, presented the court with a heat signature map to show how the affected areas are connected. He said there are currently 7 confirmed cases, 10 pending cases, 1 recovered, and 69 negative test for Covid-19 in the County. The Chief of Staff said the numbers give a false comfort because there is a lack of testing. He explained the actions by the County to help citizens and the efforts of planning for Recovery. Commissioner Shell thanked Judge Becerra, Alex Villalobos, the Chamber of Commerce, and several departments. Commissioner Ingalsbe echoed the comments of Commissioner Shell. Commissioner Jones spoke about still needing help with private sector doctors relaying information to the Health Department when they have a positive test. This helps to get information to first responders so they have the right personal protective equipment when they are called out to help those residents. Judge Becerra said we do not have test available, but when we do that the number of people with the virus will increase. He said this statement is not to alarm anyone, but to determine who should self-quarantine. Judge Becerra emphasized that it is critical to notify the Health Department with any information. Commissioner Jones thanked the School Districts for their assistance and willingness to help during this time. Commissioner Ingalsbe thanked the hospitals for their help as well. Commissioner Smith thanked Judge Becerra for his actions to limit the economic impacts of the businesses in the county. Commissioner Jones commented on the drive through testing, noting that it will first be made available to first responders, and then by appointment only to citizens with doctor's recommendation. Commissioner Smith thanked Jeff McGill, Technology Director, for his assistance so that he could join the court remotely. Commissioner Smith noted that he had recently traveled along with personal health reasons, and made the decision to use the two week timetable before interacting with others. Judge Becerra ended by encouraging people to email ideas and suggestions that would benefit everyone during this time. **No action was taken.**





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**34973                    ADOPT A PROCLAMATION DECLARING MARCH 24, 2020 AS  
WORLD TB DAY FOR HAYS COUNTY.**

Tammy Crumley, County Wide Operations, thanked the T.B. staff who were unable to attend court, as they are visiting patients. A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to Adopt a Proclamation declaring March 24, 2020 as World TB Day for Hays County. All present voted "Aye." MOTION PASSED.

**34974                    APPROVE PAYMENTS OF COUNTY INVOICES.**

A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to approve payments of County invoices. All present voted "Aye." MOTION PASSED.

**34975                    APPROVE PAYMENTS OF JUROR CHECKS.**

A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to approve payments of Juror checks. All present voted "Aye." MOTION PASSED.

**34976                    APPROVE THE PAYMENT OF UNITED HEALTHCARE CLAIMS.**

A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to approve the payment of United Healthcare claims. All present voted "Aye." MOTION PASSED.

**34977                    APPROVE THE PAYMENT OF THE MARCH 31, 2020 PAYROLL  
DISBURSEMENTS IN AN AMOUNT NOT TO EXCEED \$3,900,000.00  
EFFECTIVE MARCH 31, 2020 AND POST TOTALS FOR WAGES,  
WITHHOLDINGS, DEDUCTIONS AND BENEFITS ON THE HAYS  
COUNTY WEBSITE ONCE FINALIZED.**

A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to approve the payment of the March 31, 2020 payroll disbursements in an amount not to exceed \$3,900,000.00 effective March 31, 2020 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized. All present voted "Aye." MOTION PASSED.

**34978                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE A CONTRACT  
MODIFICATION WITH THOMSON REUTERS WESTLAW RELATED  
TO LEGAL RESEARCH FOR THE CRIMINAL DISTRICT ATTORNEY'S  
OFFICE.**

Rodrigo Amaya, Hays county resident, made a public comment against hiring additional employees. Commissioner Ingalsbe said this modification would allow two additional attorneys to have access to Westlaw to conduct legal research. A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the County Judge to execute a contract modification with Thomson Reuters Westlaw related to legal research for the Criminal District Attorney's Office. All present voted "Aye." MOTION PASSED.

**34979                    APPROVE AND ACCEPT THE UPDATED 2019 RACIAL PROFILING  
REPORT FOR THE HAYS COUNTY CONSTABLE OFFICE, PRECINCT  
3.**

Rodrigo Amaya, Hays county resident, made a public comment against the report. He said the Court should be worried about the Constable's actions. Commissioner Shell made an announcement that Constable Helm is requesting the Court accept an amended filing. His initial filing with the State had a mistake and he refiled an amended filing. Judge Becerra had questions regarding the report and inquired about access to the information which generate the report. He said he received several concerned calls about the initial filings. Judge Becerra said he noticed several edits on the revision. Commissioner Shell said he noticed the edits as well. Mark Kennedy, General Counsel, advised the Court that they are able to inquire but do not have the authority to launch an investigation. If an investigation or audit was to be made, such investigation/audit would be made by TCOLE (Texas Commission on Law Enforcement). He said per statute that the report is to be recorded with the Commissioners Court. Commissioner Jones confirmed with General Counsel that the Court is just to accept the report into the record, not to approve the report, which General Counsel confirmed. Judge Becerra ended by asking Constable Helm, who was not present in court, to provide any useful information to validate the report. A motion was made by Commissioner Shell seconded by Commissioner Jones to approve and accept the updated 2019 Racial Profiling Report for the Hays County Constable Office, Precinct 3. All present voted "Aye." MOTION PASSED.





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- 34980                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE A NEW FY20 INTERLOCAL CONTRACT FOR THE NEXT GENERATION 9-1-1 DATABASE PROGRAM WITH THE CAPITAL AREA EMERGENCY COMMUNICATIONS DISTRICT (CAECD) FOR AN ADDITIONAL \$13,186.30 IN GRANT FUNDS TO BE UTILIZED FOR MASTER STREET ADDRESS GUIDE (MSAG)/AUTOMATIC LOCATION INFORMATION (ALI) WORK AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the County Judge to execute a new FY20 Interlocal Contract for the Next Generation 9-1-1 Database Program with the Capital Area Emergency Communications District (CAECD) for an additional \$13,186.30 in grant funds to be utilized for Master Street Address Guide (MSAG)/Automatic Location Information (ALI) work and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34981                    AUTHORIZE THE FIRE MARSHAL TO ACCEPT GRANT FUNDING IN THE FORM OF LEOSE FUNDS DISTRIBUTED FROM THE STATE COMPTROLLER AND AMEND THE BUDGET ACCORDINGLY.**

Scott Raven, Fire Marshal and Interim Emergency Director, explained these funds are received annually from the State to help cover training and education exclusively for the full time peace officers out of the Fire Marshall's office. A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the Fire Marshal to accept grant funding in the form of LEOSE Funds distributed from the State Comptroller and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34982                    AUTHORIZE THE CENSUS COMPLETE COUNT COMMITTEE TO UTILIZE THE BALANCE OF THE UNITED WAY GRANT FUNDS PREVIOUSLY APPROVED FOR CONSUMABLE ITEMS FOR EVENTS AND EVENT RENTAL CONTRACT FEES AND A PORTION OF THE PRINTED MATERIALS BUDGET FOR SOCIAL MEDIA CENSUS OUTREACH DUE TO THE COVID-19 MASS GATHERING RESTRICTIONS AND AMEND THE BUDGET ACCORDINGLY.**

Rodrigo Amaya, Hays county resident made a public comment, announcing he saw a Hays County employee recklessly driving in town. Commissioner Ingalsbe assured him that the issue will be addressed. Judge Becerra also added the County vehicles have cameras and an audit can be made. Commissioner Ingalsbe said the funds would be used for social media due to Covid-19. Commissioner Smith would like the funds to be used towards targeting new residents and underserved residents. Commissioner Smith also requested to meet with Jessica Mejia, Census Program Coordinator, to talk about the needs of those communities. A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the Census Complete Count Committee to utilize the balance of the United Way grant funds previously approved for Consumable Items for Events and Event Rental Contract Fees and a portion of the Printed Materials budget for Social Media Census Outreach due to the COVID-19 mass gathering restrictions and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 34983                    AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR TWO MOBILE HOMES LOCATED AT 1571 WINDY HILL ROAD, KYLE, TEXAS 78640.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize On-Site Sewage Facility Permit for two mobile homes located at 1571 Windy Hill Road, Kyle, Texas 78640. All present voted "Aye." MOTION PASSED.

- 34984                    APPROVE RENEWAL OF IFB 2019-B02 ROAD BUILDING MATERIALS - GENERAL ROAD CONSTRUCTION WITH COLORADO MATERIALS, LTD. BRAUNTEX MATERIALS, INC. AND INDUSTRIAL ASPHALT, LLC. FOR ONE (1) ADDITIONAL YEAR AS STATED IN THE ORIGINAL BID.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to approve renewal of IFB 2019-B02 Road Building Materials - General Road Construction with Colorado Materials, LTD Brauntex Materials, Inc. and Industrial Asphalt, LLC for one (1) additional year as stated in the original bid. All present voted "Aye." MOTION PASSED.



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**34985 APPROVE UTILITY PERMITS.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to approve Utility Permits. All present voted "Aye." MOTION PASSED.

**34986 AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR TWO MOBILE HOMES LOCATED AT 704 B TURTLE HILL ROAD, DRIFTWOOD, TEXAS 78619.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to Authorize On-Site Sewage Facility Permit for two mobile homes located at 704 B Turtle Hill Road, Driftwood, Texas 78619. All present voted "Aye." MOTION PASSED.

**34987 AUTHORIZE THE EXECUTION OF AMENDMENT NO. 2 WITH THE DEPARTMENT OF STATE HEALTH SERVICES (DSHS) FOR THE FY2021 IMMUNIZATION/LOCALS (IMM/LOCALS) GRANT PROGRAM IN THE AMOUNT OF \$192,341.00.**

A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize the execution of amendment no. 2 with the Department of State Health Services (DSHS) for the FY2021 Immunization/Locals (IMM/LOCALS) grant program in the amount of \$192,341.00. All present voted "Aye." MOTION PASSED.

**34988 AUTHORIZE THE EXECUTION OF AMENDMENT NO. 4 WITH THE DEPARTMENT OF STATE HEALTH SERVICES (DSHS) FOR THE FY2021 PUBLIC HEALTH EMERGENCY PREPAREDNESS (PHEP) GRANT PROGRAM IN THE AMOUNT OF \$139,393.00.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the execution of amendment no. 4 with the Department of State Health Services (DSHS) for the FY2021 Public Health Emergency Preparedness (PHEP) grant program in the amount of \$139,393.00. All present voted "Aye." MOTION PASSED.

**34989 AUTHORIZE THE JUVENILE PROBATION DEPARTMENT TO ACCEPT \$5,768.00 ADDITIONAL GRANT FUNDING FROM THE TEXAS JUVENILE JUSTICE DEPARTMENT (TJJD) FOR REGIONAL SUPPLEMENTAL & EMERGENT NEEDS (S&E) AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the Juvenile Probation Department to accept \$5,768.00 additional grant funding from the Texas Juvenile Justice Department (TJJD) for Regional Supplemental & Emergent Needs (S&E) and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**34990 AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR BASEBALL COACHING FACILITY & OFFICE LOCATED AT 13701 FITZHUGH ROAD, AUSTIN, TEXAS 78736.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize On-Site Sewage Facility Permit for baseball coaching facility & office located at 13701 Fitzhugh Road, Austin, Texas 78736. All present voted "Aye." MOTION PASSED.

**Clerk's Note Agenda Item #20 RE:** APPROVE THE UPDATES TO THE TEXAS PROPERTY ASSESSED CLEAN ENERGY (PACE) AUTHORITY PROJECT DOCUMENTS APPROVED BY THE HAYS COUNTY COMMISSIONERS COURT ON OR ABOUT JANUARY 17, 2017. - **WAS PULLED.**

**34991 AUTHORIZE THE SHERIFF'S OFFICE TO UTILIZE SAVINGS OF \$10,386 TO PURCHASE COMPUTER EQUIPMENT FOR THE NEW DISPATCH CENTER IN THE PUBLIC SAFETY BUILDING AND AMEND THE BUDGET ACCORDINGLY.**



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A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the Sheriff's Office to utilize savings of \$10,386 to purchase computer equipment for the new dispatch center in the Public Safety Building and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**34992 APPROVE SPECIFICATIONS FOR IFB 2020-B07 METAL BEAM GUARD FENCE (MBGF) MATERIALS AND AUTHORIZE PURCHASING TO SOLICIT FOR BIDS AND ADVERTISE.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to approve specifications for IFB 2020-B07 Metal Beam Guard Fence (MBGF) Materials and authorize Purchasing to solicit for bids and advertise. All present voted "Aye." MOTION PASSED.

**34993 AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN MARCOS, HAYS COUNTY, AND LAZY OAKS RANCH, LP IN CONNECTION WITH THE LA CIMA DEVELOPMENT AND THE ADDITION OF APPROXIMATELY 130 ACRES INTO THE AREA COVERED BY THE AGREEMENT.**

Commissioner Shell announced La Cima has added 130 acres into their development agreement. As a result, there is a reduction of density and will be annexed by the city. A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the County Judge to execute the Third Amended and Restated Development Agreement between the City of San Marcos, Hays County, and Lazy Oaks Ranch, LP in connection with the La Cima development and the addition of approximately 130 acres into the area covered by the Agreement. All present voted "Aye." MOTION PASSED.

**34994 APPROVE SPECIFICATIONS FOR IFB 2020-B08 CULVERTS AND AUTHORIZE PURCHASING TO SOLICIT FOR BIDS AND ADVERTISE.**

A motion was made by Commissioner Jones seconded by Commissioner Shell to approve specifications for IFB 2020-B08 Culverts and authorize Purchasing to solicit for bids and advertise. All present voted "Aye." MOTION PASSED.

**34995 AUTHORIZE THE MAGISTRATION DIVISION TO CONVERT CONTRACT MAGISTRATION FUNDS TO ESTABLISH ONE (1) SHARED SLOT FOR PART-TIME MAGISTRATE JUDGES, GRADE 119 EFFECTIVE APRIL 1ST AND AMEND THE BUDGET ACCORDINGLY.**

Rodrigo Amaya, Hays county resident made a public comment, against the Magistration division. Judge Becerra said the Magistration division would help to lower the budget for outsourcing. Commissioner Ingalsbe agreed and added it would help to lower the number of people in jail. Commissioner Shell said the Magistrates help to streamline the process for both District Courts and County Courts. He said the County is able to hold Magistration at least once a day every day of the year. Commissioner Jones said the County is able to save money by keeping a person out of jail. A motion was made by Commissioner Jones seconded by Commissioner Shell to authorize the Magistration Division to convert contract magistration funds to establish one (1) shared slot for part-time Magistrate Judges, grade 119 effective April 1st and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**34996 AUTHORIZE BUILDING MAINTENANCE TO ACCEPT A \$15,819 PROPOSAL FROM PBS OF TEXAS (THE HAYS COUNTY JANITORIAL CONTRACTOR) TO DISINFECT ALL COUNTY BUILDINGS WITH EARTHSafe PURTAB DISINFECTANT RELATED TO THE COVID-19 PREPAREDNESS AND RESPONSE FOR BUILDING SANITATION.**

Tammy Crumley, County Wide Operations, said this service is provided under our current contract. Disinfection of the buildings would take place overnight while the buildings are empty. She said this cost could potentially be reimbursed under the Emergency declaration reimbursement. Mark Kennedy, General Counsel, noted the exemption code that should be added to the motion. A motion was made by Commissioner Ingalsbe seconded by Commissioner Shell to authorize Building Maintenance to accept a \$15,819 Proposal from PBS of Texas (the Hays County Janitorial Contractor) to disinfect all County Buildings with Earthsafe Purbtab Disinfectant related to the COVID-19 preparedness and response for building sanitation under exemption 262.024 (a)(2). All present voted "Aye." MOTION PASSED.



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**34997                    APPROVE SPECIFICATIONS FOR IFB 2020-B06 ROADWAY STRIPING AND AUTHORIZE PURCHASING TO SOLICIT FOR BIDS AND ADVERTISE.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Shell to approve specifications for IFB 2020-B06 Roadway Striping and authorize Purchasing to solicit for bids and advertise. All present voted "Aye." MOTION PASSED.

**34998                    RATIFY THE PURCHASE OF ONE (1) CLOROX TOTAL 360 SPRAYER FOR \$5,610.22 RELATED TO COVID-19 PREPAREDNESS AND RESPONSE FOR BUILDING SANITATION.**

Dan Lyon, Hays county resident, made a public comment against the purchase of the sprayer. He said the county needs to cut down on spending. Tammy Crumley, County Wide Operations, explained the benefits of the sprayer. She said the County could use it throughout all the County buildings during a number of times of the year including flu season. Alex Villalobos, Chief of Staff, said this item was discussed with Mike Jones, Health Preparedness, and explained the benefits of owning the sprayer. Scott Raven, Fire Marshall, presented an image of the sprayer to the court, and also attested to the benefits he has encountered when using the sprayer in ambulances during flu season. **A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to ratify the purchase of one (1) Clorox Total 360 Sprayer for \$5,610.22 related to COVID-19 preparedness and response for building sanitation. All present voted "Aye." MOTION PASSED.**

**34999                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH DOUCET & ASSOCIATES FOR DESIGN SERVICES RELATED TO PARKING LOT EXPANSION AT THE PCT. 2 OFFICE BUILDING AND AMEND THE BUDGET ACCORDINGLY.**

Commissioner Jones said Precinct 2 is short on parking spaces. This agreement will cover the redesign of the space to add parking. **A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to authorize the County Judge to execute a Professional Services Agreement with Doucet & Associates for design services related to parking lot expansion at the Pct. 2 office building and amend the budget accordingly. All present voted "Aye." MOTION PASSED.**

**35000                    ACCEPT THE VEGETATION COVERAGE AND THE RELEASE OF THE REVEGETATION BOND #PB03016800239 IN THE AMOUNT OF \$41,520.00 FOR SUNFIELD SUBDIVISION, PHASE 3, SECTION 3.**

Commissioner Jones announced that staff recommendation was made for this item. **A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to accept the vegetation coverage and the release of the revegetation bond #PB03016800239 in the amount of \$41,520.00 for Sunfield subdivision, Phase 3, Section 3. All present voted "Aye." MOTION PASSED.**

**35001                    APPROVE ADVANCE FUNDING AGREEMENT FOR SURFACE TRANSPORTATION BLOCK GRANT PROGRAM (STBG) BOTH ON-SYSTEM AND OFF-SYSTEM (FM 621 AND CR 266 IMPROVEMENT) AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE ADVANCE FUNDING AGREEMENT ON BEHALF OF HAYS COUNTY.**

Commissioner Ingalsbe said this is part of the 2016 Road Bond work that consist of dedicated turn lanes to provide more safety. AFA required TXDOT advertise, lead, and manage this project. **A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to approve Advance Funding Agreement for Surface Transportation Block Grant Program (STBG) Both On-System and Off-System (FM 621 and CR 266 Improvement) and authorize the County Judge to execute Advance Funding Agreement on behalf of Hays County. All present voted "Aye." MOTION PASSED.**

**35002                    APPROVE ADVANCE FUNDING AGREEMENT FOR SURFACE TRANSPORTATION BLOCK GRANT PROGRAM (STBG) AND HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) PROJECT ON-SYSTEM (RM 967 SAFETY TURN LANES) AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE ADVANCE FUNDING AGREEMENT ON BEHALF OF HAYS COUNTY.**



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Commissioner Jones said there was a long delay on this project. He said the backup reflects the project is scheduled for 2021; however they would like to start this summer while schools are out of session. **A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to approve Advance Funding Agreement for Surface Transportation Block Grant Program (STBG) and Highway Safety Improvement Program (HSIP) Project On-System (RM 967 Safety Turn Lanes) and authorize the County Judge to execute Advance Funding Agreement on behalf of Hays County. All present voted "Aye." MOTION PASSED.**

**35003 APPROVE THE REIMBURSEMENT AGREEMENT FOR PRELIMINARY ENGINEERING SERVICES WITH THE UNION PACIFIC RAILROAD COMPANY FOR THE MCCARTY LANE CORRIDOR IMPROVEMENTS PROJECT AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE AGREEMENT ON BEHALF OF HAYS COUNTY.**

Commissioner Shell said anytime work is done on a railroad crossing the county has to pay for the engineering services. He noted possible savings since McCarty and Centerpoint are relatively close. **A motion was made by Commissioner Shell seconded by Commissioner Ingalsbe to approve the Reimbursement Agreement for Preliminary Engineering Services with the Union Pacific Railroad Company for the McCarty Lane Corridor Improvements Project and authorize the County Judge to execute the Agreement on behalf of Hays County. All present voted "Aye." MOTION PASSED.**

**35004 APPROVE THE REIMBURSEMENT AGREEMENT FOR PRELIMINARY ENGINEERING SERVICES WITH THE UNION PACIFIC RAILROAD COMPANY FOR THE CENTERPOINT ROAD CORRIDOR IMPROVEMENTS PROJECT AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE AGREEMENT ON BEHALF OF HAYS COUNTY.**

A motion was made by Commissioner Shell seconded by Commissioner Ingalsbe to approve the Reimbursement Agreement for Preliminary Engineering Services with the Union Pacific Railroad Company for the Centerpoint Road Corridor Improvements Project and authorize the County Judge to execute the Agreement on behalf of Hays County. All present voted "Aye." MOTION PASSED.

**35005 ACCEPT FISCAL SURETY FOR THE CONSTRUCTION OF STREET AND DRAINAGE IMPROVEMENTS IN THE AMOUNT OF \$1,409,066.00 FOR HEADWATERS AT BARTON CREEK, PHASE 4, SECTION 2 (BOND # PB03010406703).**

A motion was made by Commissioner Shell seconded by Commissioner Ingalsbe to accept fiscal surety for the construction of street and drainage improvements in the amount of \$1,409,066.00 for Headwaters at Barton Creek, Phase 4, Section 2 (Bond # PB03010406703). All present voted "Aye." MOTION PASSED.

**35006 ACCEPT FISCAL SURETY FOR THE CONSTRUCTION OF STREET AND DRAINAGE IMPROVEMENTS IN THE AMOUNT OF \$1,103,051.40 FOR HEADWATERS AT BARTON CREEK, PHASE 4, SECTION 3 (BOND # PB03010406704).**

A motion was made by Commissioner Jones seconded by Commissioner Shell to accept fiscal surety for the construction of street and drainage improvements in the amount of \$1,103,051.40 for Headwaters at Barton Creek, Phase 4, Section 3 (Bond # PB03010406704). All present voted "Aye." MOTION PASSED.

**35007 ACCEPT FISCAL SURETY FOR THE CONSTRUCTION OF STREET AND DRAINAGE IMPROVEMENTS IN THE AMOUNT OF \$1,943,007.30 FOR HEADWATERS AT BARTON CREEK, PHASE 4, SECTION 4 (BOND # PB03010406702).**

A motion was made by Commissioner Jones seconded by Commissioner Shell to accept fiscal surety for the construction of street and drainage improvements in the amount of \$1,943,007.30 for Headwaters at Barton Creek, Phase 4, Section 4 (Bond # PB03010406702). All present voted "Aye." MOTION PASSED.





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**Clerk's Note Agenda Item #38 RE:** *DISCUSSION AND POSSIBLE ACTION TO AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR LOCALLY FUNDED TRANSPORTATION PROJECT ON-SYSTEM, RM 2325 AT FISCHER STORE RD. AS PART OF THE 2016 ROAD BOND PROGRAM. – WAS PULLED.*

**Clerk's Note:** Commissioner Smith disconnected at 1:44 p.m. and reconnected at 1:46 p.m.

**35008                    APPROVE A VARIANCE FROM SECTION 721.5.07 (C) OF THE HAYS COUNTY DEVELOPMENT REGULATIONS AND APPROVAL OF FINAL PLAT; HOLD PUBLIC HEARING. PLN-1401; REPLAT OF LOT 10, INDIAN HILLS RANCH SUBDIVISION.**

Judge Becerra opened the public hearing at 1:45p.m. No comments were made. Judge Becerra closed the public hearing at 1:45p.m. Caitlyn Strickland, Development Services, gave a review of the requirements for the variances and replat. **A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to approve a variance from section 721.5.07 (C) of the Hays County Development Regulations and approval of final plat; hold public hearing. PLN-1401; Replat of Lot 10, Indian Hills Ranch Subdivision. All present voted "Aye." MOTION PASSED.**

**35009                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE A PHASING AGREEMENT WITH HK REAL ESTATE DEVELOPMENT FOR THE FREEMAN SUBDIVISION LOCATED OFF OF OLD BASTROP HIGHWAY IN PRECINCT 1.**

Caitlyn Strickland, Development Services, and Mark Kennedy, General Counsel, gave further details to the court about the agreement. **A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the County Judge to execute a Phasing Agreement with HK Real Estate Development for the Freeman Subdivision located off of Old Bastrop Highway in Precinct 1. All present voted "Aye." MOTION PASSED.**

**35010                    AUTHORIZE THE COUNTY JUDGE TO EXECUTE A PHASING AGREEMENT WITH HK REAL ESTATE DEVELOPMENT FOR THE RIVER BEND SUBDIVISION LOCATED OFF OF OLD BASTROP HIGHWAY IN PRECINCT 1.**

**A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize the County Judge to execute a Phasing Agreement with HK Real Estate Development for the River Bend Subdivision located off of Old Bastrop Highway in Precinct 1. All present voted "Aye." MOTION PASSED.**

**35011                    APPROVE THE NAMING OF A PRIVATE DRIVEWAY IN PRECINCT 3, REVIVAL HILL.**

Commissioner Shell stated this has gone through the addressing department and was approved. Caitlyn Strickland, Development Services, stated since several residents lived on the road it is recommended to have a street name for emergency services purposes. **A motion was made by Commissioner Shell seconded by Commissioner Ingalsbe to approve the naming of a private driveway in precinct 3, Revival Hill. All present voted "Aye." MOTION PASSED.**

**35012                    AUTHORIZING THE COUNTY JUDGE TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) WITH SECURUS TECHNOLOGIES, LLC RELATED TO TEMPORARY FREE INMATE PHONE CALLS IN LIGHT OF COVID-19 CONCERNS.**

Commissioner Shell said during this time inmates would receive free phone calls due to Covid-19. Captain Mike Davenport, Sheriff's Office, said because of Covid-19 visitation at the jail facility cannot be held, therefore Securus was contacted about helping with this issue. Securus provided a contract as a solution to provide free phone calls for the inmates. Judge Becerra and Commissioner Ingalsbe said they were grateful for this action. **A motion was made by Commissioner Jones seconded by Commissioner Ingalsbe to authorizing the County Judge to execute a Memorandum of Understanding (MOU) with Securus Technologies, LLC related to temporary free inmate phone calls in light of COVID-19 concerns. All present voted "Aye." MOTION PASSED.**



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**Clerk's Note Agenda Item #44 RE: DISCUSSION AND POSSIBLE ACTION TO PROVIDE DIRECTION REGARDING ENFORCEMENT OF THE HAYS COUNTY FIRE CODE, ADOPTED BY THE COMMISSIONERS COURT ON OR ABOUT DECEMBER 17, 2019. – WAS PULLED.**

**35013                    AUTHORIZE THE EXECUTION OF A \$1,000,000.00 LETTER OF AGREEMENT BETWEEN HAYS COUNTY AND CENTRAL TEXAS MEDICAL CENTER (CTMC) AS BUDGETED FOR FY2020 FOR INDIGENT HEALTH CARE COSTS.**

Commissioner Shell introduced the representatives Stephanie Nelson, CFO of CTMC, and Thomas McKinney, CEO, of Christus. Commissioner Shell explained the prorating of the funds for the hospitals because of the transition of ownership over CTMC. Both hospital representatives spoke to the court about the services provided to the county. Commissioner Ingalsbe said she would like to set a meeting with the new CEO regarding the needs of specialty doctors through this continued partnership. **A motion was made by Commissioner Shell seconded by Commissioner Jones to authorize the execution of a \$1,000,000.00 Letter of Agreement between Hays County and Central Texas Medical Center (CTMC) as budgeted for FY2020 for Indigent health care costs. All present voted "Aye." MOTION PASSED.**

**35014                    AMEND THE HAYS COUNTY PURCHASING POLICY TO INCLUDE THE RECEIPT OF ELECTRONIC BIDS/PROPOSALS AND TO AUTHORIZE THE EXECUTION OF AN AGREEMENT FOR SERVICES BETWEEN HAYS COUNTY AND BIDNET DIRECT.**

Marisol Villarreal-Alonzo, Auditor, said her office has worked with the I.T. department to utilize their current software to allow for electronic bids and will begin training. BidNet Direct is a vendor that currently works with other counties by posting bids electronically. BidNet offers free services to the County and vendors as well as offering subscriptions to vendors for automatic notifications of bids. **A motion was made by Commissioner Ingalsbe seconded by Commissioner Shell to amend the Hays County Purchasing Policy to include the receipt of electronic bids/proposals and to authorize the execution of an Agreement for Services between Hays County and BidNet Direct. All present voted "Aye." MOTION PASSED.**

**35015                    EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING THE PURCHASE, LEASE, EXCHANGE, OR VALUE OF REAL PROPERTY LOCATED ON OR NEAR THE SAN MARCOS RIVER IN PRECINCT 1, INCLUDING THE TWO PROPERTIES FOR WHICH HAYS COUNTY HAS EXECUTED OPTION AGREEMENTS. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

A motion was made by Commissioner Ingalsbe seconded by Commissioner Jones to authorize and/or ratify General Counsel's execution of purchase agreements related to the property acquisitions for which the county has executed option agreements along Cape Road and River Road in Precinct 1; to authorize General Counsel to execute all documents incidental to closing the purchase of the Cape Family Trust, LTD property by way of 2016 Transportation bond funds (multimodal transportation) and to authorize funding the purchase of the Clemmie Sharp property by way of 2007 Park bond interest savings. All present voted "Aye." MOTION PASSED.

**35016                    EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.074 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING EMPLOYMENT AND DUTIES OF EACH INDIVIDUAL POSITION EMPLOYED BY HAYS COUNTY. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

A motion was made by Commissioner Shell seconded by Commissioner Ingalsbe to approve a policy related to emergency paid leave and to authorize execution of an Order of the Commissioners Court of Hays County, Texas as presented in Executive Session, addressing Employee absences resulting from Covid-19. All present voted "Aye." MOTION PASSED.



MARCH 24, 2020

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.074 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING THE DUTIES OF ALL INDIVIDUAL POSITIONS WITHIN THE OFFICE OF EMERGENCY SERVICES, INCLUDING BUT NOT LIMITED TO THE HAYS COUNTY FIRE MARSHAL.**

No action was taken.

**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.**

No action was taken.

**Clerk's Note Agenda Item #51 RE: DISCUSSION AND POSSIBLE ACTION RELATED TO THE BURN BAN AND/OR DISASTER DECLARATION. - WAS PULLED.**

**DISCUSSION RELATED TO THE HAYS COUNTY INMATE POPULATION, TO INCLUDE CURRENT POPULATION COUNTS AND COSTS.**

Judge Becerra read the update by the Sheriff's office. The estimated cost to outsource inmates was \$84,592 for the dates of March 15<sup>th</sup> through March 21<sup>st</sup>. The average number of outsourced inmates were 206 males and 8 females.

**Clerk's Note Agenda Item #53 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 #54 RE: DISCUSSION OF ISSUES RELATED TO THE ROAD BOND PROJECTS, INCLUDING UPDATES FROM MIKE WEAVER, PRIME STRATEGIES, WADE BENTON, HNTB AND ALLEN CROZIER, HDR. POSSIBLE ACTION MAY FOLLOW. - WAS PULLED.**

**Clerk's Note Agenda Item #55 RE: DISCUSSION OF ISSUES RELATED TO ELECTRO PURIFICATION INCLUDING UPDATES ON THE FILED APPLICATION. POSSIBLE ACTION MAY FOLLOW. - WAS PULLED.**

## ADJOURNMENT

A motion was made by Judge Becerra, seconded by Commissioner Jones to adjourn court at 1:55 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 March 24, 2020.**



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





## "AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Authorize the Sheriff's Office to purchase computer equipment with Sheriff Drug Forfeiture Funds and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	March 31, 2020	\$2,904.00

#### LINE ITEM NUMBER

053-618-00.5712\_400 Computer Equipment Operating

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

**PURCHASING GUIDELINES FOLLOWED:** YES      **AUDITOR REVIEW:** MARISOL VILLARREAL-ALONZO

REQUESTED BY	SPONSOR	CO-SPONSOR
Sheriff Gary Cutler	INGALSBE	N/A

#### SUMMARY

The Sheriff's Office is requesting to purchase four desktop computers for new positions approved in the FY 2020 budget. The Records Management Officers (RMO) are responsible for uploading and downloading files and data (video, photos, etc. which are several gigabytes. In the FY 2020 budget, VDI's were approved for the positions, and they do not have the needed power for functionality. Desktop computers will meet all the needs of the RMO functions. The Sheriff is authorizing the use of Drug Forfeiture Funds for this purchase of \$2,904.00.

Budget Amendment

053-618-00.5391 Miscellaneous (\$2,904.00)

053-618-00.5712\_400 Computer Equipment Operating \$2,904.00

Attachments: Dell Quote # 300058197160.1



## A quote for your consideration.

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

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

<b>Quote No.</b>	<b>3000058197160.1</b>
<b>Total</b>	<b>\$2,903.76</b>
Customer #	9657350
Quoted On	Mar. 20, 2020
Expires by	Apr. 19, 2020
Deal ID	17318888

Sales Rep	Chris Minchew
Phone	(800) 456-3355, 5138843
Email	Chris_Minchew@Dell.com
<b>Billing To</b>	ACCOUNTS PAYABLE HAYS COUNTY - AUDITORS 712 S STAGECOACH TRL STE 1071 SAN MARCOS, TX 78666-6247

### Message from your Sales Rep

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

Regards,  
Chris Minchew

### Shipping Group

<b>Shipping To</b>	<b>Shipping Method</b>
INFORMATION TECHNOLOGY HAYS COUNTY 712 SOUTH STAGECOACH TRAIL STE. 1206 SAN MARCOS, TX 78666 (512) 393-2273	Standard Delivery

Product	Unit Price	Qty	Subtotal
OptiPlex 7070 SFF MLK	\$725.94	4	\$2,903.76

---

<b>Subtotal:</b>	<b>\$2,903.76</b>
<b>Shipping:</b>	<b>\$0.00</b>
<b>Non-Taxable Amount:</b>	<b>\$2,903.76</b>
<b>Taxable Amount:</b>	<b>\$0.00</b>
<b>Estimated Tax:</b>	<b>\$0.00</b>

---

<b>Total:</b>	<b>\$2,903.76</b>
---------------	-------------------

Special lease pricing may be available for qualified customers. Please contact your DFS Sales Representative for details.

## Shipping Group Details

### Shipping To

INFORMATION TECHNOLOGY  
HAYS COUNTY  
712 SOUTH STAGECOACH TRAIL  
STE. 1206  
SAN MARCOS, TX 78666  
(512) 393-2273

### Shipping Method

Standard Delivery

		Qty	Subtotal
<b>OptiPlex 7070 SFF MLK</b>	<b>\$725.94</b>	<b>4</b>	<b>\$2,903.76</b>

Estimated delivery if purchased today:  
Apr. 16, 2020  
Contract # C000000006841  
Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Optiplex 7070 SFF XCTO	210-ASEC	-	4	-
Intel Core i5-8500 (6 Cores/9MB/6T/up to 4.1GHz/65W); supports Windows 10/Linux	338-BNZU	-	4	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	4	-
No AutoPilot	340-CKSZ	-	4	-
No Productivity Software	630-AAPK	-	4	-
8GB 1X8GB 2666MHz DDR4 Memory	370-AEBK	-	4	-
3.5 inch 500GB 7200rpm SATA Hard Disk Drive	400-AWFO	-	4	-
No Additional Hard Drive	401-AANH	-	4	-
NO RAID	817-BBBN	-	4	-
Intel Integrated Graphics, Dell OptiPlex	490-BBFG	-	4	-
OptiPlex 7070 Small Form Factor with 200W up to 85% efficient Power Supply (80Plus Bronze)	329-BEJY	-	4	-
System Power Cord (Philippine/TH/US)	450-AAOJ	-	4	-
ODD Bezel, Small Form Factor	325-BCXP	-	4	-
8x DVD+/-RW 9.5mm Optical Disk Drive	429-ABFH	-	4	-
Cyberlink Software for Windows 8/Windows 10 without media	430-XYIX	-	4	-
No Media Card Reader	379-BBHM	-	4	-
No Wireless LAN Card	555-BBFO	-	4	-
No Wireless LAN Card	555-BBFO	-	4	-
No Stand Option	575-BBBI	-	4	-
No Additional Cable Requested	379-BBCY	-	4	-
Black Dell KB216 Wired Multi-Media Keyboard English	580-ADJC	-	4	-
Black Dell MS116 Wired Mouse	275-BBBW	-	4	-
No Cove	320-BCGK	-	4	-
Not selected in this configuration	817-BBBC	-	4	-
SupportAssist	525-BBCL	-	4	-
Dell Applications for Windows	658-BBLB	-	4	-
Waves Maxx Audio	658-BBRB	-	4	-

Software for OptiPlex 7070	658-BEHB	-	4	-
OS-Windows Media Not Included	620-AALW	-	4	-
ENERGY STAR Qualified	387-BBLW	-	4	-
Safety/Environment and Regulatory Guide (English/French Multi-language)	340-AGIK	-	4	-
Placemat for OptiPlex 7070 SFF	750-ABKW	-	4	-
US Order	332-1286	-	4	-
No UPC Label	389-BCGW	-	4	-
Trusted Platform Module (Discrete TPM Enabled)	329-BBJL	-	4	-
Ship Material for OptiPlex Small Form Factor	340-CDWZ	-	4	-
Shipping Label for DAO	389-BBUU	-	4	-
EPA Regulatory Label	389-DQJX	-	4	-
No CompuTrace	461-AABF	-	4	-
No Hard Drive Bracket, Dell OptiPlex	575-BBKX	-	4	-
No Intel Responsive	551-BBBJ	-	4	-
8th Gen Intel Core i5 vPro processor label	389-CGJO	-	4	-
Desktop BTO Standard shipment	800-BBIO	-	4	-
Intel vPro Technology Enabled	631-ACCZ	-	4	-
2nd Intel Gigabit NIC PCIe Card (Low Profile)	555-BFBF	-	4	-
Dell SupportAssist OS Recovery Tool	658-BEOK	-	4	-
Custom Configuration	817-BBBB	-	4	-
No Anti-Virus Software	650-AAAM	-	4	-
No Additional Add In Cards	382-BBHX	-	4	-
No Optane	400-BFPO	-	4	-
No Additional Video Ports	492-BCKH	-	4	-
Dell Limited Hardware Warranty Plus Service	812-3886	-	4	-
Onsite/In-Home Service After Remote Diagnosis 3 Years	812-3887	-	4	-

<b>Subtotal:</b>	<b>\$2,903.76</b>
<b>Shipping:</b>	<b>\$0.00</b>
<b>Estimated Tax:</b>	<b>\$0.00</b>
<b>Total:</b>	<b>\$2,903.76</b>

## Important Notes

### Terms of Sale

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

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

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

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

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

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

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

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

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

**^Dell Business Credit (DBC):**

OFFER VARIES BY CREDITWORTHINESS AS DETERMINED BY LENDER. Offered by WebBank to Small and Medium Business customers with approved credit. Taxes, shipping and other charges are extra and vary. Minimum monthly payments are the greater of \$15 or 3% of account balance. Dell Business Credit is not offered to government or public entities, or business entities located and organized outside of the United States.

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Authorize the Sheriff's Office to purchase two (2) shop fans (portable cooler) for the Vehicle Maintenance and Building Maintenance shops and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	March 31, 2020	\$3,200.00

#### LINE ITEM NUMBER

001-618-03.5719\_400 Jail, Miscellaneous Equipment  
001-618-00.5719\_400 Sheriff's Office, Miscellaneous Equipment

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Sheriff Gary Cutler	JONES	N/A

#### SUMMARY

The Sheriff's Office is requesting to purchase cooling fans for both the vehicle and building maintenance shops to help with the heat and improve working conditions. The new shop was built without an AC system, the unit price per cooling fan is \$1,600.00, no additional funds are needed savings are identified in respective budgets. The only budget that requires an amendment is the Jail, funding in the S.O. is available in Miscellaneous Equipment Operating.

Budget Amendment

Jail

001-618-03.5715\_400 Communication Equipment Operating (\$260.00)

001-618-03.5719\_400 Miscellaneous Equipment Operating Expense \$260.00

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Authorize the Building Maintenance Department to replace the generator radiator at the Local Health Department in the amount of \$7,790.19 and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	March 31, 2020	\$7,790.19

#### LINE ITEM NUMBER

001-695-00.5719\_700

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
T. CRUMLEY	INGALSBE	N/A

#### SUMMARY

During the recent generator PM inspection by Clifford Power, it was noted by the Clifford technician that the radiator and thermostat housing gasket need to be replaced. This work will be completed by Clifford Power. Funding for this has been identified in the Building Maintenance Operating Budget.

##### Attachment:

Clifford Power Quote

##### Budget Amendment:

Decrease: \$7,790.19 - 001-695-00.5451 Building Maintenance and Repair

Increase : \$7,790.19 - 001-695-00.5719\_700 Miscellaneous Equipment Capital Outlay



Original Call#: 20-08120

4918 Burleson Rd  
Austin, TX 78744

**Quote #:** SERV\_QTE-00009797

**Date:** February 24, 2020

**Valid Until:** March 25, 2020

**phone:** (512) 477-6937

**e-mail:** Service-AUS@CliffordPower.com

**Equipment Location:**

HAYS COUNTY AUDITORS OFFICE  
BROADWAY  
401 BROADWAY

SAN MARCOS, TX 78666

**Contact:** KIMBERLI ANDREWS

**Bill To:**

HAYS COUNTY AUDITORS OFFICE

712 S STAGECOACH TRAIL  
SUITE 1071

SAN MARCOS, TX 78666

**Phone:** 512-393-2259

**Payment Terms:**

Due on Receipt

**E-Mail:** KIMBERLI.ANDERWS@CO.HAYS  
.TX.US

**GENERATOR:**

Manufacturer: GENERAC

kW: 180

Model Number: 3177150200

Description: GENERAC 180KW

Serial Number: 2072096

**AUTOMATIC TRANSFER SWITCH:**

Manufacturer:

Volts-Phase-Amps:

Serial Number: 83227

**Description of Proposed Work**

During PM inspection, technician noted that the radiator needs to be replaced along with the thermostat housing gasket.

(Please note: Due to scale of job, two technicians are required to perform repairs. Travel and labor is quoted accordingly.)

Clifford Power recommends the following repairs:

Travel to site and disable generator. Drain coolant into storage containers and save. Disconnect and remove radiator and radiator hoses. Remove and replace thermostat housing gaskets, thermostat and thermostat gaskets while radiator is out. Install new radiator hoses and radiator. Refill generator with original coolant. Top off coolant as needed with new extended life coolant. Enable generator and run to purge residual air from cooling system. Test complete system for proper operation. New radiator has to ship via LTL freight and carries a 8-10 day lead time from date of order.

**\*\*All work to be performed during normal business hours (8am - 5pm) M - F.**  
**If requested after hours, overtime rates will apply. Sundays & Holidays, double time rates will apply.**

**Total Quoted Amount (less tax):** **\$7,790.19**

**Please Note: Pricing Does Not Include any applicable taxes.**

This is a good faith Estimate of Repairs.  
Any concealed damage or additional work found necessary will be estimated separately.

**Signature:** \_\_\_\_\_

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

**Print Name:** \_\_\_\_\_

**PO #:** \_\_\_\_\_

Clifford Power Systems, Inc. is committed to be the preferred leader in the power generation industry.  
We will fulfill this mission by providing our Customers with service above and beyond their expectations.

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Authorize the County Judge to execute a letter to Texas Department of Transportation (TxDOT) designating Janice Jones to finalize Docusign documents between Hays County and TxDOT, once approved in Commissioners Court.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	March 31, 2020	

#### LINE ITEM NUMBER

--

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A      AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
	BECERRA	N/A

#### SUMMARY

Texas Department of Transportation recently changed their submission process with the County from requiring original paper copies to permitting submissions via Docusign.



**OFFICE OF RUBEN BECERRA  
HAYS COUNTY JUDGE**

March 31, 2020

To: Texas Department of Transportation

I authorize Janice Jones, Hays County Office of General Counsel, to electronically sign my name on documents sent by TxDOT asking for an electronic signature after the document has passed in Commissioners Court and once I have provided a wet signature on the hard copy of the same document.

She will provide my office with a copy of all documents she electronically signs.

Respectfully Submitted,

Ruben Becerra  
Hays County Judge

PHONE: 512.393.2205 • E-MAIL: JUDGE.BECERRA@CO.HAYS.TX.US  
111 E. SAN ANTONIO ST., SUITE 300 • SAN MARCOS, TEXAS 78666

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Approve specifications for RFP 2020-P09 CDBG Mitigation Funding and authorize Purchasing to solicit for proposals and advertise.

#### ITEM TYPE

CONSENT

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

Tammy Crumley

#### SPONSOR

SHELL

#### CO-SPONSOR

N/A

#### SUMMARY

Hays County is soliciting for a Grant Administration/Management consultant to assist in project development and management for funding awarded as a result of Federal Disaster Declarations made in 2015.

#### Attached:

RFP 2020-P09 CDBG Mitigation Funding

Attachment A: DBE Commitment Agreement

Attachment B: FHWA 1273-2



## SOLICITATION, OFFER AND AWARD

Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

Solicitation No.: RFP 2020-P09  
CDBG Mitigation Funding

Date Issued: April 1, 2020

### SOLICITATION

Respondents must submit proposals as listed: two (2) originals and one (1) digital copy on a thumb drive  
Proposals will be received at the Hays County Purchasing Office at the address shown above until:

**2:00 p.m. local time April 23, 2020.**

**Proposals received after the time and date set for submission will be returned unopened.**

For information please email:  
[purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)

Questions concerning this RFP must be  
received in writing no later than 5:00  
on April 15, 2020.

Phone No.: (512) 393-5532

### OFFER (Must be fully completed by Respondent)

In compliance with the above, the undersigned offers and agrees to furnish all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein. Award shall include all solicitation documents and attachments.

**MANUALLY SIGN ALL COPIES SUBMITTED. SIGNATURE IS MANDATORY.**

#### Respondent

Entity Name:  
Mailing Address:

#### Respondent's Authorized Representative

Name:  
Title:  
Email Address:  
Phone No.:

Signature:

Date:

Name, Email Address and Phone No. of  
person authorized to conduct  
negotiations on behalf of Respondent:

### NOTICE OF AWARD (To be completed by County)

Funding Source:

Awarded as to item(s):

Contract Amount:

Vendor:

Term of Contract:

This contract issued pursuant to award  
made by Commissioners Court on:

Date:

Agenda Item:

**Important: Award  
notice may be made  
on this form or by  
other Authorized  
official written notice.**

\_\_\_\_\_  
Hays County Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hays County Clerk

\_\_\_\_\_  
Date

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B. FHWA 1273 Form	

## I. RFP Submittal Checklist

This checklist is provided for the Vendor's convenience and identifies documents that must be submitted with the bid/proposal in order to be considered responsive. Any bids/proposals received without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

### **A COMPLETE SOLICITATION RESPONSE PACKAGE SHALL INCLUDE:**

- \_\_\_\_ 1. Solicitation, Offer and Award completed and signed
- \_\_\_\_ 2. Vendor Reference Form
- \_\_\_\_ 3. Form 1295 (Certificate of Interested Parties) filed online with the Texas Ethics Commission and signed
- \_\_\_\_ 4. Conflict of Interest Questionnaire completed and signed
- \_\_\_\_ 5. Code of Ethics signed
- \_\_\_\_ 6. HUB Practices signed
- \_\_\_\_ 7. House Bill 89 Verification signed and notarized
- \_\_\_\_ 8. Senate Bill 252 Certification
- \_\_\_\_ 9. Debarment & Licensing Certification signed and notarized
- \_\_\_\_ 10. Vendor/Bidder's Affirmation completed and signed
- \_\_\_\_ 11. Federal Affirmations and Solicitation Acceptance
- \_\_\_\_ 12. FHWA 1273 Certification
- \_\_\_\_ 13. Related Party Disclosure Form
- \_\_\_\_ 14. Any addenda applicable to this solicitation
- \_\_\_\_ 15. One original proposal and a digital copy on a thumb drive are in a sealed envelope with the Solicitation Number and Respondent's Name on the outermost envelope, addressed to:

Hays County Purchasing  
712 S Stagecoach Trail, Suite 1071  
San Marcos, TX 78666



## II. Summary

- 1. Type of Solicitation:** Request for Proposals
- 2. Solicitation Number:** RFP 2020-P09  
CDBG Mitigation Funding
- 3. Issuing Office:** Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666
- 4. Responses to Solicitation:** Sealed proposals marked with Solicitation Number and Respondent Name on the outermost envelope  
One (1) originals and one (1) digital copy on a thumb drive
- 5. Deadline for Responses:** In issuing office no later than:  
**Thursday April 23, 2020; 2:00 p.m. Central Time (CT)**
- 6. Initial Contract Term:** May 2020 – April 2021
- 7. Optional Contract Terms:** Renewals as needed until successful project completion
- 8. Designated Contact:** Hays County Purchasing  
Email: [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)
- 9. Questions & Answers:** Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than April 15, 2020; 5:00 p.m. CT. Telephone inquiries will not be accepted. Questions may be submitted by email to the address above. Answers to questions will be provided in the form of an addendum posted on CivicPlus and ESBD websites for the benefit of all potential respondents. The County reserves the right to contact the person submitting a question to clarify the question received, if necessary. Each clarification, supplement, or addenda to this RFP, if any, will be posted on the CivicPlus and ESBD websites. All potential or actual respondents are responsible for monitoring the websites for such materials. Respondents are deemed to have notice of, and are required to comply with, any such material posted in accordance with this paragraph. Respondents should not rely upon any other sources of written or oral responses to inquiries.
- 10. Addenda** Any interpretations, corrections or changes to this RFP and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Hays County Purchasing Office. It is the Respondent's responsibility to acknowledge receipt of all addenda with proposal submission.

**11. Contact with County Staff:**

Upon issuance of this solicitation, employees and representatives of Hays County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Respondent or its representatives. Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

April 1, 2020	Issuance of RFP
April 15, 2020	Deadline for Submission of Questions (5:00 PM CT)
April 23, 2020	Deadline for Submission of Bids (2:00 PM CT) <b>Late bids will not be accepted.</b>
May 2020	Anticipated contract award date

### III. Specifications

#### A. Introduction

Hays County (County) is soliciting for a Grant Administration/Management consultant to assist in project development and management for funding awarded as a result of Federal Disaster Declarations made in 2015. The Provider will help Hays County (County) fulfill State and Federal Community Development Block Grant Mitigation ("CDBG-MIT") statutory responsibilities related to mitigation in connection with any federally declared disaster within Hays County, with funding administered through the Texas General Land Office (GLO). Providers will assist the County, the GLO, and/or grant recipients in completion of CDBG-MIT qualified non-housing projects. Respondents may be qualified to provide Grant Administration services for non- housing projects. Grant administrative services must be performed in compliance with the U.S. Department of Housing and Urban Development ("HUD") and guidelines issued by the GLO. The proposed project lies within the Cedar Oak Mesa Water Supply Corporation service area west of Wimberley in southwestern Hays County.

#### B. Scope of Work

Respondent must be able to perform the tasks listed herein to be considered eligible for an award under this Solicitation. Respondents should provide a detailed narrative of their experience as it relates to each of the items below. Respondents should clearly indicate if they intend to provide services in-house with existing staff or through subcontracting or partnership arrangements. Grant Administration Services will be provided in conformance with the guidance documents and use forms provided by the County utilizing GLO guidance. The providers shall furnish pre-funding and post-funding grant administrative services to complete the disaster mitigation projects, including, but not limited to the following:

**Pre-Award Services.** Grant Administrator will develop project scope and complete CDGB-MIT application, if applicable. The provider will work with the City/County and Engineer, if applicable, to provide the concise information needed for submission of complete disaster mitigation application and related documents. The required information shall be submitted in a format to be described by the GLO.

**Post-Award Services.** Grant Administrator will administer, and complete infrastructure, utilities, and eligible projects approved for disaster mitigation funding. The selected administrative firm must follow all requirements of the Texas CDBG-MIT program. Please specify actual. Tasks to be performed under each of these categories within the proposal:

##### **Grant Administration Services – General**

- **Administrative Duties**
- **Contract / Program Management**
- **Acquisition Duties**
- **Environmental Services**

1. **Administrative Duties:** Coordinate, as necessary, between Hays County and any other appropriate service providers (i.e. Engineer, Environmental, etc.), contractor, subcontractor and GLO to effectuate the services requested.
  - a. Grant Application development and submission
  - b. Grant Contract closeout assistance
  - c. May assist in public hearings.
  - d. Will work with GLO's system of record.
  - e. Provide monthly project status updates.
  - f. Funding release will be based on deliverables identified in the contract.

## **2. Labor and procurement duties**

- a. Provide all Labor Standards Officer (LSO) Services.
- b. Ensure compliance with all relevant labor standards regulations.
- c. Ensure compliance with procurement regulations and policies.
- d. Maintain document files to support compliance.

## **3. Financial Duties**

- a. Prepare and submit all required reports (Section 3, Financial Interest, etc.).
- b. Assist Hays County with the procurement of audit services.
- c. Assist Hays County in establishing and maintaining a bank account for mitigation recovery funds
- d. Implementation and coordination of Affirmatively Furthering Fair Housing ("AFFH") requirements as directed by HUD and the GLO.
- e. Implementation and coordination of Section 504 requirements.
- f. Program compliance.
- g. Ensure that fraud prevention and abuse practices are in place and being implemented.
- h. Prepare and submit all closeout documents.
- i. Submit all invoices no later than 60 days after the expiration of the contract. All outstanding funds may be swept after 60 days. The provider may request an extension of this requirement in writing.
- j. Assist in preparation of contract revisions and supporting documents including but not limited to Amendments/modifications and Change orders.

## **4. Construction Management**

- a. The provider will assist the Hays County in submitting/setting up project applications in the GLO's system of record.
- b. The provider may compile and collate complete contract/bid packages that meet GLO program requirements. The packages will contain supporting documentation that meets or exceeds the requirements of the GLO's program. If applications do not have the necessary forms, the provider may assist the Hays County by coordinating to acquire the necessary documentation.
- c. The provider may monitor, report, and evaluate contractor's performance; notify the City/County if the contractor(s) fails to meet established scheduled milestones. Receive, review, recommend, and process any change orders as appropriate to the individual projects.
- d. The provider may assist the Hays County with project Activity Draws/Close Out.
- e. The provider may assist the Hays County by submitting all the necessary documentation for draws and to close a project activity in the GLO's system of record. The provider will compile, review for completeness, and collate complete contract/closeout packages that meet GLO program requirements for draw requests. If applications do not have the necessary forms, the provider may assist the County by coordinating to acquire the necessary documentation.
- f. The provider may assist the County in developing Architectural and Engineering plans with guidance from the GLO.
- g. Reassignment scope alignment (if necessary).

## **Grant Administration Services – Infrastructure**

- **Administrative Duties**
- **Acquisition Duties**
- **Environmental Services**

### **1. Administrative Duties**

- a. Ensure program compliance including all CDBG-MIT requirements and all parts therein, current Federal Register, etc.
- b. Assist Hays County in establishing and maintaining financial processes.
- c. Obtain and maintain copies of the County's most current contract including all related change requests, revisions, and attachments,
- d. Establish and maintain record keeping systems.
- e. Assist the County with resolving monitoring and audit findings.
- f. Serve and monitoring liaison.
- g. Assist the County with resolving third party claims.
- h. Report suspected fraud to the GLO
- i. Submit timely responses to the GLO requests for additional information
- j. Complete draw request forms and supporting documents.
- k. Facilitate outreach efforts, application intake, and eligibility review.
- l. Perform any other administrative duty required to deliver the project.
- m. Utilize and assist with GLO's system, of record to complete milestones, submit documentation, reports, draws, change requests, etc.
- n. Submit change requests and all required documentation related to any change requests.

## **2. Acquisition Duties**

- a. Submit acquisition reports and related documents
- b. Establish acquisition files (if necessary).
- c. Complete acquisition activities (if necessary).

## **3. Environmental Services**

- a. Assist detailed scope of services
- b. Review each project description to ascertain and/or verify the level of environmental review required (i.e., Exempt, Categorical Exclusion not Subject to 58.5, Categorical Exclusion Subject to 58.5, Environmental Assessment, and Environmental Impact Statements);
- c. Prepare, complete and submit HUD required forms, if any, for environmental review and provide all documentation to support environmental findings;
- d. Consult and coordinate with oversight/regulatory agencies to facilitate environmental clearance;
- e. Be able to perform or contract special studies, additional assessments, or permitting to secure environmental clearance. These may include, but are not limited to biological assessments, wetland delineations, asbestos surveys, lead- based paint assessments, archeology studies, architectural reviews, Phase I & II ESAs, USACE permits, etc.
- f. Prepare all responses to comments received during comment phase of the environmental review, including State/Federal Agency requiring further studies and/or comments from public or private entities during public comment period;
- g. Maintain close coordination with local officials, project engineer and other members of the project team to assure appropriate level of environmental review is performed and no work is conducted without authorization;
- h. Complete and submit the environmental review into GLO's system of record;
- i. At least one site visit to project location and completion of a field observation report
- j. Prepare and submit for publication all public notices including, but not limited to the Notice of Finding of No Significant Impact (FONSI), Request for Release of Funds floodplain/wetland early and final notices in required order and sequence;
- k. Provide documentation of clearance for Parties Known to be Interested as required by 24 CFR 58.43;
- l. Process environmental review and clearance in accordance with NEPA;
- m. Advise and complete environmental re-evaluations per 24 CFR 58.47 when evidence of further clearance or assessment is required;

- n. Prepare and submit Monthly Status Report; and
- o. Participate in regularly scheduled progress meetings.

### C. Qualifications

Hays County is seeking to contract with a competent grant administrator with experience in grants/contracts application and administration. Specifically, it is seeking those consultant(s) or firms with the following qualifications:

- Experience in applying for and managing state and federally funded local public works construction projects – infrastructure, with an emphasis on directly related and recent experience
- Related experience or background with specific project type – GLO CDBG-MIT projects; and
- Consultant/Firm is not debarred or suspended from the Excluded Parties List System (EPLS) in the System for Award Management (SAM).

Please provide within your proposal a list of past local government clients and types of projects implemented, as well as resumes for all employees who will or may be assigned to provide technical assistance to the County on this project should your firm be awarded this management services contract.

### D. Proposed Cost of Services

Please provide your cost proposal to accomplish the scope of work outlined above and for any additional services required. The final grant amount is yet to be determined and this award is contingent upon funding of the CDGB-MIT grant with the Texas General Land Office. The proposal must include all costs that are necessary to successfully complete these activities. Firms may submit proposals for any or all activities. Please note that the lowest/best bid will not be used as the sole basis for entering into this contract.

### E. Submittal Requirements

Respondent must deliver the following to the Issuing Office by the specified deadline:

- One (1) original proposals with required forms manually signed by Respondent with original signatures
- One (1) digital copy of the full proposal with all required forms on a thumb drive
- **System for Award Management.** Respondent and its Principals may not be debarred or suspended nor otherwise on the Excluded Parties List System (EPLS) in the System for Award Management (SAM). Include verification that the company as well as the company's principals are not listed (are not debarred) through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). Enclose a printout of the search results that includes the record **April 15, 2020.**

Proposal shall not exceed twenty (20) pages (10 sheets front and back) in length, but not including: a) Letter of Transmittal; b) Title Page; c) Table of Contents; d) Appendix materials; and, e) front and rear covers. Sheet size is limited to 8½" x 11" sheets only, using 12-point font. Appendix materials (related project graphics, resumes, etc.) are not included in the 20-page limit but should be conservative in their inclusion. The proposal must include an organizational chart containing the names, addresses, telephone numbers, fax numbers, and e-mail addresses for the prime provider and any sub-providers if proposed for the team and their contract responsibilities by work category. The organizational chart is included in the 20-page limit and it is permissible to use an 11" x 17" sheet (one-sided) and a font smaller than 12-point for the organizational chart, provided text is clearly legible. It is permissible to use a font smaller than 12-point for graphics, provided text is clearly legible.

The SOQ must be submitted with a continuous binding (e.g. – spiral, GBC, etc.) along the left edge; no other binding will be accepted. While the County does not desire tab dividers in the proposals, if included they would not count towards the 20-page limit. Required forms (see Section I. RFQ Submittal Checklist) do not count towards the 20-page limit.

All items must be in a sealed envelope marked with the Solicitation Number and Respondent Name on the outermost envelope.

**LATE SUBMITTALS WILL NOT BE ACCEPTED.**

Submittals may be withdrawn at any time prior to the official opening. After the official opening, submittals may not be amended, altered or withdrawn without the recommendation of the County Purchasing Office and the approval of Commissioners Court.

Submittals will be publicly opened at the Office of the Hays County Auditor upon the deadline for submittal. Respondents, their representatives and interested persons may be present.

It is understood that Hays County reserves the right to accept or reject any and all submittals as it shall deem to be in the best interest of Hays County.

ALTERING PROPOSALS: Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the proposal, guaranteeing authenticity.

FORMS: Changes to forms herein, made by respondents, shall disqualify the respondent. Proposals cannot be altered or amended after submission deadline.

REFERENCES: Hays County requires respondent to supply a list of at least three (3) references (See Section V for Vendor Reference Form) where like services have been supplied by their company. Include name of company, address, telephone number and name of representative.

**F. State of Texas federally approved DBE program**

Hays County will require compliance with the State of Texas federally-approved DBE program and compliance with the requirements established by 49 CFR part 26. For some projects, Hays County may be required to set an aspirational goal, as recommended by the State, to secure a certain percentage of its competitively procured contracts with vendors that qualify as Disadvantaged Business Enterprises, as defined by the Act. Regardless of the project, Hays County, and qualified respondents, shall not discriminate on the basis of Race, color, national origin, or sex in the award and/or performance of the work described herein. Failure by the selected respondent to comply with the requirements described in this section will be considered a material breach of any contract that issues from this RFQ and may result in the termination of that agreement or the assertion of other remedies by Hays County.

**G. Small, Minority and Women Business Enterprises**

Affirmative Steps. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Small and minority businesses, women's business enterprises, and labor surplus area firms are encouraged to participate in this RFP. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor.



1. Placing qualified small and minority businesses, and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce,
6. Section 3 Residents, Minority Business Enterprises, Small Business Enterprises, Women Business Enterprises, and labor surplus area firms are encouraged to submit proposals

#### H. Evaluation Criteria

Proposals will be evaluated by Hays County staff. Proposals will be ranked according to the criteria outlined below.

<b>Criteria</b>	<b>Points</b>
<i>Experience</i>	30
<i>Work Performance</i>	30
<i>Capacity to Perform</i>	20
<i>Proposed Cost</i>	20
<b>Total Maximum Points</b>	<b>100</b>

It is the practice of Hays County to encourage local participation and to promote and encourage contracting and subcontracting opportunities for locally owned businesses and labor in all contracts.

The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Hays County is an Affirmative Action/Equal Opportunity Employer and strives to attain goals for Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

THE CONTRACT AWARD shall be based on but not necessarily limited to, the following factors:

- Vendor's qualifications & competency
- Special needs and requirements of Hays County
- Vendors past performance record with Hays County
- Hays County's evaluation of vendor's ability
- Vendor's references

RESPONSIBILITY: A prospective respondent must affirmatively demonstrate respondent's responsibility. A prospective respondent must meet the following requirements:

- Have adequate financial resources, or the above ability to obtain such resources as required
- Be able to comply with required or proposed delivery schedule
- Have a satisfactory record of performance
- Be otherwise qualified and eligible to receive an award

**BASIS OF AWARD:** The County reserves the right to award a contract for named project to a respondent on the basis competence and qualifications

## **I. Limitations**

**RIGHT TO ACCEPT OR REJECT:** The County reserves the right to accept or reject any or all submissions as a result of this RFQ, to negotiate with all qualified sources, or to cancel in part or its entirety if found to be in the best interest of the County. The RFQ does not commit the County to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFQ. SOQs may be held for one hundred twenty (120) calendar days after opening without taking action.

**COMMISSIONERS COURT APPROVAL REQUIRED:** The Hays County Commissioners Court must approve the contractors selected to provide the services requested in this RFQ. The County reserves the right to authorize contract negotiations to begin without further discussion with contractors submitting a response. Therefore, each SOQ should be submitted as completely and accurately as possible. The County reserves the right to request additional data, oral discussions, or presentations in support of the written SOQ.

### **Contractor or Individual's Obligation Regarding Evaluation**

- a. **SUBMISSION OF INFORMATION.** Submitters are cautioned that it is each contractor and or individual's sole responsibility to submit information related to the evaluation categories, and the County is under no obligation to solicit such information if it is not included with the SOQ. Failure of a contractor or individual to submit such information may cause an adverse impact on the evaluation of the specific SOQ.
- b. **SUBMITTER REVIEW OF RFQ.** Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFQ and their responses. Failure to do so will be at the contractor and/or individual's risk and will not be a determinative factor when awarding the contract for services.

**ORAL NON-BINDING:** Any non-written representations, explanations, or instructions given by County staff or County agents are not binding and do not form a part of, or alter in any way, the RFQ, a written agreement pertinent to the RFQ, or the awarding of the contract.

**RESERVATIONS BY COUNTY:** The Commissioners Court has the right to accept, reject, or cancel any and all submissions. In addition, the County expressly reserves the following:

- a. waive any defect, irregularity, or informality in any submission or RFQ procedure;
- b. extend the RFQ closing time and date;
- c. reissue this RFQ in a different form or context;
- d. procure any item by other allowable means;
- e. revise and modify, at any time before the RFQ submittal due date, the factors and/or weights of factors the County will consider in evaluating RFQ submittals and to otherwise revise or expand its evaluation methodology as set forth herein;
- f. investigate the qualifications of any contractor under consideration and require confirmation of information furnished by a contractor;
- g. require additional information from a contractor concerning contents of its RFQ submittal and/or require additional evidence of qualifications;
- h. waive minor deviations from specifications, conditions, terms, or provisions of the RFQ, if it is determined that waiver of the minor deviations improves or enhances the County's business interests under the RFQ;
- i. extend any contract when most advantageous to the County, as set forth in this RFQ.

- j. appoint an evaluation committee to review RFQ submittals or responses, make recommendations and seek the assistance of outside technical experts in RFQ submittal evaluation;
- k. hold interviews and conduct discussions and correspondence with one or more of the contractors responding to this RFQ to seek an improved understanding and evaluation of the responses to this RFQ.
- l. disclose information contained in an RFQ submittal to the public as required under the Texas Public Information Act; AND/OR
- m. exercise any other right reserved or afforded to Hays County under this RFQ. The County reserves the right to modify the process, in its sole discretion, to address applicable law and/or the best interest of the County.

The County shall not, under any circumstances, be bound by or be liable for any obligations with respect to any construction project until such time (if at all) a contract has been awarded and all approvals obtained in form and substance satisfactory to the County have been executed and authorized by the County, and then only to the extent of such agreements.

#### **J. Elements of a Contract**

1. RFQ. This Request for Qualifications is an invitation for individuals and companies to submit Statements of Qualifications (SOQs).
2. SOQ IS AN INDICATION OF ABILITY TO PERFORM REQUESTED SERVICES. The SOQ submitted by a contractor or individual is an indication of the ability of the contractor or individual to perform the requested services.
3. AWARD IS ACCEPTANCE. The selection of a contractor or individual and award of a contract by the Hays County Commissioners Court based upon a negotiated price is acceptance on the part of the County, thereby resulting in a binding contract between the County and the selected contractor.
4. CONSIDERATION. Consideration consists of the services to be performed under the contract awarded in exchange for compensation, based upon a final negotiated project price, to be paid by the County to the selected firm or individual.
5. AGREEMENT; EXCEPTIONS.
  - a. Submission of an SOQ is a representation by a submitter that the submitting contractor or individual agrees to the terms, conditions, and other provisions contained in the RFQ, unless the submitter clearly and specifically presents in its SOQ any exceptions to the terms, conditions, and other provisions contained in the RFQ.
  - b. Exceptions presented in an SOQ are not to be considered incorporated into the contract between the County and the selected contractor or individual unless and until the County agrees to accept such exceptions.
  - c. The selected contractor must acknowledge and agree that the negotiated contract resulting from this RFQ includes the terms, conditions, and other provisions contained in the RFQ, the SOQ selected (including any exceptions accepted by the County) which is acceptable to the County and is not in conflict or contravention of the RFQ, and any other documents mutually agreed upon by the County and the selected contractor or individual.
  - d. No oral statement of any person shall modify or otherwise change or affect the terms, conditions, or specifications stated in the RFQ or the resulting negotiated contract.
6. CONFIDENTIALITY OF DOCUMENTS.
  - a. ALL STATEMENTS OF QUALIFICATION SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT.

- b. On each page where confidential information appears, the Contractor or Individual must label the confidential information. Failure to so label the confidential information shall be considered as a waiver of any confidentiality rights or interests by said Contractor or Individual.
- c. Marking your entire SOQ CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.

7. MISCELLANEOUS.

- a. All costs directly or indirectly related to the preparation of a response to this SOQ shall be the sole responsibility of and shall be borne by the contractor.
- b. During the evaluation process, the County reserves the right, where it may serve the County's best interest, to request additional information or clarifications from contractor or individuals, or to allow corrections of errors or omissions.
- c. The County reserves the right to retain all qualifications submitted and to use non-confidential information in a SOQ regardless of whether or not that SOQ is selected.
- d. Each SOQ shall state that it is valid for a period of one hundred twenty (120) days from the date of opening of the SOQ by the County.

8. NON-NEGOTIABLE TERMS. The following terms or conditions are not negotiable:

- a. **Unfunded Liability.** The County will not incur a debt or obligation to pay selected contractor or individual any amounts the County does not have the current funds available to pay, unless the contract includes a provision for the County to appropriate funding for the debt or obligation.
- b. **Indemnification.** The County does not assume any liability to third persons, nor will the County reimburse the contractor for its liability to a third person, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder, and the contractor further agrees to provide the defense for, and indemnify and hold harmless County from any and all claims, suits, causes of action, and liability, arising in connection with this contract.
- c. **Advance Payments.** The County will not make advance payments to a selected contractor or individual or any third party pursuant to this RFQ or resulting contract.
- d. **Gift of Public Property.** The County will not agree to any terms or conditions that cause the County to lend its credit or grant public money or anything of value to the selected contractor or individual.
- e. **Procurement Laws.** The County will not agree to any terms or conditions that cause the County to violate any federal, Texas, or local procurement laws.
- f. **Limitation of Liability.** The County will not agree to allow the selected contractor or individual to limit its liability for breach or default of contract to the contract amount or to the amount the County has paid up to the time of the breach or default.
- g. **Attorney's fees; Legal Costs.** The County will not agree to pay the selected contractor or individual's attorney's fees or other legal costs under any circumstances.
- h. **Venue; Applicable Law.** This RFQ and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the RFQ are fully performable in Hays County, Texas and venue for any dispute regarding contract shall be in Hays County, Texas.

**K. Award of Contract**

Upon review by the Evaluating Committee, recommendation will be made to the Hays County Commissioners Court to negotiate a contract with the highest scoring respondent.

The County reserves the right to accept in part or in whole any proposals submitted, and waive any technicalities for the best interest of the County.

Respondent agrees, if the proposal is accepted, to furnish any and all services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications, if any. The period for acceptance of the responses will be ninety (90) calendar days.

If the proposal is accepted and approved by Commissioners Court, this document shall be made part of the contract. No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any discussions with any County employee. No oral agreements either expressed or implied will be considered in fulfilling this contract.

#### **L. Warranty of Performance**

The successful respondent expressly warrants that all services specified in the RFP will be performed with care and diligence and in accordance with all specifications of the RFP. The successful respondent 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 respondent, in terms of specifications, shall be basis for the termination of the contract by the property owner. The property owner shall not pay for services that are unsatisfactory.

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 proposal. Any contract executed as a result of this RFP shall be governed by the laws of the State of Texas.

DISADVANTAGE BUSINESS ENTERPRISES (DBE) GOAL: Hays County will require compliance with the State of Texas federally-approved DBE program and compliance with the requirements established by 49 CFR part 26. For some projects, Hays County may be required to set an aspirational goal, as recommended by the State, to secure a certain percentage of its competitively procured contracts with vendors that qualify as Disadvantaged Business Enterprises, as defined by the Act. Regardless of the project, Hays County, and qualified respondents, shall not discriminate on the basis of Race, color, national origin, or sex in the award and/or performance of the work described herein. Failure by the selected respondent to comply with the requirements described in this section will be considered a material breach of any contract that issues from this RFQ and may result in the termination of that agreement or the assertion of other remedies by Hays County.

## IV. General Terms and Conditions for Solicitations

### Applicable To: Request for Proposals (RFP)

#### 1. GENERAL DEFINITIONS:

- a. "Auditor" means the Hays County Auditor or his/her designee.
- b. "Commissioners Court" means Hays County Commissioners Court.
- c. "Contract" means the contract awarded pursuant to the RFP and negotiated cost proposal.
- d. "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- e. "County" means Hays County, Texas, a political subdivision of the State of Texas.
- f. "County Building" means any County owned buildings and does not include buildings leased by County.
- g. "Is doing business" and "has done business" mean:
  - i. Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
  - ii. Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - iii. But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- h. "Key Contracting Person" means any person or business listed in Exhibit A to Affidavit.
- i. "Purchasing Manager" means the Hays County Purchasing Manager.
- j. "Sub-contractor" means a person or firm doing business with a Contractor.

2. **FUNDING:** Funds for payment on this Contract have been provided through the County budget approved by Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of Hays County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Contract. However, County cannot guarantee the availability of funds, and enters into this Contract only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. **FUNDING OUT:** Despite anything to the contrary in this Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this Contract after giving Contractor thirty (30) calendar days written notice that this Contract is terminated due to the failure to fund it.

#### 4. INVOICING/PAYMENTS:

- a. Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- b. As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in this Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- c. Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:  
County Auditor  
712 S Stagecoach Trail, Suite 1071

San Marcos, Texas 78666

- d. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.
  - e. Accrual and payment of interest on overdue payments shall be governed by Tex. Gov't Code Ann., ch. 2251.
5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
7. FOB POINT: Delivery of all products under this contract, if any, shall be made Free on Board to final destination, at the address shown in this contract or as indicated on each Purchase Order placed against this contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at the F.O.B. point.
8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.
9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.
10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:
- a. Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
  - b. Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] if Contractor were an entity bound to comply with these laws.



12. CHANGES:

- a. This Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF THIS CONTRACT OR OTHERWISE AMEND THIS CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.
- b. Contractor shall submit all requests for changes to this Contract or any attachment(s) to it to the Purchasing Manager. The Purchasing Manager shall present Contractor's requests to Commissioners Court for consideration.

13. REPRESENTATIONS:

- a. Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- b. The Contractor's delivery time includes weekends and holidays.
- c. Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.
- d. Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of this contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.
- e. The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.
- f. Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Manager. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

14. SUBCONTRACTS:

- a. Contractor shall not enter into any subcontracts for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.
- b. If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this Contract. Contractor must obtain County approval of all proposed HUB subcontractors through the Purchasing Manager. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Contract and may result in termination of this Contract.

15. ASSIGNMENT:

- a. The parties to this Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this Contract unless that specific authority is expressly granted by Commissioners Court.
- b. The terms, provisions, covenants, obligations and conditions of this Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Contract if the assignment or transfer is made in compliance with the provisions of this Contract.
- c. Contractor remains responsible for the performance of this Contract when there is a change of name or change of ownership. If a change of name is required, the Purchasing Manager shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Manager acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Manager or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Manager, or other authorized County person, the Contractor must submit a written notice to the Purchasing Manager within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Manager, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE: If the performance by either party of any of its obligations under this Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

- a. No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. No official, agent, employee or representative of County may waive any breach of any term or condition of this Contract unless expressly granted that specific authority by the Commissioners Court.
- b. All rights of County under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. TERMINATION FOR DEFAULT: Failure by either County or Contractor to perform any provisions of this Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days

shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why this Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Manager or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Manager or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Manager or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of this Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this Contract.

21. **TERMINATION FOR CONVENIENCE:** County reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with this Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Manager. County shall not be liable for loss of any profits anticipated under this Contract.
22. **GRATUITIES:** Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Contract. County may terminate this Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect of this contract. If this Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.
23. **COVENANT AGAINST CONTINGENT FEES:** Contractor represents and warrants that no persons or selling agency has been retained to solicit this Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate this Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
24. **COUNTY ACCESS:** Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of this Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under this Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.

25. FORFEITURE OF CONTRACT:

- a. The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
- b. The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
- c. The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.

26. CONTRACTOR CLAIMS NOTIFICATION:

- a. If any claim, or other action, that relates to Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:
  - i. The existence of the claim, or other action;
  - ii. The name and address of the person, firm, corporation or their entity that made a claim or that instituted any type of action or proceeding;
  - iii. The alleged basis of the claim, action or proceeding;
  - iv. The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
  - v. The name or names of any person against whom this claim is being made.
- b. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

27. CERTIFICATION OF ELIGIBILITY: This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/respondent certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/respondent will notify the Hays County Purchasing Manager. Failure to do so may result in terminating this Contract for default.

28. CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION: Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

29. CONSTRUCTION OF CONTRACT:

- a. This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas.
- b. If any portion of this Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- c. Headings and titles at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing this Contract.

- d. When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Hays County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in this Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- e. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- f. Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

### 30. ADDITIONAL GENERAL PROVISIONS:

- a. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract.
- b. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- c. Contractor must pay all taxes and license fees imposed by the Federal and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.
- d. Despite anything to the contrary in this Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under this Contract equal to the amount Contractor is delinquent in property tax payments to the Hays County Tax Assessor-Collector for the payment of the delinquent taxes.
- e. In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

### 31. INTERPRETATION OF CONTRACT:

- a. This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Manager. No official, representative, employee, or agent of the County has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court.
- b. If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:
  - i. The Schedule of Items/Services
  - ii. Terms and Conditions of Request for Proposals;
  - iii. General Provisions;
  - iv. Other provisions, whether incorporated by reference or otherwise; and
  - v. The specifications.
- c. If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and this contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.
- d. This contract shall be governed by the laws of Texas and all obligations are performable in Hays County, Texas.
- e. If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.
- f. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.

- g. The headings in this contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.
- h. Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to this contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

32. MODIFICATIONS:

- a. The County Purchasing Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:
  - i. Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
  - ii. Method of shipment or packing.
  - iii. Place of deliveries.
  - iv. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
  - v. Description of items to be provided.
  - vi. Time of performance (i.e. hours of day, days of week, etc)
- b. If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Manager decides that the facts justify it, the County Purchasing Manager may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

33. PRICE CHANGES: The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Hays County substantiating the changes to the bid prices. Any price changes must be approved by Hays County.

34. INSURANCE AND LIABILITY: During the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall;
- a. Name County as additional insured as its interests may appear.
  - b. Provide County a waiver of subrogation.
  - c. Provide County with a thirty (30) calendar day advance written notice of cancellation or material change to said insurance.
  - d. Provide the County Purchasing Manager at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. Also, please assure your certificate contains the contract number as indicated on the Contract Award form when issued by Hays County.
  - e. Submit an original certificate of insurance reflecting coverage as follows:

Automobile Liability:	
Bodily Injury (Each person)	\$1,000,000.00
Bodily Injury (Each accident)	\$1,000,000.00
Property Damage	\$1,000,000.00
Commercial General Liability (Including Contractual Liability):	

General Aggregate	\$2,000,000.00
Product completed operations aggregate	\$2,000,000.00
Bodily Injury (Each accident)	\$2,000,000.00
Property Damage	\$2,000,000.00
Employers Liability:	
Each accident	\$1,000,000.00
Each employee for disease	\$1,000,000.00
Policy limit for disease	\$1,000,000.00
Excess Liability:	
Umbrella Form	Not Required
Labor Liability:	
Worker's Compensation	Meeting Statutory Requirements

## V. Vendor Reference Form

Please list three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

REFERENCE ONE
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

REFERENCE TWO
---------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

REFERENCE THREE
-----------------

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

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_



## VI. Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Hays County purchases, a vendor or other person who is awarded a contract or purchase approved by Hays County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Hays County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

Failure to return this document may disqualify your response from consideration.

If you do not have access to the link provided above please or have any questions please contact Purchasing at 512-393-5532.

## VII. Conflict of Interest Questionnaire

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> <b>For vendor doing business with local governmental entity</b>		<b>FORM CIQ</b>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>	
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p>	<p>Date Received</p>	
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p><b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b></p> <div style="margin-top: 20px;"> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p> </div>		
<p><b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b></p>		
<p><b>6</b> <input type="checkbox"/> <b>Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</b></p>		
<p><b>7</b></p>		
<p>_____ Signature of vendor doing business with the governmental entity</p>		<p>_____ Date</p>

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## VIII. CODE OF ETHICS FOR HAYS COUNTY

Public employment is a public trust. It is the policy of Hays County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Hays County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Hays County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Hays County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## IX. Hays County Practices Related to Historically Underutilized Businesses

### 1. STATEMENT OF PRACTICES

Hays County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Hays County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

### 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Hays County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

### 3. GUIDELINES

- a. Hays County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL). Hays County will solicit bids from certified HUB's for state purchasing and public works contracts.

4. Hays County will actively seek and encourage HUBs to participate in all facets of the procurement process by:
  - a. Continuing to increase and monitor a database of certified HUB vendors, professionals and contractors. The database will be expanded to include products, areas of expertise and capabilities of each HUB firm.
  - b. Continuing to seek new communication links with HUB vendors, professionals and contractors to involve them in the procurement process.
  - c. Continuing to advertise bids on the County's website and in the newspapers including newspapers that target socially and economically disadvantaged communities.
5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms in the procurement process by:
  - a. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements.
  - b. Where feasible, assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work.
  - c. Specifications of reasonable, realistic delivery schedules consistent with the County's actual requirements.
  - d. Specifications, terms and conditions reflecting the County's actual requirements are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. A HUB practice statement shall be included in all specifications. The County will consider the bidder's responsiveness to the HUB Practices in the evaluation of bids and proposals. Failure to demonstrate a good faith effort to comply with the County's HUB practices may result in a bid or proposal being considered non-responsive to specifications.
7. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Please sign for acknowledgement of the Hays County HUB Practices:

---

Signature

---

Date

X. Hays County House Bill 89 Verification

I, \_\_\_\_\_ (Person name), the undersigned representative of  
\_\_\_\_\_(Company or Business name, hereafter referred to as Company) being an adult  
over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and  
verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter  
2270:

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

*Pursuant to Section 2270.001, Texas Government Code:*

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Date

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, the  
above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Date

## XI. Hays County Purchasing Department Senate Bill 252 Certification

On this day, I, \_\_\_\_\_, 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 below-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
RFP or Vendor number

CERTIFICATION CHECK PERFORMED BY:

\_\_\_\_\_  
Purchasing Representative

\_\_\_\_\_  
Date



## XII. Debarment and Licensing Certification

STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §

I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Firm named herein below and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- d. Have not within a three-year period preceding this application/proposal had one or more public (federal, state or local) transactions terminated for cause or default;
- e. Are registered and licensed in the State of Texas to perform the professional services which are necessary for the project; and
- f. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

Where the Firm is unable to certify to any of the statements in this certification, such Firm shall attach an explanation to this certification.

SUBSCRIBED and sworn to before me the undersigned authority by \_\_\_\_\_ on this the day of \_\_\_\_\_, 20\_\_\_\_, on behalf of said Firm.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

### XIII. Vendor/Bidder's Affirmation

2. 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.
3. 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.
4. Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County

\_\_\_\_\_  
Name of Contracting Company

If taxable property is owned in Hays County, list property ID numbers:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

## **XIV. FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

### **1. Debarment and Suspension**

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 regulations implementing Executive Order 12549, 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. Wages**

Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5, as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5.

### **5. 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.

**6. 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.

**7. 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. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- h. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

**8. 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.).

**9. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_ Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

## XV. FHWA 1273 CERTIFICATION

I have read, understand, and agree to comply with the FHWA 1273 presented in Attachment C.  
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.

## XVI. Related Party Disclosure Form



Hays County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Hays County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Hays County employee (including elected or appointed official)(Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package that does not include this completed form will be considered non-responsive and will not be eligible for an award.

### Section A: Current Hays County Employee

Employee Name	Title

### Section B: Former Hays County Employee

Employee Name	Title	Date of Separation from County

### Section C: Person Related to Current or Former Hays County Employee

Employee or Former Employee Name	Title

Name of Related Person	Title	Relationship

### Section D: No Known Relationships

If no relationships in accordance with the above exist or are known to exist, provide a written explanation below:

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
	1st Degree	2nd Degree	3rd Degree*	4th Degree*
<b>Person</b>	child or parent	grandchild, sister, brother or grand- parent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great- grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great- great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
	1st Degree	2nd Degree
<b>Person</b>	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Hays County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a sharehold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.



## Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMS.4901  
(Rev. 06/08)  
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the  
Texas Department of Transportation for the subject project.

<b>Project #:</b>		<b>County:</b>		<b>Contract-CSJ:</b>	
<b>Items of work to be performed (attach a list of work items if more room is required):</b>					
Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
<b>Total</b>					
<p>The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.</p>					
<b>IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.</b>					
<b>Prime Contractor:</b>			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		
<b>DBE:</b>			Name/Title (please print):		
Vendor No.:			Signature:		
Address:					
Phone:	Fax:		Date:		
E-mail:					
<b>Subcontractor (if the DBE will be a second tier sub):</b>			Name/Title (please print):		
Address:			Signature:		
Phone:	Fax:				
E-mail:			Date:		

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.



## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated 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. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### 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 (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).

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.

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). 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 bid proposal or request for proposal 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).

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.

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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.

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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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. 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, 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, 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

**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 \$10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

a. All laborers and mechanics employed or working upon the site of the work, 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 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.

Contributions made or costs reasonably anticipated for bona fide fringe benefits 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 paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall 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. (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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, 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.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency 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.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 1(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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 Regulations, 29 CFR part 3;

(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 of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her 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 Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees 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, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration 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. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. 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. 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 journeymen 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.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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.

**9. Disputes concerning labor standards.** 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 he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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 watchmen 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.

**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. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 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.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

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" 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:

- (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.

2. 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. 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.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## 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 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.

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 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).

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 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 1, 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**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **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.

### **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.

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.

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.

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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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. 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) 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;

(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; 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.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. 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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall 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 20).

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.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

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.

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to consider the acceptance of site improvement performance bond #LICX1192181 for street excavation, drainage, and erosion control improvements in the amount of \$937,314.16 for the Caliterra subdivision, Phase 3, Section 9.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	March 31, 2020	

#### LINE ITEM NUMBER

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#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A      AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
BORCHERDING	SMITH	N/A

#### SUMMARY

Caliterra, Ph 3, Sec 9 is a proposed 86 lot subdivision consisting of 31.75 acres located off of Ranch Road 12 in Precinct 4. Water service will be provided by Dripping Springs Water Supply Corp. and wastewater treatment will be accomplished via public sewer from the City of Dripping Springs.

The final plat for Caliterra subdivision, Phase 3, Section 9 has been reviewed under the interlocal cooperation agreement with the City of Dripping Springs and has been approved by County staff. While the plat has been approved administratively, formal acceptance of fiscal surety is required by Commissioners Court action.

SITE IMPROVEMENT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that Development Solutions CAT LLC, as Principal, and Lexon Insurance Company, 10002 Shelbyville Road, Suite 100, Louisville, KY 40223, a corporation organized and existing under the laws of the state of Texas and authorized to transact business in the Texas, as Surety, are held and firmly bound unto the County of Hays, Texas, with an address of Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666, as Obligee, in the penal sum of Nine Hundred Thirty-Seven Thousand Three Hundred Fourteen and 16/100 (\$937,314.16) for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above named Principal has agreed to construct in the County of Hays, Texas the following improvements: Caliterra Phase 3, Section 9 – Street Excavation, Drainage, and Erosion Control Improvements.

NOW, THEREFORE, the condition of this obligation is such that if the above Principal shall well and truly perform said work in accordance with agreement (s) between Principal and Obligee during the original term thereof or of any extension of said term that may be granted by the Obligee with or without notice to the Surety, this obligation shall be void, otherwise to remain in full force and effect.

Signed, sealed and dated this 20<sup>th</sup> day of January, 2020.

Development Solutions CAT LLC

Principal

By: \_\_\_\_\_

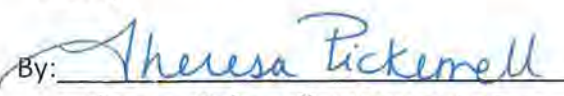
(Title)

  
Rudy Newell  
Vice President

Lexon Insurance Company

Surety

By: \_\_\_\_\_

  
Theresa Pickerrell, Attorney-in-Fact





# POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint **Brook T. Smith, Raymond M. Hundley, Jason D. Cromwell, James H. Martin, Barbara Duncan, Sandra L. Fusinetti, Mark A. Guidry, Jill Kemp, Lynnette Long, Amy Bowers, Deborah Neichter, Theresa Pickerrell, Sheryon Quinn, Beth Frymire, Leigh McCarthy, Michael Dix, Susan Ritter, Ryan Britt** as true and lawful Attorney(s)-in-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **One Hundred Million Dollars (\$100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15<sup>th</sup> day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15<sup>th</sup> day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15<sup>th</sup> day of June, 2019.

**Endurance Assurance Corporation**

**Endurance American Insurance Company**

**Lexon Insurance Company**

**Bond Safeguard Insurance Company**

By: *Richard Appel*  
Richard Appel; SVP & Senior Counsel

By: *Richard Appel*  
Richard Appel; SVP & Senior Counsel

By: *Richard Appel*  
Richard Appel; SVP & Senior Counsel

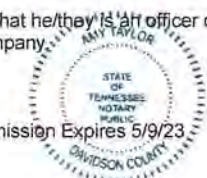
By: *Richard Appel*  
Richard Appel; SVP & Senior Counsel



## ACKNOWLEDGEMENT

On this 15<sup>th</sup> day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/she is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: *Amy Taylor*  
Amy Taylor, Notary Public - My Commission Expires 5/9/23



## CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: **RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT**

; and be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 20<sup>th</sup> day of January, 2020

By: *Daniel S. Lurie*  
Daniel S. Lurie, Secretary

## NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <https://www.treasury.gov/resource-center/sanctions/SDN-List>.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: [LexonClaimAdministration@sompo-intl.com](mailto:LexonClaimAdministration@sompo-intl.com)

Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

This Bond #LICX1192181 was acknowledged before me January 20, 2020 by Rudy Newell as Vice President of Development Solutions CAT, LLC



Notary Public

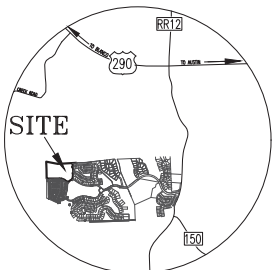


Printed Name: Maria Brennan

My Commission Expires:

1/31/2024





VICINITY MAP  
(N.T.S.)

SCALE 1" = 100'

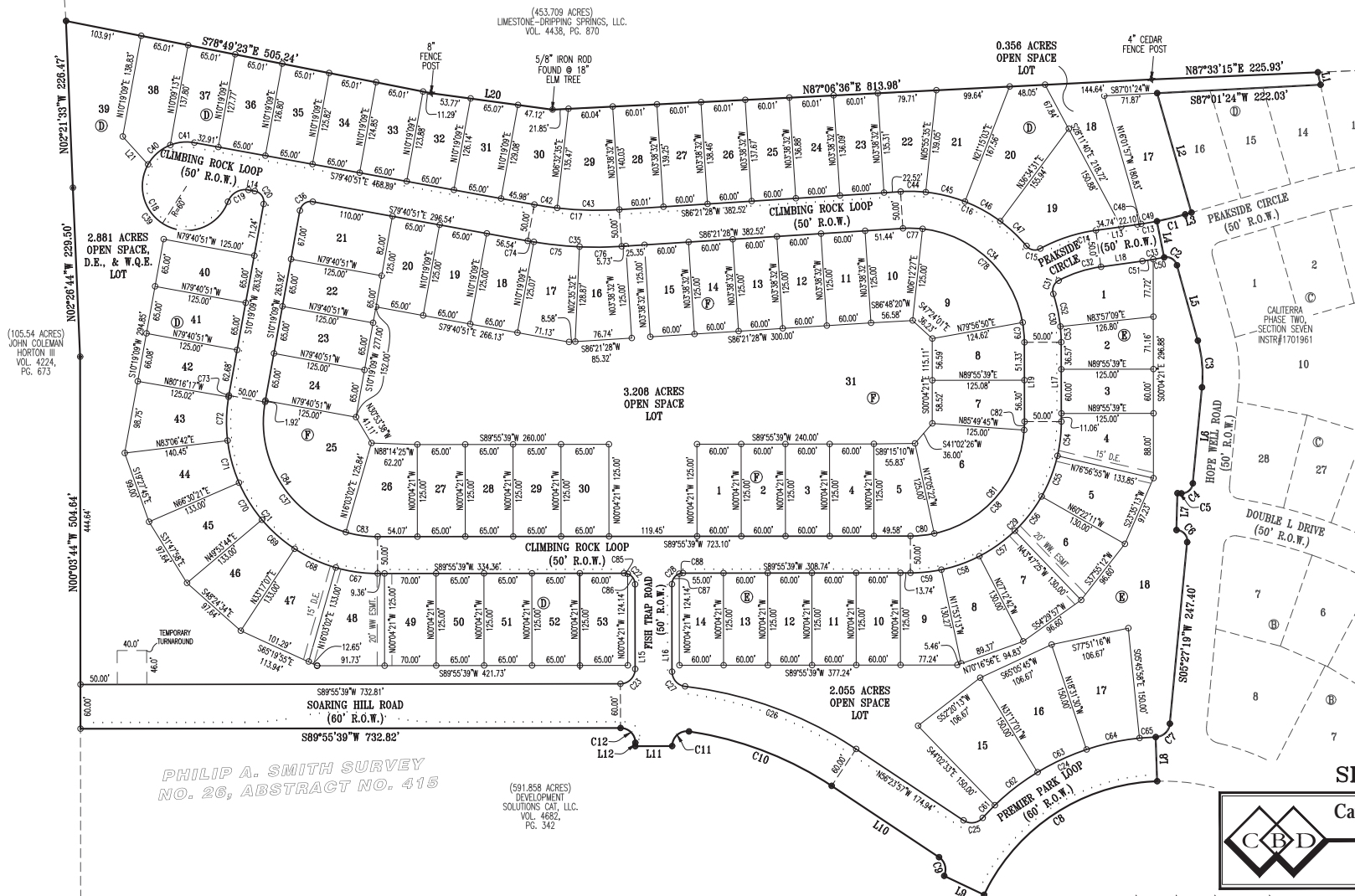
# LEGEND

- 1/2" IRON ROD FOUND (UNLESS OTHERWISE NOTED)
- 1/2" CAPPED IRON ROD SET (UNLESS OTHERWISE NOTED)
- ⊙ 5/8" IRON ROD FOUND
- △ FENCE POST FOUND
- 17 LOT NUMBER
- Ⓛ BLOCK DESIGNATION
- ..... SIDEWALKS
- D.E. DRAINAGE EASEMENT
- S.W.E. SIDEWALK EASEMENT
- W.Q.E. WATER QUALITY EASEMENT
- R.O.W. RIGHT-OF-WAY

# CALITERRA PHASE THREE, SECTION NINE

## LINEAR FOOTAGE OF RIGHT-OF-WAY

PREMIER PARK LOOP (MINOR ARTERIAL)	60' R.O.W.	328'
PEAKSIDE CIRCLE (LOCAL STREET)	50' R.O.W.	192'
SOARING HILL ROAD (LOCAL STREET)	60' R.O.W.	1,274'
FISH TRAP ROAD (LOCAL STREET)	50' R.O.W.	260'
CLIMBING ROCK LOOP (LOCAL STREET)	50' R.O.W.	3,035'
TOTAL		5,089'



FEMA PANEL NO. 48209C-0115F  
EFFECTIVE DATE: SEPTEMBER 2, 2005

ACREAGE: 31.750 ACRES

SURVEY: PHILIP A. SMITH  
SURVEY NUMBER 26  
ABSTRACT NUMBER 415  
HAYS COUNTY, TEXAS

DATE: JANUARY 10, 2019

OWNER: DEVELOPMENT SOLUTIONS CAT, LLC.  
901 IDS CENTER  
80 SOUTH 8TH STREET  
MINNEAPOLIS, MINNESOTA 55402

ENGINEER & SURVEYOR:  
CARLSON, BRIGANCE & DOERING, INC.  
5501 WEST WILLIAM CANNON DRIVE  
AUSTIN, TX 78749  
PHONE: 512-280-5160  
FAX: 512-280-5165

TOTAL ACREAGE: 31.750 ACRES

SURVEY: PHILIP A. SMITH SURVEY NO. 26  
ABSTRACT NUMBER 415  
HAYS COUNTY, TEXAS

TOTAL NO. LOTS	86
NO. OF SINGLE FAMILY LOTS	82
NO. OF OPENSACE LOTS	3
NO. OF OPENSACE, D.E., & W.Q. LOTS	1
NO. OF BLOCKS	3

## BENCHMARK NOTES:

BM#1 IS A CAPPED 1/2" IRON ROD, ON THE SOUTH SIDE OF CALITERRA PARKWAY, APPROXIMATELY 136' NORTH FROM THE EASTERMOST CORNER OF LOT 16, BLOCK "K" OF CALITERRA PHASE TWO, SECTION EIGHT, INSTRUMENT # 18010022. ELEVATION = 1,154.00'

BM#2 IS A "X" ON TOP OF RIBBON CURB, ON THE NORTH SIDE OF CALITERRA PARKWAY, APPROXIMATELY 139' SOUTHEAST FROM THE SOUTHERNMOST CORNER OF LOT 35, BLOCK "E", AMENDED PLAT OF CALITERRA PHASE ONE, SECTION FOUR, VOL. 19, PG. 138. ELEVATION = 1,066.07'

A SUBDIVISION OF 31.750 ACRES BEING CALITERRA PHASE THREE, SECTION NINE, OUT OF THE PHILIP A. SMITH SURVEY NUMBER 22, ABSTRACT NUMBER 415, HAYS COUNTY, TEXAS

SHEET NO. 1 OF 3



Carlson, Brigance & Doering, Inc.

FIRM ID #E3791 REG. # 10024900

Civil Engineering	Surveying
5501 West William Cannon	Austin, Texas 78749
Phone No. (512) 280-5160	Fax No. (512) 280-5165

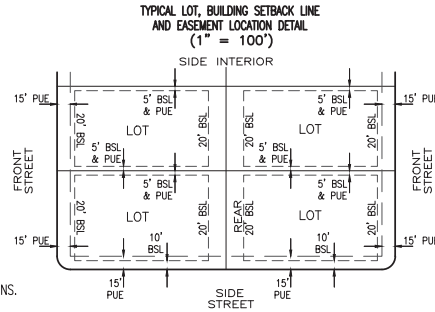
PATH-J:\AC3D\4992\SURVEY\PLAT - CALITERRA PHASE THREE, SECTION NINE.dwg

## GENERAL NOTES:

- THIS FINAL PLAT IS WITHIN THE EXTRA TERRITORIAL JURISDICTION (ETJ) OF THE CITY OF DRIPPING SPRINGS.
- NO PORTION OF THIS PLAT LIES WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE.
- THIS PLAT LIES WITHIN THE BOUNDARIES OF THE CONTRIBUTING ZONE OF THE EDWARDS AQUIFER ZONE.
- THIS PLAT IS LOCATED WITHIN THE DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT.
- ACCESS TO AND FROM CORNER LOTS SHALL ONLY BE PERMITTED FROM ONE STREET.
- NO PORTION OF THE SUBJECT PLAT PROPERTY IS LOCATED WITHIN A DESIGNATED 100 YEAR FLOOD PLAIN AS DELINEATED ON F.J.R.M. PANEL NO. 48209C 0115F, DATED SEPTEMBER 2, 2005, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- WATER SERVICE WILL BE PROVIDED TO EACH LOT FROM THE DRIPPING SPRINGS WATER SUPPLY CORPORATION.
- ORGANIZED WASTEWATER SERVICE WILL BE PROVIDED TO EACH LOT BY THE CITY OF DRIPPING SPRINGS.
- ELECTRIC SERVICE WILL BE PROVIDED BY THE PEDERNALES ELECTRIC COOPERATIVE.
- TELEPHONE SERVICE WILL BE PROVIDED BY VERIZON.
- IF GAS LINES ARE NOT INCLUDED IN THE CONSTRUCTION PLANS, THERE WILL BE SEPARATE SITE DEVELOPMENT PLAN, APPLICATION, AND FEES REQUIRED.
- MINIMUM FRONT SETBACK SHALL BE 20'.
- MINIMUM REAR SETBACK SHALL BE 20'.
- MINIMUM SIDE AND INTERIOR SIDE YARD SETBACKS SHALL BE 5'.
- MINIMUM SIDE YARD SETBACKS ADJACENT TO A PUBLIC STREET SHALL BE 10'.
- UTILITY EASEMENTS OF 15 FEET SHALL BE LOCATED ALONG EACH SIDE OF DEDICATED R.O.W. AND 5' ALONG EACH SIDE LOT LINE.
- ALL STREETS SHALL BE DESIGNED IN ACCORDANCE WITH APPLICABLE CITY OF DRIPPING SPRINGS AND HAYS COUNTY DEVELOPMENT REGULATIONS.
- NO STRUCTURE SHALL BE OCCUPIED UNTIL A CERTIFICATE OF OCCUPANCY IS ISSUED BY THE CITY OF DRIPPING SPRINGS.
- NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A STATE APPROVED COMMUNITY WATER SYSTEM.
- NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A STATE APPROVED ORGANIZED WASTE WATER SYSTEM.
- NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL OF HAYS COUNTY DEVELOPMENT AUTHORIZATION REQUIREMENTS HAVE BEEN SATISFIED.
- 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 ACCESS ONTO A PUBLIC ROADWAY UNLESS (A) A PERMIT FOR USE OF THE CITY RIGHT-OF-WAY HAS BEEN ISSUED UNDER AND (B) THE DRIVEWAY SATISFIES THE MINIMUM SPACING REQUIREMENTS FOR DRIVEWAYS AS SET FORTH IN CHAPTER 721 OF THE HAYS COUNTY DEVELOPMENT REGULATIONS.
- DEVELOPMENT AND RESTRICTIONS WITHIN THE CITY OF DRIPPING SPRINGS AND TCEQ WATER QUALITY BUFFER ZONES ARE LIMITED TO THOSE LISTED IN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S (TCEQ) OPTIONAL ENHANCED MEASURES FOR THE PROTECTION OF WATER QUALITY IN THE EDWARDS AQUIFER (REVISED) OR AS PERMITTED BY THE TCEQ.
- ALL LOTS ARE REQUIRED TO COMPLY WITH THE THEN CURRENT ADOPTED BUILDING CODE AS ADOPTED BY THE CITY OF DRIPPING SPRINGS, AND THE FIRE CODE ADOPTED BY ESD #6. THIS IS TO INCLUDE THE PULLING OF BUILDING PERMITS THROUGH THE CITY OF FOR ALL APPLICABLE CONSTRUCTION.
- PER THE DEVELOPMENT AGREEMENT BETWEEN CITY OF DRIPPING SPRINGS AND DEVELOPMENT SOLUTIONS CAT, LLC, THE CALITERRA DEVELOPMENT PROJECT IS SUBJECT TO AN INTEGRATED PEST MANAGEMENT (IPM) PLAN.
- ALL SIDEWALKS ARE TO BE MAINTAINED BY THE HAYS COUNTY DEVELOPMENT DISTRICT #1.
- POST-DEVELOPMENT CONDITIONS RUNOFF RATE SHALL BE NO GREATER THAN THE PREDEVELOPED CONDITION FOR 2, 5, 10, 25, AND 100 YEAR STORM EVENTS, PER HAYS COUNTY DEVELOPMENT REGULATIONS, CHAPTER 725, SUBCHAPTER 3.02. PRE AND POST DEVELOPMENT RUNOFF CALCULATIONS SHALL BE INCLUDED WITH THE CONSTRUCTION DRAWINGS FOR THIS SUBDIVISION.
- ALL ROADWAYS IN THIS DEVELOPMENT ARE TO BE DEDICATED TO THE PUBLIC AND MAINTAINED BY HAYS COUNTY.
- THIS DEVELOPMENT IS SUBJECT TO THE CALITERRA DEVELOPMENT AGREEMENT DATED JANUARY 14, 2014 BETWEEN THE CITY OF DRIPPING SPRINGS AND DEVELOPMENT SOLUTIONS CAT, LLC., RECORDED IN VOLUME 4978, PAGE 215, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS.

# CALITERRA

## PHASE THREE SECTION NINE



AREA TABLE		
AREA WITHIN SUBDIVISION	31.750 ACRES (1,383,041 sq. ft.)	
AREA OF SINGLE FAMILY LOTS	17,049 ACRES (742,654 sq. ft.)	
AREA WITHIN PRIVATE STREETS	6,201 ACRES (270,116 sq. ft.)	
BLOCK 'D'		
LOT NO.	ACREAGE	SQ. FT.
17	0.282 ACRES	12,289 SQ. FT.
18	0.356 ACRES	15,504 SQ. FT.
19	0.306 ACRES	13,316 SQ. FT.
20	0.313 ACRES	13,623 SQ. FT.
21	0.260 ACRES	11,318 SQ. FT.
22	0.213 ACRES	9,258 SQ. FT.
23	0.187 ACRES	8,142 SQ. FT.
24	0.188 ACRES	8,189 SQ. FT.
25	0.189 ACRES	8,237 SQ. FT.
26	0.190 ACRES	8,285 SQ. FT.
27	0.191 ACRES	8,331 SQ. FT.
28	0.192 ACRES	8,380 SQ. FT.
29	0.230 ACRES	9,998 SQ. FT.
30	0.220 ACRES	9,572 SQ. FT.
31	0.190 ACRES	8,295 SQ. FT.
32	0.186 ACRES	8,108 SQ. FT.
33	0.186 ACRES	8,084 SQ. FT.
34	0.187 ACRES	8,147 SQ. FT.
35	0.188 ACRES	8,211 SQ. FT.
36	0.190 ACRES	8,274 SQ. FT.
37	0.193 ACRES	8,406 SQ. FT.
38	0.228 ACRES	9,947 SQ. FT.
39	2.754 ACRES	119,959 SQ. FT.
40	0.187 ACRES	8,125 SQ. FT.
41	0.187 ACRES	8,125 SQ. FT.
42	0.188 ACRES	8,180 SQ. FT.
43	0.234 ACRES	10,201 SQ. FT.
44	0.243 ACRES	10,599 SQ. FT.
45	0.235 ACRES	10,237 SQ. FT.
46	0.235 ACRES	10,237 SQ. FT.
47	0.243 ACRES	10,604 SQ. FT.
48	0.252 ACRES	10,962 SQ. FT.
49	0.201 ACRES	8,750 SQ. FT.
50	0.187 ACRES	8,125 SQ. FT.
51	0.187 ACRES	8,125 SQ. FT.
52	0.187 ACRES	8,125 SQ. FT.
53	0.186 ACRES	8,123 SQ. FT.

BLOCK 'E'		
1	0.222 ACRES	9,660 SQ. FT.
2	0.186 ACRES	8,083 SQ. FT.
3	0.172 ACRES	7,500 SQ. FT.
4	0.213 ACRES	9,264 SQ. FT.
5	0.232 ACRES	10,115 SQ. FT.
6	0.228 ACRES	9,931 SQ. FT.
7	0.228 ACRES	9,931 SQ. FT.
8	0.212 ACRES	9,222 SQ. FT.
9	0.201 ACRES	8,769 SQ. FT.
10	0.172 ACRES	7,500 SQ. FT.
11	0.172 ACRES	7,500 SQ. FT.
12	0.172 ACRES	7,500 SQ. FT.
13	0.172 ACRES	7,500 SQ. FT.
14	0.172 ACRES	7,500 SQ. FT.
15	0.306 ACRES	13,317 SQ. FT.
16	0.306 ACRES	13,316 SQ. FT.
17	0.306 ACRES	13,316 SQ. FT.
18	1.979 ACRES	86,219 SQ. FT.
BLOCK 'F'		
1	0.172 ACRES	7,500 SQ. FT.
2	0.172 ACRES	7,500 SQ. FT.
3	0.172 ACRES	7,500 SQ. FT.
4	0.172 ACRES	7,500 SQ. FT.
5	0.198 ACRES	8,640 SQ. FT.
6	0.345 ACRES	15,028 SQ. FT.
7	0.181 ACRES	7,899 SQ. FT.
8	0.194 ACRES	8,433 SQ. FT.
9	0.345 ACRES	15,023 SQ. FT.
10	0.194 ACRES	8,429 SQ. FT.
11	0.172 ACRES	7,500 SQ. FT.
12	0.172 ACRES	7,500 SQ. FT.
13	0.172 ACRES	7,500 SQ. FT.
14	0.172 ACRES	7,500 SQ. FT.
15	0.172 ACRES	7,500 SQ. FT.
16	0.202 ACRES	8,799 SQ. FT.
17	0.207 ACRES	9,012 SQ. FT.
18	0.187 ACRES	8,125 SQ. FT.
19	0.187 ACRES	8,125 SQ. FT.
20	0.187 ACRES	8,125 SQ. FT.
21	0.234 ACRES	10,201 SQ. FT.
22	0.187 ACRES	8,125 SQ. FT.
23	0.187 ACRES	8,125 SQ. FT.
24	0.187 ACRES	8,125 SQ. FT.
25	0.402 ACRES	17,498 SQ. FT.
26	0.231 ACRES	10,071 SQ. FT.
27	0.187 ACRES	8,125 SQ. FT.
28	0.187 ACRES	8,125 SQ. FT.
29	0.187 ACRES	8,125 SQ. FT.
30	0.187 ACRES	8,125 SQ. FT.
31	3.182 ACRES	138,593 SQ. FT.

Curve Table					
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent
C1	39.51	475.00	S76°21'02"W	39.50	19.77
C2	22.45	15.00	S58°23'26"E	20.41	13.92
C3	64.05	175.00	S05°01'47"E	63.69	32.39
C4	22.68	15.00	S48°45'24"W	20.58	14.14
C5	5.27	660.00	N88°10'15"W	5.27	2.64
C6	24.56	15.00	S41°28'20"E	21.91	16.04
C7	28.83	20.00	S46°45'35"W	26.40	17.57
C8	295.36	270.00	S56°43'33"W	280.85	164.41
C9	28.55	20.00	N15°30'20"W	26.19	17.32
C10	208.94	470.00	N69°08'05"W	207.23	106.23
C11	34.28	20.00	S49°01'43"W	30.23	23.09
C12	31.42	20.00	N45°04'21"W	28.28	20.00
C13	26.95	475.00	N80°21'29"E	26.95	13.48
C14	79.88	225.00	S71°48'45"W	79.46	40.37
C15	20.60	15.00	S79°00'30"E	19.02	12.30
C16	193.11	205.00	N66°39'21"W	186.05	104.39
C17	115.75	475.00	S86°39'42"E	115.46	58.16
C18	272.10	60.00	S29°35'55"E	92.04	71.71
C19	34.83	25.00	S60°24'05"W	32.08	20.92
C20	23.56	15.00	N34°40'51"W	21.21	15.00
C21	359.19	205.00	S39°52'36"E	314.98	100'23'30"
C22	23.56	15.00	N45°04'21"W	21.21	15.00
C23	31.42	20.00	N44°55'39"E	28.28	20.00
C24	286.38	330.00	S64°56'21"W	259.21	140.93
C25	28.55	20.00	N82°42'27"E	26.19	17.32
C26	249.48	530.00	N69°53'03"W	247.19	127.10
C27	29.08	20.00	S41°43'16"E	26.58	17.79
C28	23.56	15.00	S44°55'39"W	21.21	15.00
C29	322.01	205.00	N44°55'39"E	289.91	205.00

Curve Table					
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent
C30	66.70	205.00	N09°23'37"W	66.41	33.65
C31	21.15	15.00	S21°40'19"W	19.44	12.76
C32	60.86	175.00	S72°01'16"W	60.55	30.74
C33	29.79	525.00	N80°21'29"E	29.78	14.90
C34	253.13	155.00	N46°51'27"W	225.92	164.97
C35	127.93	525.00	S86°39'42"E	127.61	64.28
C36	23.56	15.00	S55°19'09"W	21.21	15.00
C37	271.59	155.00	S39°52'36"E	238.15	186.01
C38	243.47	155.00	N44°55'39"E	219.20	155.00
C39	197.93	60.00	S65°00'40"E	119.63	761.46
C40	40.78	60.00	S48°57'55"W	40.00	21.21
C41	33.39	60.00	S84°22'41"W	32.96	17.14
C42	31.31	475.00	S81°34'08"E	31.30	15.66
C43	84.44	475.00	S88°32'59"E	84.33	42.33
C44	34.24	205.00	N88°51'29"W	34.20	17.16
C45	54.83	205.00	N76°24'41"W	54.67	27.58
C46	54.83	205.00	N61°05'13"W	54.67	27.58
C47	49.22	205.00	N46°32'49"W	49.10	24.73
C48	5.10	475.00	N81°40'33"E	5.10	2.55
C49	21.85	475.00	N80°03'01"E	21.85	10.93
C50	14.97	525.00	N79°32'59"E	14.97	7.49
C51	14.82	525.00	N81°10'30"E	14.81	7.41
C52	45.29	205.00	N12°23'09"W	45.19	22.74
C53	41.21	205.00	N03°03'54"W	21.40	10.72
C54	26.46	205.00	N06°29'22"E	46.85	23.58
C55	59.32	205.00	N21°20'27"E	59.11	29.87
C56	59.32	205.00	N37°55'12"E	59.11	29.87
C57	59.32	205.00	N54°29'57"E	59.11	29.87
C58	54.83	205.00	N70°27'02"E	54.67	27.58

Curve Table					
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent
C59	42.27	205.00	N84°01'13"E	42.20	21.21
C61	23.86	330.00	S43°53'09"W	23.86	11.94
C62	73.49	330.00	S52°20'13"W	73.33	36.90
C63	73.49	330.00	S65°05'45"W	73.33	36.90
C64	73.49	330.00	S77°51'16"W	73.33	36.90
C65	22.06	330.00	S86°08'56"W	22.06	11.03
C67	57.69	205.00	S82°00'40"E	57.50	29.04
C68	61.66	205.00	S65°19'55"E	61.43	31.07
C69	59.43	205.00	S48°24'34"E	59.22	29.92
C70	59.43	205.00	S31°47'58"E	59.22	29.92
C71	59.44	205.00	S15°11'16"E	59.23	29.93
C72	59.43	205.00	S01°25'25"W	59.22	29.92
C73	2.11	205.00	S10°01'26"W	2.11	1.06
C74	8.46	525.00	S80°08'33"E	8.46	4.23
C75	62.34	525.00	S84°00'21"E	62.30	31.21
C76	57.13	525.00	N89°28'30"E	57.10	28.59
C77	26.65	155.00	N88°43'03"W	26.61	13.36
C78	199.49	155.00	N46°55'21"W	186.00	116.25
C79	27.00	155.00	N05°03'45"W	26.96	13.53
C80	32.51	155.00	N83°55'08"E	32.45	16.31
C81	199.49	155.00	N41°02'26"E	186.00	116.25
C82	11.48	155.00	N02°02'57"E	11.48	5.74
C83	43.62	155.00	S82°00'40"E	43.47	21.95
C84	227.97	155.00	S31°48'54"E	207.97	140.22
C85	5.10	15.00	S80°20'13"E	5.07	2.57
C86	18.46	15.00	S35°20'13"E	17.32	10.61
C87	18.46	15.00	N35°11'31"E	17.32	10.61
C88	5.10	15.00	N80°11'31"E	5.07	2.57

Line Table		
Line #	Length	Direction
L1	17.22	S12°13'19"E
L2	168.56	S16°01'57"E
L3	8.82	S73°58'03"W
L4	50.00	S11°16'00"E
L5	106.09	S15°30'53"E
L6	130.84	S05°27'19"W
L7	50.00	S01°36'02"W
L8	60.00	S01°56'09"E
L9	60.00	N64°36'44"W
L10	174.94	N56°23'57"W
L11	50.00	S89°55'39"W
L12	4.60	N00°04'21"W
L13	56.84	S81°59'01"E
L14	8.69	S79°40'51"E
L15	115.00	N00°04'21"W
L16	118.76	N00°04'21"W
L17	107.63	N00°04'21"W
L18	56.84	S81°59'01"E
L19	107.63	N00°04'21"W
L20	165.95	S82°16'26"E
L21	51.04	N42°02'13"W

LOT SIZE	NO.
< 1 ACRE	83
1-2 ACRE	0
2-5 ACRE	3
5-10 ACRE	0
> 10 ACRE	0
MINIMUM LOT SIZE: 0.172 AC (7,500 sq. ft.)	
AVERAGE LOT SIZE: 0.298 AC (12,589 sq. ft.)	

# CALITERRA PHASE THREE SECTION NINE

STATE OF TEXAS }  
COUNTY OF HAYS }

KNOW ALL MEN BY THESE PRESENTS:  
THAT DEVELOPMENT SOLUTIONS CAT, LLC, ACTING BY AND THROUGH ITS MANAGER, GREGORY L. RICH, BEING THE OWNER OF A CALLED 591.858 ACRES OF LAND OUT OF THE PHILIP A. SMITH SURVEY NUMBER 22, ABSTRACT NUMBER 415, SITUATED IN HAYS COUNTY, TEXAS, AS CONVEYED BY DEED RECORDED IN VOLUME 4682, PAGE 342 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 31.750 ACRES OF LAND IN ACCORDANCE WITH THIS PLAT, TO BE KNOWN AS:

## "CALITERRA PHASE THREE, SECTION NINE"

SUBJECT TO ANY EASEMENTS AND/OR RESTRICTIONS HERETO GRANTED AND NOT RELEASED, AND DO HEREBY DEDICATED TO THE PUBLIC USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

WITNESS MY HAND, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

By: \_\_\_\_\_  
GREGORY L. RICH, MANAGER  
DEVELOPMENT SOLUTIONS CAT, LLC

STATE OF TEXAS }  
COUNTY OF HAYS }

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED \_\_\_\_\_, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
PRINTED NOTARY NAME  
MY COMMISSION EXPIRES: \_\_\_\_\_

STATE OF TEXAS:  
COUNTY OF TRAVIS:

I, QUINN HINK, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT. I CERTIFY TO THE COMPLETENESS, ACCURACY AND COMPLIANCE TO THE CITY OF DRIPPING SPRINGS SUBDIVISION ORDINANCES.

FLOOD PLAIN NOTE: NO PORTION OF THIS TRACT IS WITHIN THE DESIGNATED FLOOD HAZARD AREA AS SHOWN ON THE FEDERAL INSURANCE RATE MAP PANEL NO. 48209C-0115F, BOTH DATED SEPTEMBER 02, 2005.

ENGINEERING BY: \_\_\_\_\_ DATE \_\_\_\_\_  
QUINN HINK, P.E., No. 130416  
CARLSON, BRIGANCE & DOERING, INC.  
5501 WEST WILLIAM CANNON DRIVE,  
AUSTIN, TEXAS 78749



STATE OF TEXAS:  
COUNTY OF TRAVIS:

I, AARON V. THOMASON, AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF SURVEYING, AND HEREBY CERTIFY THAT THIS PLAT COMPLIES WITH THE REQUIREMENTS OF THE CITY OF DRIPPING SPRINGS, TEXAS, AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

SURVEYED BY: \_\_\_\_\_ DATE \_\_\_\_\_  
AARON V. THOMASON, R.P.L.S. NO. 6214  
CARLSON, BRIGANCE & DOERING, INC.  
5501 WEST WILLIAM CANNON DRIVE  
AUSTIN, TEXAS 78749



CITY OF DRIPPING SPRINGS ADMINISTRATIVE PLAT APPROVAL

THIS PLAT, CALITERRA PHASE THREE, SECTION NINE, HAS BEEN SUBMITTED TO AND CONSIDERED BY THE CITY OF DRIPPING SPRINGS, AS A FINAL PLAT FOR ADMINISTRATIVE APPROVAL PURSUANT TO ORDINANCE 1230.09, AND HAS BEEN FOUND TO COMPLY WITH THE DEVELOPMENT CODE OF ORDINANCES, AND IS HEREBY APPROVED ADMINISTRATIVELY.

\_\_\_\_\_  
MICHELLE FISCHER, CITY ADMINSTRATOR

DATE: \_\_\_\_\_

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION, TO-WIT:

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER SUPPLY OR STATE APPROVED COMMUNITY WATER SYSTEM

\_\_\_\_\_  
CHAD GILPIN, P.E. - CITY ENGINEER

DATE: \_\_\_\_\_

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER SUPPLY OR STATE-APPROVED COMMUNITY WATER SYSTEM. DUE TO DECLINING WATER SUPPLY 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 SOURCE.

NO STRUCTURE OR OTHER DEVELOPMENT IN THIS SUBDIVISION MAY BEGIN UNTIL ALL HAYS COUNTY AUTHORIZATION REQUIREMENTS HAVE BEEN SATISFIED.

\_\_\_\_\_  
CAITLYN STRICKLAND, INTERIM DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES

\_\_\_\_\_  
TOM POPE, R.S., C.F.M.  
FLOODPLAIN ADMINISTRATOR

STATE OF TEXAS }  
COUNTY OF HAYS }

I, THE UNDERSIGNED, INTERIM DIRECTOR OF HAYS COUNTY DEVELOPMENT SERVICES, 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 DRIPPING SPRINGS FOR SUBDIVISION REGULATION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DRIPPING SPRINGS.

\_\_\_\_\_  
CAITLYN STRICKLAND, INTERIM DIRECTOR  
HAYS COUNTY DEVELOPMENT SERVICES

DATE: \_\_\_\_\_

I, ELAINE HANSON CARDENAS, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IN WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D., AT \_\_\_\_\_ O'CLOCK \_\_\_\_M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, AS DOCUMENT NO. \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ A.D.

ELAINE HANSON CARDENAS BY: \_\_\_\_\_  
COUNTY CLERK  
HAYS COUNTY, TEXAS

THIS FLOOD STATEMENT, AS DETERMINED BY A H.U.D.-F.I.A. FLOOD INSURANCE RATE MAP, DOES NOT IMPLY THAT THE PROPERTY OR THE IMPROVEMENTS THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FOODS CAN AND WILL OCCUR, AND FLOOD HEIGHTS MAY INCREASE BY MAN-MADE OR NATURAL CAUSES.

THIS STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF ENGINEER OR SURVEYOR.

A SUBDIVISION OF 31.750 ACRES BEING  
CALITERRA PHASE THREE, SECTION NINE, OUT  
OF THE PHILIP A. SMITH SURVEY NUMBER 22,  
ABSTRACT NUMBER 415,  
HAYS COUNTY, TEXAS

## SHEET NO. 3 OF 3



PATH-J: \AC3D\4992\SURVEY\PLAT - CALITERRA PHASE THREE, SECTION NINE.dwg

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to approve Advance Funding Agreement for Locally Funded Highway Improvement Project On-System (RM 12 at Winters Mill Pkwy. and RM 3237 at Winters Mill Pkwy.) and authorize the County Judge to execute Advance Funding Agreement on behalf of Hays County.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	March 31, 2020	\$1,510,351.00

#### LINE ITEM NUMBER

034-803-96-769

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

**PURCHASING GUIDELINES FOLLOWED:** YES      **AUDITOR REVIEW:** MARISOL VILLARREAL-ALONZO

REQUESTED BY	SPONSOR	CO-SPONSOR
Michael J. Weaver, Prime Strategies, Inc.	SHELL	N/A

#### SUMMARY

The RM 12 at Winters Mill Parkway and RM 3237 at Winters Mill Parkway intersection improvements project is an element of the Hays County 2016 Road Bond Program that would improve safety and mobility for local traffic conditions at these locations. The County has moved forward with project development of the RM 12 at Winters Mill Parkway and RM 3237 at Winters Mill Parkway intersection improvements project, including environmental clearance, construction design, and right-of-way/utility coordination. The Advance Funding Agreement would memorialize the roles and responsibilities of the Texas Department of Transportation (TxDOT) and Hays County. TxDOT would contribute a total of \$65,642.00 which includes indirect State costs. Hays County would contribute a total of \$1,510,351.00 which includes environmental clearance, construction engineering, construction funding, and State direct costs. Hays County would be responsible for advertising, letting and managing construction. The project is estimated to be let for construction by TxDOT in mid-2020.

CSJ #	0683-03-040 and 0805-04-031
District #	14-AUS
Code Chart 64 #	50106
Project Name	RM 12 at Winters Mill Pkwy. and RM 3237 at Winters Mill Pkwy. Pavement Widening for Intersection Improvements

STATE OF TEXAS       §

COUNTY OF TRAVIS   §

**ADVANCE FUNDING AGREEMENT  
For  
Locally Funded Highway Improvement Project  
On-System**

**THIS AGREEMENT** (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **County of Hays**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

**WITNESSETH**

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

**WHEREAS**, the State and Local Government do not anticipate that federal funds will be used for the Project governed by this Agreement; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number **115550** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **local project to widen pavement for intersection improvement**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated **{Enter Date of Resolution}**, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order. A map showing the Project location appears in Attachment B, Location Map Showing Project, (Attachment B) which is attached to and made a part of this Agreement.



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<b>Project Name</b>	<b>RM 12 at Winters Mill Pkwy. and RM 3237 at Winters Mill Pkwy. Pavement Widening for Intersection Improvements</b>

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows

## **AGREEMENT**

### **1. Responsible Parties:**

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	<b>N/A</b>	Utilities	Article 8
2.	<b>Local Government</b>	Environmental Assessment and Mitigation	Article 9
3.	<b>Local Government</b>	Architectural and Engineering Services	Article 12
4.	<b>Local Government</b>	Construction Responsibilities	Article 13
5.	<b>N/A</b>	Right of Way and Real Property	Article 15

### **2. Period of the Agreement**

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

### **3. Scope of Work**

The scope of work for this Project consists of:

- a. 0683-03-040 pavement widening for intersection improvement on RM 12 from 0.035 miles north of Winters Mill Pkwy to 0.20 miles south of Winters Mill Pkwy.
- b. 0805-04-031 pavement widening for intersection improvement on RM 3237 from 0.199 miles south of Winters Mill Pkwy to 0.166 miles north of Winters Mill Pkwy.

### **4. Project Sources and Uses of Funds**

The total estimated cost of the Project is shown in Attachment C, Project Budget, (Attachment C) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not

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continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the State, the Local Government, or other parties are shown in Attachment C. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission.
- C. Attachment C shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- F. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding or the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.

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- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the local Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred the State may refuse to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government or the State for these work items will be promptly paid by the owing party.
- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

## 5. **Termination of this Agreement**

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;



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- B. The Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against state funds, in which case the State may in its discretion terminate this Agreement.

#### **6. Amendments**

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

#### **7. Remedies**

This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

#### **8. Utilities**

The party named in article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

#### **9. Environmental Assessment and Mitigation**

Development of a transportation project must comply with applicable environmental laws. The party named in article 1, Responsible Parties, under AGREEMENT is responsible for the following:

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- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**10. Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**11. Procurement Standards**

For projects being managed by the Local Government and on the State highway system or that include state funding, the Local Government must obtain approval from the State for its proposed procurement procedure for the selection of a professional services provider, a contractor for a construction or maintenance project, or a materials provider.

**12. Architectural and Engineering Services**

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable *State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with Texas Government Code 2254, Subchapter A. If the Local Government is the responsible party, the Local Government shall submit its procurement selection process for prior approval by the State. All professional service contracts must be reviewed and approved by the State prior to execution by the Local Government.

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**13. Construction Responsibilities**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. Projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.
- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

**14. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

**15. Right of Way and Real Property**

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

The Local Government shall be responsible for the following:

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.
- B. If the Local Government is the owner of any part of the Project site under this Agreement, the Local Government shall permit the State or its authorized

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representative access to occupy the site to perform all activities required to execute the work.

- C. All parties to this Agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- D. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this Agreement and the obligation of federal spending authority.
- F. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

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- H. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

#### **16. Insurance**

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

#### **17. Notices**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<b>Local Government:</b>	<b>State:</b>
County of Hays ATTN.: County Judge 111 E. San Antonio Street, Suite 300 San Marcos, TX 78666	Texas Department of Transportation ATTN.: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that

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notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**18. Legal Construction**

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**19. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**20. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, of photocopy reproduction on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

**21. Compliance with Laws**

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**22. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

**23. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement and property management standards established in the Texas Uniform Grant Management Standards.

**24. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State and the Local Government, or their duly authorized representatives for review and inspection at its office during the Agreement period and for

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seven (7) years from the date of completion of work defined under this Agreement or until any impending litigation, or claims are resolved. Additionally, the State and the Local Government and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**25. Audit**

Pursuant to Texas Government Code § 2262.154, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**26. Historically Underutilized Business (HUB) and Small Business Enterprise (SBE) Requirements**

For projects with State funds and no federal funds, the Local Government will be required to follow the provisions of Texas Transportation Code §201.702 and 43 TAC §§9.354-9.355 (HUB) and §§9.314-9.315 (SBE). The Local Government must incorporate project goals approved by TxDOT into project documents before advertising for receipt of bids. Contractors must select HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government will provide monthly updates of HUB/SBE (as appropriate) participation and report final accomplishments to TxDOT for credit to overall program goals.

For projects with no state or federal funds that are not on the state or federal highway systems, the Local Government should follow its own local or specific ordinances and procedures. Local Governments are encouraged to use HUBs and SBEs from TxDOT-approved or maintained sources. The Local Government must also report final HUB accomplishments to TxDOT for credit to overall program goals.

**27. Debarment Certifications**

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

**28. Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

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- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).



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**29. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated under that party's signature.

**THE STATE OF TEXAS**

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

**THE LOCAL GOVERNMENT**

Signature

Ruben Becerra

Typed or Printed Name

County Judge

Typed or Printed Title

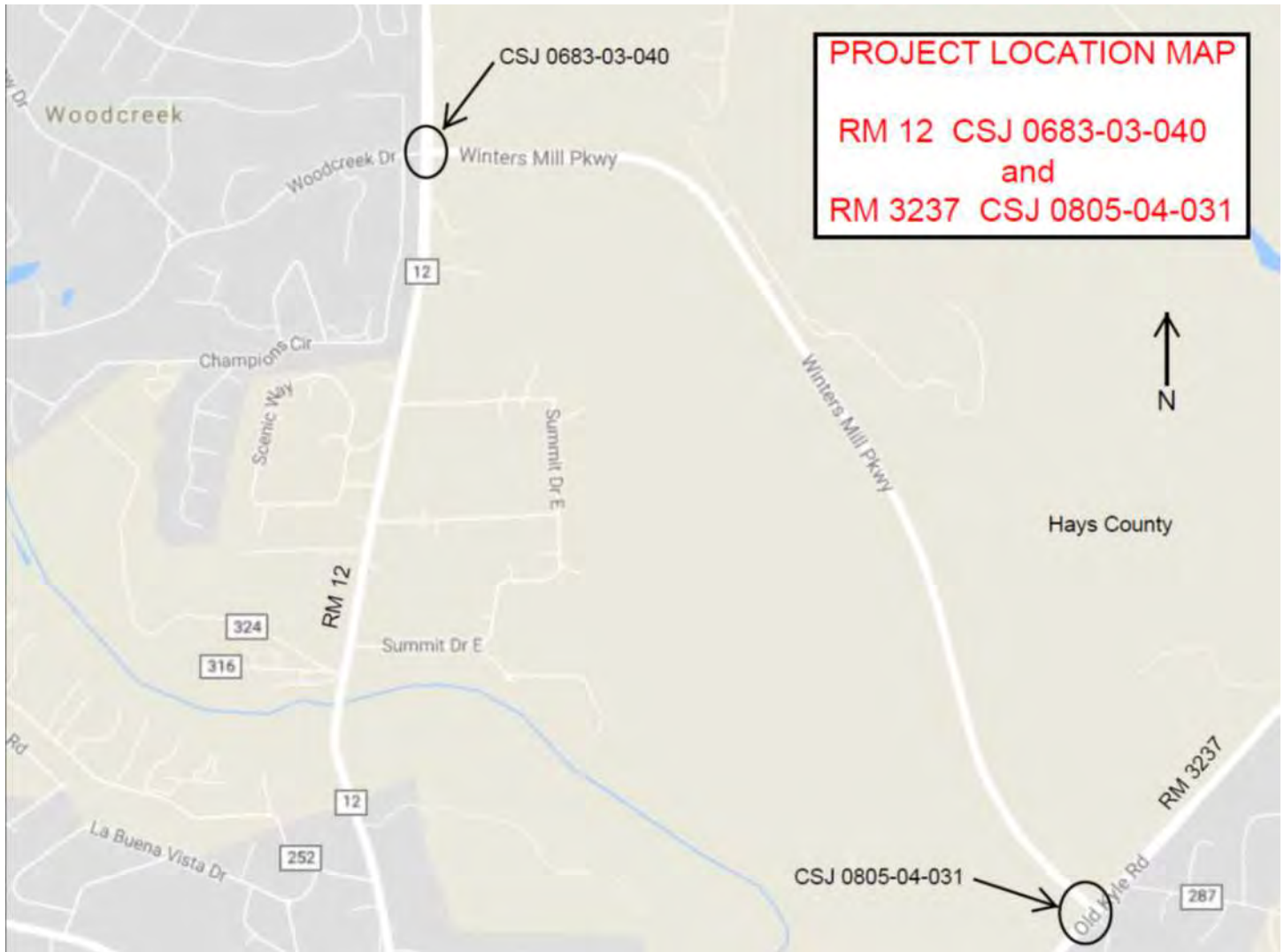
Date

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**ATTACHMENT A**  
**RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER**

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## ATTACHMENT B LOCATION MAP SHOWING PROJECT



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### ATTACHMENT C PROJECT BUDGET

Costs will be allocated based on 100% Local Government funding. The Local Government will be responsible for 100% of the cost overruns.

Description	Total Estimated Cost	State Participation		Local Participation	
		%	Cost	%	Cost
Engineering (by Local Government)	\$313,773	0%	\$0	100%	\$313,773
Environmental (by Local Government)	\$46,992	0%	\$0	100%	\$46,992
Construction 0805-04-031 (by Local Government)	\$147,160	0%	\$0	100%	\$147,160
Construction 0683-03-040 (by Local Government)	\$944,336	0%	\$0	100%	\$944,336
Subtotal	\$1,452,261		\$0		\$1,452,261
Environmental Direct State Costs	\$5,809	0%	\$0	100%	\$5,809
Right of Way Direct State Costs	\$1,452	0%	\$0	100%	\$1,452
Engineering Direct State Costs	\$8,714	0%	\$0	100%	\$8,714
Utility Direct State Costs;	\$1,452	0%	\$0	100%	\$1,452
Construction Direct State Costs	\$40,663	0%	\$0	100%	\$40,663
Indirect State Costs (4.52%)	\$65,642	100%	\$65,642	0%	\$0
<b>TOTAL</b>	<b>\$1,575,993</b>		<b>\$65,642</b>		<b>\$1,510,351</b>

Initial payment by the Local Government to the State: \$17,427

Payment by the Local Government to the State before construction: \$40,663

Estimated total payment by the Local Government to the State \$58,090. This is an estimate.

The final amount of Local Government participation will be based on actual costs.



A Resolution of the Hays County Commissioners Court  
Approving an Advance Funding Agreement for Locally Funded Highway Improvement  
Project On-System (RM 12 at Winters Mill Pkwy. and RM 3237 at Winters Mill Pkwy.)  
and Authorizing the County Judge to Execute the Agreement on behalf of Hays County

STATE OF TEXAS           §  
                                      §  
COUNTY OF HAYS       §

**WHEREAS**, the RM 12 at Winters Mill Parkway and RM 3237 at Winters Mill Parkway intersection improvements project is an element of the Hays County 2016 Road Bond Program; and

**WHEREAS**; the project would improve safety and mobility for local traffic conditions at these locations; and

**WHEREAS**, Hays County has moved forward with project development of the RM 12 at Winters Mill Parkway and RM 3237 at Winters Mill Parkway intersection improvements project, including environmental clearance, construction design, and right-of-way/utility coordination; and

**WHEREAS**, the Advance Funding Agreement would memorialize the roles and responsibilities of the Texas Department of Transportation (TxDOT) and Hays County;

**NOW, THEREFORE, BE IT RESOLVED** by the Hays County Commissioners Court:

- (a) That the Commissioners Court of Hays County does hereby approve Advance Funding Agreement for Locally Funded Highway Improvement Project On-System (RM 12 at Winters Mill Pkwy. and RM 3237 at Winters Mill Pkwy.) and authorizes the County Judge to execute the Agreement on behalf of Hays County.

RESOLVED, ORDERED, AND DECLARED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Ruben Becerra  
Hays County Judge

---

Debbie Gonzales Ingalsbe  
Commissioner, Pct. 1

---

Mark Jones  
Commissioner, Pct. 2

---

Lon Shell  
Commissioner, Pct. 3

---

Walt Smith  
Commissioner, Pct. 4

ATTEST:

Elaine H. Cárdenas  
Hays County Clerk

RM12atWintersMillParkwayAFA\_resolution

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to authorize that execution of a Construction Contract with Intermountain Slurry Seal, Inc. for the Transportation Department related to road improvements.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	March 31, 2020	\$140,385

#### LINE ITEM NUMBER

020-710-00.5448\_010

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

**PURCHASING GUIDELINES FOLLOWED:** YES      **AUDITOR REVIEW:** MARISOL VILLARREAL-ALONZO

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry Borcharding	INGALSBE	SHELL

#### SUMMARY

The Transportation Department would like to utilize Intermountain Slurry Seal for micro surfacing to extend the life of the road pavement for named projects. Projects to be completed include:

- >Running Rope Estates- Precinct 3
- >Eaglepoint Subdivision- Precinct 1
- >Southridge Estates- Precinct 1

These projects will be scheduled during the 2020 fiscal and funded within the Transportation Departments operating budget. Procurement is allowable through the Bexar County ILA purchasing agreement and in accordance with Bexar County PO#11597775.



## PROPOSAL AND CONSTRUCTION CONTRACT

Date of Proposal: **1.30.20**  
 Proposal Valid Until: **11.30.20**

This Proposal and Construction Contract (including the General Conditions appearing on the reverse side hereof or attached hereto and any additional attachments identified in Section 6 below) (herein "Contract") is entered into as of the Date of Proposal by and between INTERMOUNTAIN SLURRY SEAL, INC., a Wyoming corporation, (herein "Contractor") and Hays County (herein "Owner"). Owner and Contractor agree as follows:

**1. Description and Location of Work.** Contractor agrees to perform the following work (herein, "Work"):  
 Place approximately 38,982 SY of Ty II Micro-surfacing (21-23 lbs/SY) (Dry) per ISSA/TxDOT Specifications for a total of approximately 490 tons.

Located At: (See Attachment "A, B" – Site Maps) Formal Quote: (See Attachment "C"- Quote), Summary (See Attachment "D").

**2. Plans and Specifications.** The Work described above shall be performed in accordance with the following plans and specifications: Bexar County (PO 1159775) / TxDOT 2014 Specifications

Such plans and specifications are, by this reference, incorporated herein and made a part of this Contract, but are not attached.

**3. Payment.** Owner shall pay to Contractor, as full compensation for performance by Contractor of the Work (herein, "Contract Amount") the following amount:

- A. Payments shall be made in accordance with the PROMPT PAYMENT ACT, TEXAS GOV'T CODE ANN., ch 2251 as outlined in Section 2 on the reverse side hereof.
- B. In the event the above price is a unit price based on quantities, final payment shall be for actual quantities jointly determined by the Owner and Contractor, upon completion of all Work hereunder.
- C. Contractor shall have the right to terminate this Contract if Owner is unable to demonstrate to the satisfaction of Contractor prior to commencement of Work (or at anytime during the course of the Work in response to the written request of Contractor) Owner's ability to make payments for the Work to be performed hereunder in the manner and at the times set forth herein. Owner shall have the right to terminate this contract upon thirty (30) days' written notice to the Contractor.
- 4. Time.** Contractor shall commence and continue thereafter to diligently perform the Work in accordance with a mutually agreed upon schedule. The mutually agreed upon schedule shall provide for 20 working days in which to perform the Work. A working day is defined as any day except Saturdays, Sundays and legal holidays and except days on which the Contractor is prevented from proceeding with at least ninety percent (90%) of the normal labor and/or equipment force required to perform the Work due to events or circumstances, beyond the control of Contractor including, but not limited to, those events or circumstances identified in Sections 7 and 8 of the General Terms.

**5. Special Conditions.** Owner is responsible for all prep work including removal of excess gravel from edges, applying herbicide, crack sealing and patching. Contractor to sweep streets prior to Micro-surfacing. County to provide a staging area for Intermountain to set up their operations if needed.

#### IN REFERENCE TO MICRO-SURFACING / SLURRY SEAL:

- A. Schedule to be mutually agreed upon by owner and contractor.
- B. Special permits and licensing prices are not included in the contractual price agreement. If permitting or licensing is required for work to be conducted, all costs to obtain permits and licenses will be the responsibility of the owner.
- C. The complete elimination of any existing drainage problem or reflective cracking is not intended or guaranteed.
- D. Contractor is not responsible for any damage done to existing asphalt due to weights of machinery during the construction process.
- E. Sweeping may be required by the Owner approximately two months after micro-surfacing placement to remove any excess aggregate.
- F. Price excludes quality control besides initial mix design.
- 6. Attachments.** The following documents are attached hereto and incorporated herein and made a part of this contract by this reference: Attachment "A, B, C"- (Site Maps), Attachment "D"- (Quote)

For ISS Use Only  
 Initial \_\_\_\_\_





7. OWNER ACKNOWLEDGES THAT INTERMOUNTAIN SLURRY SEAL, INC. IS NOT SIGNATORY TO ANY COLLECTIVE BARGAINING AGREEMENTS. OWNER AND CONTRACTOR AGREE THAT CONTRACTOR WILL NOT BE REQUIRED TO BECOME SIGNATORY TO, OR BOUND BY, ANY COLLECTIVE BARGAINING AGREEMENTS OR OTHER UNION AGREEMENTS AND THE OBLIGATIONS THEREUNDER.

THIS CONTRACT IS SUBJECT TO THE GENERAL CONDITIONS APPEARING ON THE REVERSE SIDE  
HEREOF OR, IF NOT APPEARING ON THE REVERSE SIDE HEREOF, THEN ATTACHED HERETO.

Executed at: \_\_\_\_\_ as of the date first above written.

Please Sign Original and Return to:

BY: \_\_\_\_\_  
Owner

**INTERMOUNTAIN SLURRY SEAL, INC.**  
**A WYOMING CORPORATION**  
Contractor

\_\_\_\_\_  
Business Address

BY: \_\_\_\_\_  
Contractor

\_\_\_\_\_  
Residence Address

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Name of Construction Lender (if any)

\_\_\_\_\_

\_\_\_\_\_  
Address

ISS Job No. \_\_\_\_\_

For ISS Use Only  
Initial \_\_\_\_\_



## GENERAL CONDITIONS

1. **WORKMANSHIP AND MATERIALS:** Contractor acknowledges that it is familiar with the nature and location of the Work. All Work shall be performed by Contractor in a workmanlike manner, and in accordance with industry standards.
2. **PAYMENTS:** Contractor shall receive progress payments monthly in proportion to the amount of Work performed during the period covered by Contractor's billing. Progress payments will be made within ten (10) days, per Government Code Chapter 2251, after Owner receives a billing from Contractor setting forth the amount due for the Work performed and covered by the billing. Owner will make payment to Contractor for work performed in the percentage amount set forth under §3.A. appearing on the face page of the Contract. Final payment shall be due Contractor within ten (10) days after (i) Owner's receipt of a final billing from Contractor or (ii) completion of the Work, whichever shall occur last. The proportionate amount of Work billed on Contractor's progress billings shall be subject to the approval of Owner. Progress payments shall not be construed as an acceptance of any Work, the entire Work being subject to final inspection and approval by Owner. Nothing contained herein shall be deemed consent by the Contractor to extend the due date for payment under this Contract. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers' interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
3. **CHANGES IN THE WORK:** Owner may, from time to time, by instructions or drawings issued to Contractor, make changes to the scope of the Work, issue additional instructions, request additional work or direct the omission of work previously ordered, and the provisions of this Contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original contract. The price or a formula for establishing the price and any time impacts to the schedule for such work shall be set forth in a written change order either prior to the commencement of work or as soon as practical thereafter and shall be mutually agreed upon with Contractor. Absent the parties' agreement to price and/or time extension for a change in the Work, Owner shall pay Contractor its actual direct costs in completing said extra work plus a mark-up of 15 percent thereon for overhead and profit.
4. **INDEMNITY: CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION:** Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.
5. **RESPONSIBILITY FOR WORK:** Except to the extent insured by property insurance provided by Owner, Contractor shall be responsible for and shall bear any loss of or damage to the Work and all materials, supplies and equipment until such time as Contractor has de-mobilized from the Work site. In no event, shall Contractor be liable for such loss or damage that results from the actions, omissions, fault or negligence, either active or passive, of the Owner, Owner's representatives, agents, employees, its other contractors or anyone acting on Owner's behalf or others over whom Contractor has no authority or control.
6. **INSURANCE:** Contractor shall maintain such insurance as will protect it from claims under workers' compensation acts and from claims for damages because of bodily injury, including death, or injury to property which may arise from and during the operation of this Contract. A certificate of such insurance shall be provided to the Owner if the Owner so requests.
  - \* Worker's compensation; as required by statute;
  - \* Employer' Liability - \$500,000 per each accident
  - \* Commercial General Liability - \$1,000,000 per each occurrence and general aggregate
  - \* Delete any requirement for Professional Liability coverage
7. **DELAYS BEYOND CONTROL OF CONTRACTOR:** In the event Contractor shall be delayed in the performance of the Work under this Contract by causes beyond the control of the Contractor and not caused by Contractor's negligence, including, but not limited to, Change Orders, Acts of God, or of the public enemy, acts of any governmental agency, fire, flood, epidemics, strikes, freight embargoes, inclement weather, over optimum moisture content of ground or base course, unsuitable ground conditions or delays caused by Owner, its other contractors, their subcontractors of any tier and the suppliers to any of the foregoing, Contractor shall have a time extension to the mutually agreed schedule for the time caused by said delay and shall be paid its additional costs incurred as a result of the delay, including labor and material cost or price escalations, and extended jobsite and home office overhead.
8. **DIFFERING SITE CONDITIONS:** (A) Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, including but not limited to any subsurface utilities not accurately shown on plans or drawings, or (2) unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, or (3) the existence of contaminated, toxic or hazardous materials or conditions not specifically described in type, character, or quantity in this Contract, which existence is deemed to be a differing site condition. (B) Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ or are deemed to so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract price increased to reflect Contractor's increased costs plus a mark-up of 15 percent, and the mutually agreed schedule extended accordingly.
9. **LAWS AND REGULATIONS:** This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
10. **OWNER:** Owner represents he/she/it is the Owner in fee simple of the real property upon which the construction improvement is to be made.
11. **ACCEPTANCE:** Upon receipt of written notice from Contractor requesting acceptance of the Work being performed hereunder, Owner and Contractor shall promptly inspect the job jointly and, in the event the same has been completed in conformity herewith, provide Contractor with a Notice of Completion in recordable manner and form. In the event the Work performed is subject to further inspection and/or final acceptance by another person or entity, and such inspection and/or final acceptance cannot be obtained through no fault of Contractor, then in such event the Work shall be deemed completed and accepted. Contractor shall warrant its Work against defects in materials and workmanship for a period of one year from the date of completion of the Work.
12. **PERMITS:** Owner will obtain and pay for all permits, inspection fees, soils test, engineering, staking, fees for utility connections, or other such similar items required for the performance of Work hereunder.
13. **SUBCONTRACTING:** Contractor shall have the right to subcontract any portion of the Work hereunder, and all Work performed by subcontractors shall be subject to all of the applicable Contract terms and conditions.
14. **LIENS AND CLAIMS:** Provided Contractor has been, and continues to be, timely paid all amounts due it, Contractor shall promptly pay valid claims of all persons, firms or corporations performing labor or furnishing equipment, materials and other items used in, upon or for the Work done hereunder.
15. **DEFAULT:** In the event Contractor shall fail to timely perform any provision of this Contract and if such failure should continue for thirty (30) days after receipt of written notice from Owner, then Owner may terminate this Contract and cause the balance of the Work to be completed by other parties. In any such event, if the reasonable cost of such completion exceeds the unpaid balance due on the Contract price, Contractor shall promptly pay such difference to Owner; otherwise, the unpaid contract balance shall be paid to Contractor. The Owner and Contractor each waive the right to recover from the other any indirect, incidental or consequential damages regardless of how such damages are caused.
16. **COSTS AND ATTORNEYS' FEES:** Should either party bring suit in court to enforce or interpret any of the terms hereof, or for a breach thereof, and/or to foreclose any mechanic's lien attributable to the Work done hereunder, the prevailing party, to the extent permitted by applicable law, shall be entitled to cost and reasonable attorneys' fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.
17. **NOTICES:** Any notice required or permitted hereunder shall be served personally on Contractor's construction manager or on the representative of Owner at the job site, or may be served by certified mail directed to the address of the party shown on the face of the Contract. Notices shall be effective upon receipt by the intended recipient.
18. **ASSIGNMENT:** Except as provided in Section 13 above, neither party shall assign all or any portion of this Contract without first obtaining the signed written consent of the other party. Subject to the foregoing, this agreement shall be binding upon and inure to the heirs, successors and assigns of the parties hereto.
19. **WAIVER OF RIGHTS:** Failure to enforce any rights hereunder shall not waive any rights in respect of other or future occurrences.
20. **SEVERABILITY:** To the best knowledge and belief of the Parties, this Contract now contains no provision that is contrary to any Laws. In the event that any provision of this Contract shall at any time contravene in whole or in part any applicable Law, then such provision shall remain in effect only to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.
21. **JURISDICTION AND VENUE:** It is understood and agreed that each and every provision of this Contract, including any alleged breach thereof, shall be interpreted in accordance with the laws of the state of Texas. Venue for all matters arising under this Contract shall be in the state and federal district courts located in Ft Worth, Texas. Contractor is authorized to do business in the state of Texas.
22. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between Owner and Contractor and contains all terms and conditions agreed upon by the parties. This Contract supersedes all earlier proposals, discussions, correspondence and oral agreements, if any, between Owner and Contractor.

For ISS Use Only  
Initial \_\_\_\_\_




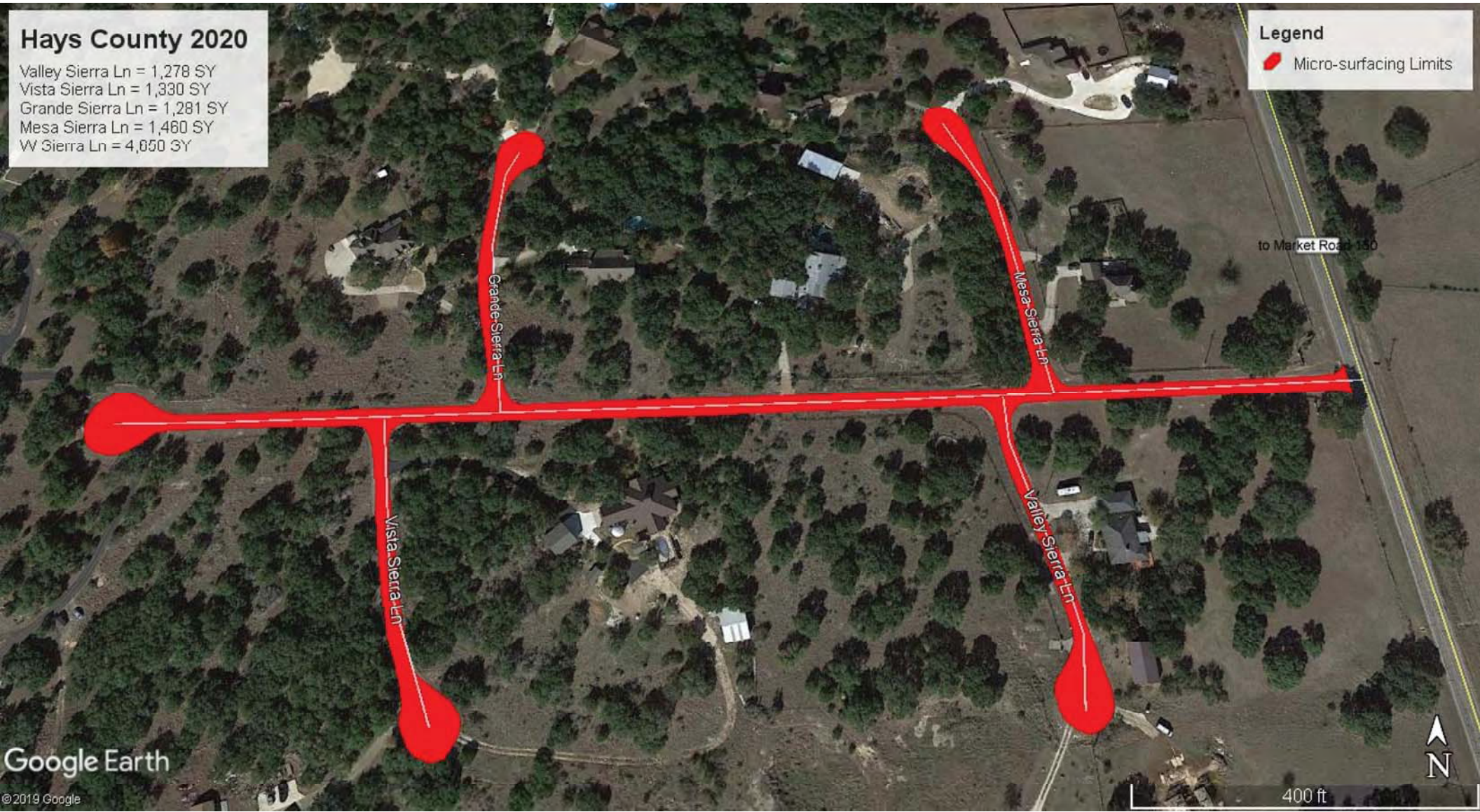


**Hays County 2020**

Valley Sierra Ln = 1,278 SY  
Vista Sierra Ln = 1,330 SY  
Grande Sierra Ln = 1,281 SY  
Mesa Sierra Ln = 1,460 SY  
W Sierra Ln = 4,850 SY

**Legend**

 Micro-surfacing Limits






# Hays County 2020

Viewpoint Dr = 1,085 SY  
Centerview Dr = 1,892 SY  
Grandview Dr = 12,453 SY  
Crest Cir Dr = 7,543 SY  
Park Dr = 2,348 SY  
Pauls Dr = 3,862 SY

Legend

 Micro-surfacing Limits



## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to accept the Fiscal Year 2019 Hays County Comprehensive Annual Financial Report (CAFR) as audited by ABIP, PC Certified Public Accountants.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

N/A

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

The CAFR will be presented & distributed at the Commissioner's Court meeting

**PURCHASING GUIDELINES FOLLOWED:** N/A

**AUDITOR REVIEW:** MARISOL VILLARREAL-ALONZO

#### REQUESTED BY

Marisol Villarreal-Alonzo

#### SPONSOR

BECERRA

#### CO-SPONSOR

INGALSBE

#### SUMMARY

A representative of ABIP, PC will be present to discuss the report and to answer any related questions.

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to provide direction regarding enforcement of the Hays County Fire Code, adopted by the Commissioners Court on or about December 17, 2019.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

#### SPONSOR

#### CO-SPONSOR

SMITH

N/A

#### SUMMARY

Direction to staff will include, but not be limited to, when to consider a project vested for the purposes of Fire Code enforcement.

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to allow the Development Services staff to take work vehicles to their homes, requested per the County Property and Employee Responsibility chapter of the HR Policy.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

STRICKLAND

#### SPONSOR

JONES

#### CO-SPONSOR

INGALSBE

#### SUMMARY

The Development Services department currently has 7 Environmental Health Specialists that utilize county vehicles to allow them to complete site inspections, complaint follow-ups, and take them to any property that needs to be reviewed for the public health and safety of Hays County. Standard procedure is for them to drive their personal vehicles to the office, work in office, and then take the work vehicles to sites. However, during this disaster declaration, the EHS are currently working from home and are not coming into the office prior to site inspections.

Per the HR Policy, court approval is needed to allow staff members to take personal vehicles home with them should they live outside the county. Currently, 4 EHS staff members live outside the county.

This request would only be for the duration of the disaster declaration that Hays County currently is under.



## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute Amendment No. 2 to the Stop Loss Policy between Hays County and United Healthcare Insurance Company.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	March 31, 2020	n/a

#### LINE ITEM NUMBER

n/a

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Miller	BECERRA	N/A

#### SUMMARY

Amendment No. 2 sets forth the Schedule of Benefits for Specific Excess Loss Insurance and Aggregate Excess Loss Insurance Policy between Hays County and United Healthcare for the benefit period of January 1, 2017 through December 31, 2020.

# UnitedHealthcare Insurance Company

A Stock Company

185 Asylum Street, Hartford, Connecticut

Phone: 1-860-702-5000

## SCHEDULE OF BENEFITS

This Schedule of Benefits is only applicable to Excess Loss Insurance provided by the Company during the Policy Period shown below.

Policyholder: County of Hays

Policy Number: GA-912772AL

Effective Date: January 1, 2020

Administrator: United HealthCare Services, Inc.

Coverage specified herein is applicable only during the Policy Period from January 1, 2020 through December 31, 2020, and is further subject to all terms and conditions of this Policy.

### SPECIFIC EXCESS LOSS INSURANCE

Benefit Period: Covered Expenses Incurred from January 1, 2017 through December 31, 2020 and Paid from January 1, 2020 through December 31, 2020.

Specific Deductible per Covered Person: \$165,000

Specific Percentage Reimbursable: 100%

Maximum Specific Benefit per Covered Person: Unlimited

Specific Excess Loss Insurance includes:

- Medical
- Stand Alone Prescription Drug Program

Specific Excess Loss Premium: \$102.81 per subscriber per month

### AGGREGATE EXCESS LOSS INSURANCE

Benefit Period: Covered Expenses Incurred from January 1, 2017 through December 31, 2020 and Paid from January 1, 2020 through December 31, 2020.

Aggregate Excess Loss Insurance includes:

- Medical
- Stand Alone Prescription Drug Program

Aggregate Percentage Reimbursable: 100%

Maximum Aggregate Benefit: \$1,000,000 per Policy Year

Minimum Annual Aggregate Deductible: \$12,313,544 or 95% of the first Monthly Aggregate Deductible amount times 12, whichever is greater

## UnitedHealthcare Insurance Company

A Stock Company

185 Asylum Street, Hartford, Connecticut

Phone: 1-860-702-5000

### AMENDMENT NO. 2

Amendment to be attached to and made a part of Group Policy No. GA-912772AL, issued by UnitedHealthcare Insurance Company (herein called "Company") to County of Hays (herein called "Policyholder").

It is agreed by and between the Company and the Policyholder that

1. The page entitled "Schedule Of Benefits" as contained in the Policy is hereby replaced with the attached page entitled "Schedule Of Benefits".
2. This Amendment will hereby be effective as of January 1, 2020.

UnitedHealthcare Insurance Company



William J Golden, President



Thomas J. McGuire, Secretary

ACCEPTED BY: \_\_\_\_\_

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

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

UHIC AMEND (07/06)

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement (PSA) between Hays County and W.F. Smith Company for appraiser services for the County's GLO Disaster Housing Assistance Program (HAP).

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

NTE \$40,000

#### LINE ITEM NUMBER

153-762-99-126

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: YES

AUDITOR REVIEW: MARISOL VILLARREAL-ALONZO

#### REQUESTED BY

#### SPONSOR

Click to Select  
Sponsor.

#### CO-SPONSOR

N/A

#### SUMMARY

The County, through a small procurement request for quotes (RFQ), directly requested qualifications from four (4) local appraisal companies. The County received one submission. In review of the submission, the listed qualifications and license are sufficient for the appraisals required for this program.

Attachment: Professional Services Agreement (PSA)

**PROFESSIONAL SERVICES AGREEMENT**  
**HAYS COUNTY, TEXAS**

**HAYS COUNTY**, a political subdivision of the State of Texas (hereinafter the “County”) with administrative offices at 111 E. San Antonio, Suite 300, San Marcos, Texas 78666, and **W.F. SMITH COMPANY** (hereinafter “Contractor”), whose primary place of business is located at 4161 E. Hwy. 290 Suite #100, Dripping Springs, TX 78620, hereby enter into this Professional Services Agreement (hereinafter “Agreement”) effective the \_\_\_\_ day of March 2020 (hereinafter “Effective Date”). The County and Contractor (collectively “the parties to this Agreement” or “the parties”) agree as follows:

**1. OVERVIEW**

Appraisal of properties, within Hays County, participating in the Hays County GLO Disaster Housing Assistance Program (hereinafter “HAP Program”), a HUD funded Community Development Block Grant Disaster program for low-moderate income families that received damage from the 2015 Disaster Event.

**2. SERVICES**

Contractor agrees to perform services for the County in accordance with the County’s instructions and, in particular, the instructions of Lindsay McClune and/or legal counsel for the Hays County Commissioners Court; and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be limited to those services and terms attached hereto as Exhibit “A”, and any subsections of Exhibit “A”, if as and when they are attached hereto and signed by the parties (collectively “the Work”). If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibits “A” and/or “C”), the Compensation cited in Section 5 of this Agreement may also be amended to conform with the change in Scope of Services, as agreed by the parties.

**3. ADDITIONAL TERMS**

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit “C”, attached hereto.

**4. DURATION**

The parties agree that the Work shall be completed ninety (90) days after commencement date. (hereinafter the “Completion Date”). In the event that Contractor is unable to complete the Work by the Completion Date, Contractor shall request an extension of the Completion Date in writing no later than fifteen (15) business days prior to the Completion Date. The County may grant extensions of the Completion Date for all reasonable extension requests and shall do so in writing.

**5. COMPENSATION**

Contractor will be compensated for the Work on an hourly-charge basis, the terms of which are cited in Contractors rate schedule, which is attached hereto as Exhibit “B.” Despite any reference to Contractors rate schedule, which shall be used to calculate monthly invoice amounts under this Agreement or a change in the Scope of Services (i.e. Amendment), the parties agree

that the County shall pay Contractor a total fee not to exceed forty thousand dollars (\$40,000 USD) for the Work under this Agreement.

## **6. PAYMENT**

Contractor shall invoice the County for the Work performed under this Agreement on a monthly basis, beginning at the end of the first full month following the Effective Date. The County agrees to promptly pay all invoices in accordance with Texas Government Code Chapter 2251 and by sending payment to Contractor's address stated in Section 8, below.

## **7. NOTICE OF COMPLETION**

Upon completion of the Work, Contractor shall send a Notice of Completion to the County in writing, and the County shall have the option to inspect the Work (or the product thereof) before it is considered complete under this Agreement. If the County is satisfied that the Work under this Agreement is complete, the County shall send Contractor an Acceptance of Completion in writing. If, after inspection, the County does not agree that the Work is complete or believes that the Work is of deficient quality, the County shall send Contractor a Deficiency Letter, stating the specific aspects of the Work that are incomplete and/or deficient. If, after ten (10) business days from the County's receipt of Contractor's Notice of Completion, the County does not send Contractor either an Acceptance of Completion or a Deficiency Letter, the Work under this Agreement shall be considered complete.

## **8. NOTICE (GENERAL)**

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Hays County, Attn: County Judge, 111 E. San Antonio, Suite 300, San Marcos, Texas 78666; <judge.becerra@co.hays.tx.us>.

All notices issued by the County under or regarding this Agreement shall be provided in writing to Contractor at its primary place of business.

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

## **9. INSURANCE**

Contractor agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County's acceptance of Contractor's Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, Contractor shall, at its sole expense, provide and maintain Commercial General Liability insurance that meets or exceeds the industry standard for professional services providers in Contractor's field of employment and for the type of services that are being performed by Contractor under this Agreement. Such insurance coverage shall specifically name the COUNTY as co-insured. This insurance coverage shall cover all perils arising from the activities of Contractor, its officers, directors, employees, agents or sub-contractors, relative to this Agreement. Contractor shall be responsible for any deductibles stated in the policy. A copy of the current Certificate of Liability Insurance is attached hereto as Exhibit "D". A true copy of each new Certificate of Liability Insurance shall be provided to the COUNTY within seven (7) days of the new policy date at the following address: Office of General Counsel, Hays County Courthouse, 111 East San Antonio, Suite 202, San Marcos, Texas 78666.

So long as this Agreement is in effect, Contractor shall not cause such insurance to be canceled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days after the COUNTY has received written notice as evidenced by a return receipt of registered or certified mail.

#### **10. MUTUAL INDEMNITY**

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable.

The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement.

Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

#### **11. COMPLIANCE WITH LAWS**

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

#### **12. SURVIVAL**

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 3, 5, 8, 10, 12, 14, 15, 16, 17, 18, 20, 21 and 22.

#### **13. FORCE MAJEURE**

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

#### **14. SEVERABILITY**

If any Section or provision of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are as consistent with the parties' intents as possible.

## **15. MULTIPLE COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

## **16. SECTION HEADINGS, EXHIBITS**

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled “Overview,” shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

## **17. WAIVER BY PARTY**

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

## **18. GOVERNING LAW AND VENUE**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Hays County, Texas.

## **19. ASSIGNMENT**

Neither party to this Agreement may assign its duties, interests, rights, benefits and/or obligations under this Agreement, in whole or in part, without the other party’s prior written consent thereto.

## **20. BINDING EFFECT**

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

## **21. ENTIRE AGREEMENT; AMENDMENT**

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this Agreement must be made in writing and signed by the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.

## **22. WORK PRODUCT**

Any and all product, whether in the form of calculations, letters, findings, opinions, or the like, shall be the property of Hays County during and after performance of the Work. Contractor shall have a right to retain a copy of all Work product for record-keeping purposes.

## **23. TERMINATION BY COUNTY**

This Agreement may be terminated by Hays County, for any reason whatsoever, by providing



thirty (30) days written notice to Contractor. Any approved services provided under this Agreement up to the date of termination may be invoiced by Contractor after the termination date, and payment of said invoice shall not be unreasonably withheld by the County.

***Signatures by the parties to this Professional Services Agreement follow on the next page.***

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND DO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.

\_\_\_\_\_  
Hays County, Texas

By: Ruben Becerra  
\_\_\_\_\_  
Hays County Judge

\_\_\_\_\_  
W.F. Smith Company

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

## **EXHIBIT A**

### **Scope of Work**

**EXHIBIT B**

**Fee/Rate Schedule**

**FEE SCHEDULE SHALL BE INSERTED AT THE  
TIME OF AGREEMENT/CONTRACT EXECUTION**

## **EXHIBIT C**

**Additional Terms and Obligations of the Parties, if any, are as follows:**

# REQUIRED CONTRACT PROVISIONS (CONTRACTS USING FEDERAL FUNDS)

*Italics – Explanatory; NOT CONTRACT LANGUAGE*

THRESHOLD	PROVISION	CITATION
None	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 government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMS guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Camp., p. 189) and 12689 (3 CFR Part 1989 Camp., 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.	2 CFR 200 APPENDIX II (H)
None	Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.	2 CFR 200.333 (former 24 CFR (85.36(i) {11}))
>\$10,000	<p><i>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 affected and the basis for settlement.</i></p> <p><u>Termination for Cause:</u></p> <p>If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement. The City/County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City/County, be turned over to the City/County and become the property of the City/County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.</p> <p>Notwithstanding the above. The Contractor shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of contract by the Contractor, and the City/County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.</p> <p><u>Termination for Convenience of the City/County:</u></p> <p>City/County may at any time and for any reason terminate Contractor 's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.</p> <p>Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by City/County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.</p>	2 CFR 2:00 APPENDIX II (B)

>\$50,000	<p><i>(A) Contracts for more than \$50,000 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.</i></p> <p>Use the following language for contracts &gt; \$50,000:</p> <p><b><u>Resolution of Program Non-compliance and Disallowed Costs:</u></b></p> <p>In the event of any dispute, claim, question, or disagreement - arising from or relating to this agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. If the matter IS not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally.</p>	2 CFR 200 APPENDIX II (A)
<p align="center"><b><i>Equal Opportunity Clause for Construction Contracts &gt; \$10K, including administration &amp; engineering contracts associated with construction contracts.</i></b></p>		
≥\$10,000	<p>2 CFR 200 Appendix II (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."</p> <p><b><u>§60-1.4(b) Equal opportunity clause:</u></b></p> <p><i>(b) Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:</i></p> <p><i>The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract loan, insurance, or guarantee, the following equal opportunity clause:</i></p> <p>During the performance of this contract, the contractor agrees as follows:</p> <p>(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places. Available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.</p>	41 CFR §60-1.4 (b) and 2 CFR 200 APPENDIX II (C)

- (2) 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 considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This Provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) 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 advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) 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.
- (6) 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (7) 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.
- (8) The contractor will include the portion of the sentence Immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 administering agency 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 administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations. and relevant



	<p>orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.</p> <p>The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24 , 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order . In addition, the applicant agrees that if it fails or refuses to comply with these undertakings. the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan. insurance. guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.</p> <p>(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.</p> <p>(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.</p> <p>(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written</p> <p>(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.</p> <p>[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997; 79 FR 72993, Dec. 9, 2014; 80 FR 54934, September 11. 2015]</p>	
<b>CONSTRUCTION CONTRACTS</b>		
<p>&gt;\$2,000 for Davis Bacon and Copeland "Anti-Kickback" Act; &gt;\$100,000 for Contract Work Hours and Safety Standards Act</p>	<p><i>Federal labor standards provisions include:</i></p> <ol style="list-style-type: none"> <li>1. <i>Davis Bacon Act (40 U.S.C. 3141 et seq) as supplemented by DOL regulations (29 CFR part 5);</i></li> <li>2. <i>Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3); and</i></li> <li>3. <i>Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq)</i></li> </ol>	

>\$2,000	<p><i>Compliance with the Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5) and with the Copeland Anti-Kickback" Act (18 U.S.C. 874: 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3)</i></p> <p>(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 sub recipient 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</p>	2 CFR 200 APPENDIX II (D)
≥\$100,000	<p>(E) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award of \$100,000 or more 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.</p>	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303
>\$100,000	<p>(F) 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.</p>	2 CFR 200 APPENDIX II (E)
>\$150,000	<p>(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).</p>	2 CFR 200 APPENDIX II (G)

**EXHIBIT D**

**Certificate of Insurance**

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement (PSA) between Hays County and Spot on Surveying, Inc. (SOS) regarding surveying services for the County's GLO Disaster Housing Assistance Program (HAP)

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

NTE \$40,000

#### LINE ITEM NUMBER

153-762-99-126

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: YES

AUDITOR REVIEW: MARISOL VILLARREAL-ALONZO

#### REQUESTED BY

#### SPONSOR

Click to Select  
Sponsor.

#### CO-SPONSOR

N/A

#### SUMMARY

The County, through a small procurement request for quotes (RFQ), directly requested qualifications from five (5) local surveying companies. The County received three submissions. In review of the submission, Spot on Surveying, Inc. has the listed qualifications and license required for this program.

Attachment: Professional Services Agreement (PSA)

**PROFESSIONAL SERVICES AGREEMENT**  
**HAYS COUNTY, TEXAS**

**HAYS COUNTY**, a political subdivision of the State of Texas (hereinafter the “County”) with administrative offices at 111 E. San Antonio, Suite 300, San Marcos, Texas 78666, and **Spot on Surveying, Inc.** (hereinafter “Contractor”), whose primary place of business is located at 614 Jerrys Lane, Buda, TX 78610, hereby enter into this Professional Services Agreement (hereinafter “Agreement”) effective the \_\_\_\_ day of March 2020 (hereinafter “Effective Date”). The County and Contractor (collectively “the parties to this Agreement” or “the parties”) agree as follows:

**1. OVERVIEW**

Surveying of properties, within Hays County, participating in the Hays County GLO Disaster Housing Assistance Program (hereinafter “HAP Program”), a HUD funded Community Development Block Grant Disaster program for low-moderate income families that received damage from the 2015 Disaster Event.

**2. SERVICES**

Contractor agrees to perform services for the County in accordance with the County’s instructions and, in particular, the instructions of Lindsay McClune and/or legal counsel for the Hays County Commissioners Court; and in conformance with the descriptions, definitions, terms, and conditions of this Agreement. The Scope of Services shall be limited to those services and terms attached hereto as Exhibit “A”, and any subsections of Exhibit “A”, if as and when they are attached hereto and signed by the parties (collectively “the Work”). If the parties to this Agreement amend the Work required under this Agreement (by adding or removing specific services and/or terms enumerated in Exhibits “A” and/or “C”), the Compensation cited in Section 5 of this Agreement may also be amended to conform with the change in Scope of Services, as agreed by the parties.

**3. ADDITIONAL TERMS**

Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit “C”, attached hereto.

**4. DURATION**

The parties agree that the Work shall be completed ninety (90) days after commencement date. (hereinafter the “Completion Date”). In the event that the Contractor is unable to complete the Work by the Completion Date, Contractor shall request an extension of the Completion Date in writing no later than fifteen (15) business days prior to the Completion Date. The County may grant extensions of the Completion Date for all reasonable extension requests and shall do so in writing.

**5. COMPENSATION**

Contractor will be compensated for the Work on an hourly-charge basis, the terms of which are cited in Contractors rate schedule, which is attached hereto as Exhibit “B.” Despite any reference to Contractors rate schedule, which shall be used to calculate monthly invoice amounts under this Agreement or a change in the Scope of Services (i.e. Amendment), the parties agree

that the County shall pay Contractor a total fee not to exceed forty thousand dollars (\$40,000 USD) for the Work under this Agreement.

## **6. PAYMENT**

Contractor shall invoice the County for the Work performed under this Agreement on a monthly basis, beginning at the end of the first full month following the Effective Date. The County agrees to promptly pay all invoices in accordance with Texas Government Code Chapter 2251 and by sending payment to Contractor's address stated in Section 8, below.

## **7. NOTICE OF COMPLETION**

Upon completion of the Work, Contractor shall send a Notice of Completion to the County in writing, and the County shall have the option to inspect the Work (or the product thereof) before it is considered complete under this Agreement. If the County is satisfied that the Work under this Agreement is complete, the County shall send Contractor an Acceptance of Completion in writing. If, after inspection, the County does not agree that the Work is complete or believes that the Work is of deficient quality, the County shall send Contractor a Deficiency Letter, stating the specific aspects of the Work that are incomplete and/or deficient. If, after ten (10) business days from the County's receipt of Contractor's Notice of Completion, the County does not send Contractor either an Acceptance of Completion or a Deficiency Letter, the Work under this Agreement shall be considered complete.

## **8. NOTICE (GENERAL)**

All notices issued by Contractor under or regarding this Agreement shall be provided in writing to the County at: Hays County, Attn: County Judge, 111 E. San Antonio, Suite 300 San Marcos, Texas 78666; <judge.becerra@co.hays.tx.us>.

All notices issued by the County under or regarding this Agreement shall be provided in writing to Contractor at its primary place of business.

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

## **9. INSURANCE**

Contractor agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County's acceptance of Contractor's Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, Contractor shall, at its sole expense, provide and maintain Commercial General Liability insurance that meets or exceeds the industry standard for professional services providers in Contractor's field of employment and for the type of services that are being performed by Contractor under this Agreement. Such insurance coverage shall specifically name the COUNTY as co-insured. This insurance coverage shall cover all perils arising from the activities of Contractor, its officers, directors, employees, agents or sub-contractors, relative to this Agreement. Contractor shall be responsible for any deductibles stated in the policy. A copy of the current Certificate of Liability Insurance is attached hereto as Exhibit "D". A true copy of each new Certificate of Liability Insurance shall be provided to the COUNTY within seven (7) days of the new policy date at the following address: Office of General Counsel, Hays County Courthouse, 111 East San Antonio, Suite 202, San Marcos, Texas 78666.

So long as this Agreement is in effect, Contractor shall not cause such insurance to be canceled nor permit such insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days after the COUNTY has received written notice as evidenced by a return receipt of registered or certified mail.

#### **10. MUTUAL INDEMNITY**

Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Contractor's negligent performance of the Work under this Agreement and that of its subcontractors or anyone for whom the Consultant is responsible or legally liable.

The County agrees, to the fullest extent permitted by law, to indemnify and hold harmless Contractor, its officers, directors, employees and subcontractors against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's negligent acts in connection with this Agreement.

Neither the County nor Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

#### **11. COMPLIANCE WITH LAWS**

Each party agrees to comply with all laws, regulations, rules, and ordinances applicable to this Agreement and/or applicable to the parties performing the terms and conditions of this Agreement.

#### **12. SURVIVAL**

Notwithstanding any termination of this Agreement, the following Sections, and the terms and conditions contained therein, shall remain in effect: 3, 5, 8, 10, 12, 14, 15, 16, 17, 18, 20, 21 and 22.

#### **13. FORCE MAJEURE**

Either of the parties to this Agreement shall be excused from any delays and/or failures in the performance of the terms and conditions of this agreement, to the extent that such delays and/or failures result from causes beyond the delaying/failing party's reasonable control, including but not limited to Acts of God, Forces of Nature, Civil Riot or Unrest, and Governmental Action that was unforeseeable by all parties at the time of the execution of this Agreement. Any delaying/failing party shall, with all reasonable diligence, attempt to remedy the cause of delay and/or failure and shall recommence all remaining duties under this Agreement within a reasonable time of such remedy.

#### **14. SEVERABILITY**

If any Section or provision of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are as consistent with the parties' intents as possible.

## **15. MULTIPLE COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

## **16. SECTION HEADINGS, EXHIBITS**

The Section and Subsection headings of this Agreement, as well as Section 1, Entitled “Overview,” shall not enter in the interpretation of the terms and conditions contained herein, as those portions of the Agreement are included merely for organization and ease of review. The Exhibit(s) that may be referred to herein and may be attached hereto, are incorporated herein to the same extent as if fully set forth herein.

## **17. WAIVER BY PARTY**

Unless otherwise provided in writing by the waiving party, a waiver by either of the parties to this Agreement of any covenant, term, condition, agreement, right, or duty that arises under this Agreement shall be considered a one-time waiver and shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, term, condition, agreement, right, or duty that arises under this Agreement.

## **18. GOVERNING LAW AND VENUE**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any lawsuit, claim, or action, whether in law or in equity, arising from this Agreement will be brought in Hays County, Texas.

## **19. ASSIGNMENT**

Neither party to this Agreement may assign its duties, interests, rights, benefits and/or obligations under this Agreement, in whole or in part, without the other party’s prior written consent thereto.

## **20. BINDING EFFECT**

Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors, permitted assigns, heirs, executors, and/or administrators.

## **21. ENTIRE AGREEMENT; AMENDMENT**

This Agreement (including any and all Exhibits attached hereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any amendments to this Agreement must be made in writing and signed by the parties to this Agreement prior to the performance of any terms or conditions contained in said amendments.

## **22. WORK PRODUCT**

Any and all product, whether in the form of calculations, letters, findings, opinions, or the like, shall be the property of Hays County during and after performance of the Work. Contractor shall have a right to retain a copy of all Work product for record-keeping purposes.

## **23. TERMINATION BY COUNTY**

This Agreement may be terminated by Hays County, for any reason whatsoever, by providing thirty (30) days written notice to Contractor. Any approved services provided under this



Agreement up to the date of termination may be invoiced by Contractor after the termination date, and payment of said invoice shall not be unreasonably withheld by the County.

*Signatures by the parties to this Professional Services Agreement follow on the next page.*

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Professional Services Agreement, and hereby declare that THEY HAVE READ AND DO UNDERSTAND AND AGREE TO EACH AND EVERY TERM, CONDITION, AND COVENANT CONTAINED IN THIS AGREEMENT AND IN ANY DOCUMENT INCORPORATED BY REFERENCE.

\_\_\_\_\_  
Hays County, Texas

By: Ruben Becerra  
\_\_\_\_\_  
Hays County Judge

\_\_\_\_\_  
Spot on Surveying, Inc.

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

## **EXHIBIT A**

### **Scope of Work**

**EXHIBIT B**

**Fee/Rate Schedule**

**FEE SCHEDULE SHALL BE INSERTED AT THE  
TIME OF AGREEMENT/CONTRACT EXECUTION**

## **EXHIBIT C**

**Additional Terms and Obligations of the Parties, if any, are as follows:**

# REQUIRED CONTRACT PROVISIONS (CONTRACTS USING FEDERAL FUNDS)

*Italics – Explanatory; NOT CONTRACT LANGUAGE*

THRESHOLD	PROVISION	CITATION
None	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 government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMS guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Camp., p. 189) and 12689 (3 CFR Part 1989 Camp., 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.	2 CFR 200 APPENDIX II (H)
None	Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.	2 CFR 200.333 (former 24 CFR (85.36(i) {11}))
>\$10,000	<p><i>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 affected and the basis for settlement.</i></p> <p><u>Termination for Cause:</u></p> <p>If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement. The City/County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City/County, be turned over to the City/County and become the property of the City/County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.</p> <p>Notwithstanding the above. The Contractor shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of contract by the Contractor, and the City/County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.</p> <p><u>Termination for Convenience of the City/County:</u></p> <p>City/County may at any time and for any reason terminate Contractor 's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.</p> <p>Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by City/County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.</p>	2 CFR 2:00 APPENDIX II (B)

>\$50,000	<p><i>(A) Contracts for more than \$50,000 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.</i></p> <p>Use the following language for contracts &gt; \$50,000:</p> <p><b><u>Resolution of Program Non-compliance and Disallowed Costs:</u></b></p> <p>In the event of any dispute, claim, question, or disagreement - arising from or relating to this agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. If the matter IS not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally.</p>	2 CFR 200 APPENDIX II (A)
<p align="center"><b><i>Equal Opportunity Clause for Construction Contracts &gt; \$10K, including administration &amp; engineering contracts associated with construction contracts.</i></b></p>		
≥\$10,000	<p>2 CFR 200 Appendix II (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."</p> <p><b><u>§60-1.4(b) Equal opportunity clause:</u></b></p> <p><i>(b) Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:</i></p> <p><i>The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract loan, insurance, or guarantee, the following equal opportunity clause:</i></p> <p>During the performance of this contract, the contractor agrees as follows:</p> <p>(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places. Available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.</p>	41 CFR §60-1.4 (b) and 2 CFR 200 APPENDIX II (C)

- (2) 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 considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This Provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) 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 advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) 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.
- (6) 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (7) 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.
- (8) The contractor will include the portion of the sentence Immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 administering agency 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 administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations. and relevant



	<p>orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.</p> <p>The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24 , 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order . In addition, the applicant agrees that if it fails or refuses to comply with these undertakings. the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan. insurance. guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.</p> <p>(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.</p> <p>(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.</p> <p>(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written</p> <p>(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.</p> <p>[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997; 79 FR 72993, Dec. 9, 2014; 80 FR 54934, September 11. 2015]</p>	
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## CONSTRUCTION CONTRACTS

<p>&gt;\$2,000 for Davis Bacon and Copeland "Anti-Kickback" Act; &gt;\$100,000 for Contract Work Hours and Safety Standards Act</p>	<p><i>Federal labor standards provisions include:</i></p> <ol style="list-style-type: none"> <li>1. <i>Davis Bacon Act (40 U.S.C. 3141 et seq) as supplemented by DOL regulations (29 CFR part 5);</i></li> <li>2. <i>Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3); and</i></li> <li>3. <i>Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq)</i></li> </ol>	
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>\$2,000	<p><i>Compliance with the Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5) and with the Copeland Anti-Kickback" Act (18 U.S.C. 874: 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3)</i></p> <p>(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 sub recipient 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</p>	2 CFR 200 APPENDIX II (D)
≥\$100,000	<p>(E) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award of \$100,000 or more 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.</p>	2 CFR 200 APPENDIX II (I) and 24 CFR §570.303
>\$100,000	<p>(F) 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.</p>	2 CFR 200 APPENDIX II (E)
>\$150,000	<p>(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).</p>	2 CFR 200 APPENDIX II (G)

**EXHIBIT D**

**Certificate of Insurance**

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Discussion and possible action authorizing the County Judge to execute a Temporary License Agreement between Hays County and Unbeaten, LLC, in support of the Room 2 Hope project for the benefit of victim witnesses at the Hays County Government Center.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

#### SPONSOR

#### CO-SPONSOR

SHELL

N/A

#### SUMMARY

Denise Fonseca, founder of the Room 2 Hope project, gave a presentation to the Commissioners Court in February 2020. This Temporary License Agreement would help fulfill the objectives stated by Ms. Fonseca during her presentation.

## **ROOM 2 HOPE**

### **TEMPORARY LICENSE AGREEMENT**

This License Agreement (the “Agreement”) is entered into on this 31<sup>st</sup> day of March, 2020, by and between Unbeaten, LLC (the “Company” or “Licensee”), and Hays County, a political subdivision of the State of Texas (the “Owner”), collectively, the Parties and individually a “Party”.

The Company is in the business of organizing non-profit projects for the benefit of the community. Company desires to refurbish the 2 Victim Waiting Rooms (adult and child) located within the Hays County Criminal District Attorney’s Office (the “Rooms” or the “Licensed Area”), located at the Hays County Government Center at 712 S. Stagecoach Trail, Suite 2057, San Marcos, TX 78666, under the project entitled “Room 2 Hope” (the “Project”) and hereby contracts with the Owner, to provide all services connected with the Project, pursuant to this Agreement.

1. **Rendering of Services:** Company agrees to refurbish the 2 Rooms into warm and inviting environments by replacing furniture, painting murals, providing décor, and carrying out any other necessary duties, both aesthetic and practical (coffee machine, water storage, items to pass the time) (the “Services”), to be pre-approved by Owner pursuant to Section 5 of this Agreement. Furniture removed during this process shall either be discarded or repurposed by Owner, after a determination of value and utility is confirmed by the Hays County Auditor’s Office.
2. **Compensation:** Company shall perform all Services without charge to Owner, and Owner shall not be required to provide monetary support for materials or labor contributed to the Project. Owner and Licensee may later make arrangements for the ongoing costs of operation and maintenance of the Licensed Area.
3. **Dates of Completion:** Company agrees to begin the Services on March 31, 2020 and estimates for the Project completed by December 31, 2020. This is dependent upon the timely collaboration of the key point of contact.
4. **Point of Contact:** Owner designates Maggie Avalos, within the Hays County Criminal District Attorney’s Office, as the direct point of contact for the Company (the “Point of Contact”). Company shall communicate all important information to the Point of Contact, and it is the expectation that the Point of Contact is responsible for forwarding information and requesting the necessary approvals for the Project.
5. **Aesthetic Pre-Approval:** Company shall provide the Point of Contact with images, drawings, descriptions, or other appropriate materials demonstrating the aesthetic intended to be carried out on the Room at least fifteen (15) calendar days before Services are performed. The Point of Contact shall be responsible for approving the aesthetic, with input from other Owner representatives, and shall render such approval or disapproval within three (3) calendar days of receiving the pre-approval materials.

6. **Volunteers:** Company agrees to be fully responsible for all volunteers contributing to the Project. Volunteers may not access the Licensed Area within the Criminal District Attorney's Office without checking in and being processed through the front desk area of that office.
7. **Future Maintenance:** Upon completion of the Services, Company shall not be responsible for future maintenance or updates. Company and Owner may make additional arrangements regarding operation/maintenance of the Licensed Area.
8. **Materials & New Items:** Company shall provide all materials necessary to carry out the Services and shall bear the cost of any new items that are contributed to the Room, items of which shall become the sole property of Owner upon completion of the Services.
9. **Removal of Items & Damage:** If Owner opts to discard of items from the Licensed Area, then Company shall be responsible for disposing of items that are not to remain in the Room and upon completion of the Services shall leave the Room in a clean and fully functioning manner. Company shall be liable for any damage that occurs in the process of carrying out the Services.
10. **Credit:** Owner agrees to credit Company with work performed on the Project by allowing for Company to display a plaque in the Rooms acknowledging the donation by Unbeaten, LLC, and acknowledging volunteers that helped carry out the Project. Owner also agrees to credit Company in any publication that Owner provides to the public that references the Project.
11. **Promotional Uses:** Owner grants Company the unrestricted, royalty-free, perpetual right to use photographs, videos, information and any other promotional materials associated with the Project, in the Company's own promotional or Project expansion efforts, including but not limited to, print media, television, social media, and display on the Unbeaten website.
12. **Intellectual Property:** Owner shall not have any right to any intellectual property owned by Company including but not limited to, copyrights, trademarks, service marks, trade secrets, and patents. Owner shall not claim ownership over Unbeaten, LLC, or the Room 2 Hope Project or otherwise interfere with any intellectual property owned by Company or attack or contest, in any manner, the registration of such intellectual property.
13. **Term:** This Agreement shall continue until completion of the Services, or until it is otherwise terminated pursuant to Section 10 of this Agreement, whichever occurs first.
14. **Termination:** Either Party may terminate this Agreement at any time before Services have started by providing the other Party at least thirty (30) calendar days written notice. If Services have started or there are less than thirty (30) calendar days before

Services are due to begin, Parties shall not be permitted to terminate this Agreement unless there has been a material breach by a non-terminating Party and the non-terminating Party has been given at least five (5) calendar days to cure the breach.

15. **Warranties:** Both Parties warrant that they have the full right, power, capacity, and authority to execute this Agreement and to grant the rights herein.
16. **Indemnification:** Each Party agrees to indemnify and hold the other harmless from any claims and damages arising out of an individual Party's breach of this Agreement or breach of any other warranty that a Party has given.
17. **Confidentiality:** Parties shall not, without the prior written consent of the other party, disclose to any third person or entity other than in the proper course of performance under this Agreement, any information that under the circumstances ought to be reasonably treated as confidential or proprietary. "Confidential Information" includes but is not limited to preliminary or unreleased works, business plans and strategies, future and proposed products or works, marketing plans, deals in negotiation, legal documents, processes, operations, and other business, financial, or technical information. Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party or is otherwise properly received from a third party without an obligation of confidentiality. Either Party may, at any time, request for Confidential Information to be returned or destroyed. Parties acknowledge that breach of any obligations under this clause may give rise to irreparable harm that cannot be adequately compensated with monetary damages. Accordingly, injunctive relief may be sought for breach of this clause without posting a bond, in addition to any other legal or equitable remedies that may be available for the breach of this clause. Licensee recognizes that Owner is a public governmental entity, which must comply with the requirements of Texas Government Code, Chapter 551, also known as the Texas Public Information Act. If a Public Information request is made for information that could be covered by this Section, Owner will provide Licensee an opportunity to make argument to the Texas Attorney General for non-disclosure of that information.
18. **Dispute Resolution:** If any controversy or claim arising out of or relating to this Agreement cannot be amicably resolved between the Parties, the Parties agree to attempt to settle the dispute with the help of a mutually agreed-upon mediator, unless Parties mutually agree to waive mediation, or the dispute is under USD 10,000.00, and it would be more cost-effective for the matter to be heard in a small claims court. Except for attorney fees, all other costs associated with the mediation will be shared equally between the Parties. Parties shall bear their own costs associated with any litigation.
19. **Prevailing Party:** The prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

- 20. Notices:** All notices and other written communications required under this Agreement shall be addressed via certified mail or email as indicated below, or as otherwise specified by subsequent written notice delivered by the Party whose address has changed. Such notice shall be valid upon the receipt by the Party to which notice is given, or on the third day following postmarking of the email or mail, whichever occurs first.

Unbeaten, LLC:

\_\_\_\_\_  
\_\_\_\_\_

Owner:  
Office of General Counsel  
111 E. San Antonio Street, Suite 202  
San Marcos, TX 78666

- 21. Waiver:** No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of such term or condition in the future, or of any preceding or subsequent breach of the same or any other term or condition of this Agreement or any other agreement.
- 22. Severability:** If any provision of this Agreement is declared to be invalid, illegal, or unenforceable, for any reason, the remainder of the provisions will remain in effect and enforceable to the fullest extent possible.
- 23. Assignment:** Neither Party may assign this Agreement or any of its rights hereunder to any person, corporation, or entity without the written consent of the other Party.
- 24. Relationship of Parties:** For purposes of this Agreement, the Parties agree that they are in an independent contractor relationship. Nothing in this Agreement is to be construed to create any employment, joint venture, or partnership relationship between the Parties.
- 25. Governing Law & Venue:** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement shall be proper in Hays County, Texas.
- 26. Entire Agreement:** This Agreement represents the entire agreement between Parties and the terms of this Agreement may only be amended or modified with the written consent of the Parties.

UNBEATEN, LLC (the “Company”) signed with authorization by Denise Fonseca, CEO



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

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

**HAYS COUNTY, TEXAS** (the “Owner”)

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

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

ATTEST: \_\_\_\_\_  
Elaina Cardenas, MBA, PhD  
Hays County Clerk

**EXHIBIT D**

**Certificate of Insurance**

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding the duties of all individual positions within the Office of Emergency Services, including but not limited to the Hays County Fire Marshal.

#### ITEM TYPE

EXECUTIVE SESSION

#### MEETING DATE

March 24, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

#### SPONSOR

#### CO-SPONSOR

SMITH

N/A

#### SUMMARY

Summary to be provided in Executive Session

## AGENDA ITEM REQUEST FORM

### Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

#### AGENDA ITEM

Executive Session pursuant to Sections 551.071 and 551.074 of the Texas Government Code: consultation with counsel and deliberation regarding all individual positions in Hays County Victim Services, C.I.D., Patrol, Dispatch, and Crime Scene Investigation Unit. Possible discussion and/or action may follow in open Court.

#### ITEM TYPE

EXECUTIVE SESSION

#### MEETING DATE

March 31, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

n/a

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

#### REQUESTED BY

#### SPONSOR

#### CO-SPONSOR

INGALSBE

N/A

#### SUMMARY

Summary to be provided in Executive Session.