

**Commissioners Court August 25, 2020  
NOTICE OF A MEETING OF THE  
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS**



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 **25<sup>th</sup> day of August 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. Please Complete the Public Participation/ Witness Form in its Entirety.  
NO ACTION MAY BE TAKEN BY THE COURT DURING PUBLIC COMMENTS.

**PRESENTATIONS & PROCLAMATIONS**

1	5	Update from the County Judge and staff regarding the Local Disaster Declaration and COVID-19. Possible discussion and action may follow. <b>BECERRA</b>
2	6	Presentation by K Friese and Associates regarding the Hays County Master Transportation Plan. <b>SMITH/BORCHERDING</b>

**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.

3	7	Approve payments of County invoices. <b>VILLARREAL-ALONZO</b>
4	8	Approve the payment of United Healthcare claims. <b>VILLARREAL-ALONZO</b>
5	9-26	Approve Commissioners Court Minutes of August 11, 2020 and August 18, 2020. <b>BECERRA/CARDENAS</b>
6	27	Approve the payment of the August 31, 2020 payroll disbursements in an amount not to exceed \$3,850,000.00 effective August 31, 2020 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized. <b>BECERRA/RICHEY</b>
7	28-37	Approve Utility Permits. <b>INGALSBE/JONES/BORCHERDING</b>
8	38	Authorize the Sheriff's Office to utilize existing funds to purchase a refrigerator for the new Allen Bridges Training Center and amend the budget accordingly. <b>INGALSBE/CUTLER</b>
9	39-55	Authorize the Sheriff's Office to utilize salary savings to purchase 13 replacement Surface Pro Laptops and Axon In-Car Camera Systems valued at \$68,408 and amend the budget accordingly. <b>SMITH/CUTLER</b>
10	56-59	Authorize the Sheriff's Office to utilize salary savings to purchase replacement SWAT law enforcement equipment valued at and amend the budget accordingly. <b>SMITH/CUTLER</b>
11	60	Authorize On-Site Sewage Facility Permit for a 3-bedroom residence and a small office at 31620 Ranch Road 12, Dripping Springs, Texas 78620. <b>SMITH/STRICKLAND</b>
12	61-64	Authorize the execution of a grant contract amendment with United Way for Greater Austin (United Way ATX) to extend the term of the Census Outreach grant to September 30, 2020. <b>BECERRA/T.CRUMLEY</b>
13	65	Approve specifications for IFB 2020-B15 RM 150 Center Turn Lane Gap Project and authorize Purchasing to solicit for proposals and advertise. <b>INGALSBE/BORCHERDING</b>
14	66	Amend various departmental operating, special revenue and capital project budgets in preparation for Fiscal Year 2020 4th Quarter financial reporting. <b>INGALSBE/VILLARREAL-ALONZO</b>
15	67-68	Authorize the purchase and installation of modular office furniture for the Transportation Department and amend the budget accordingly. <b>JONES/BORCHERDING</b>
16	69-83	Ratify the submission of the County Feral Hog Abatement Grant submission to the Texas A&M AgriLife Extension Services, Wildlife Services Program. <b>JONES/CRUMLEY</b>
17	84-113	Authorize the execution of the FY2020 Statewide Automated Victim Notification Services (SAVNS) Maintenance Grant Contract in the amount of \$30,122.51. <b>BECERRA/T.CRUMLEY</b>

18	114-115	Authorize the Recycling and Solid Waste Department to purchase two new Self- Dumping Forklift Hoppers that will be used at both the Wimberley and Driftwood locations and amend the budget accordingly. <b>SHELL/SMITH/T.CRUMLEY</b>
19	116-117	Accept the delivery of the Fiscal Year 2019 Internal Examination Report for the Hays County Sheriff's Jail Commissary Account. <b>VILLARREAL-ALONZO</b>
20	118-125	Authorize the County Judge to ratify an Equipment Transfer Memorandum of Agreement with the Capital Area Council of Governments (CAPCOG) for Pass-Through Grant Funded Emergency Equipment valued at \$11,153.09 and amend the budget accordingly. <b>BECERRA/VILLALOBOS</b>
21	126-127	Approve an additional contract extension of IFB 2017-B06 AC & Heating Services with SI Mechanical for a period not to exceed 30 days (September 30, 2020). <b>BECERRA/T.CRUMLEY</b>
22	128-131	Authorize the County Judge to execute a renewal contract for \$21,608.40 with West Thompson Reuters for online legal research services in the Hays County Criminal District Attorney's office with funds budgeted for FY2021. <b>INGALSBE/MAU</b>
23	132-145	Authorize the County Judge to execute First Amendment to Consulting Services Agreement to an agreement between Hays County and Water PR, LLC regarding an Information Program related to the upcoming November 3, 2020 Parks and Open Space Bond Proposition, finding for an exemption pursuant to Texas Local Government Code 262.024(a)(4). <b>INGALSBE</b>

## ACTION ITEMS

### ROADS

24	146-183	Discussion and possible action to authorize the County Judge to sign a Professional Services Agreement between Hays County and BGE, Inc. for design services related PS&E for the Hillside Terrace bond project. <b>JONES/BORCHERDING</b>
25	184-217	Discussion and possible action to authorize the County Judge to sign a Professional Services Agreement between Hays County and Bowman Engineering, Inc. for design services related to PS&E for reconstruction of Cotton Gin Road. <b>JONES/BORCHERDING</b>
26	218-220	Discussion and possible action to accept the maintenance bond rider extension #1060751 for two months for Sunfield subd., Phase 2, Section 11. <b>JONES/BORCHERDING</b>
27	221-242	Discussion and possible action to execute an Advance Funding Agreement for the Metropolitan Area Corridor Project On-System (RM 3237 Intersection Improvements) as part of the 2016 Road Bond Program. <b>SHELL/BORCHERDING</b>
28	243-284	Discuss and possible action to authorize the County Judge to execute a Professional Services Agreement (PSA)/contract between Hays County and Cobb, Fendley & Associates, Inc. to provide engineering design and ROW acquisition services on the Winters Mill Intersection Improvements at RM 12 and RM 3237 project in Precinct 3 as part of the 2016 Road Bond Project. <b>SHELL/BORCHERDING</b>
29	285-325	Discussion and possible action to authorize the County Judge to execute a Professional Services Agreement between Hays County and Binkley and Barfield, Inc. to provide Utility Coordination services for Darden Hill (RM1826-Sawyer Ranch Road) project in Precinct 4 as part of the Road Bond Program. <b>SMITH/BORCHERDING</b>
30	326-327	Discussion and possible action to authorize the Transportation Department to purchase one new 2020 Chevrolet Silverado 1500 valued at \$32,009 for the Inspections and Engineering Division. <b>JONES/BORCHERDING</b>
31	328-331	Discussion and possible action to authorize the Transportation Department to purchase one replacement HC6 Nexstar III Auto Crane and one EHP System Automatic Tire Changer valued at \$32,279 and amend the budget accordingly. <b>JONES/BORCHERDING</b>

### MISCELLANEOUS

32	332	Discussion and possible action to authorize the County Judge to execute a Commercial Lease Agreement between Hays County and Show Place Commercial Park, LLC for approximately 3,853 square feet of commercial space. <b>BECERRA</b>
33	333	Discussion and possible action to award RFP 2020-P01 HVAC - Maintenance & Repair Services to JM Engineering, LLC and authorize staff and General Counsel to negotiate a contract. <b>BECERRA/T.CRUMLEY</b>
34	334-336	Hold a public hearing on the proposed Lantana multi-family project in accordance with Tex. Gov't Code, §2306.67071(b) and authorize the execution of a Resolution of No Objection for an application submitted by Mission Development Group, Ltd. to the Texas Department of Housing and Community Affairs. <b>INGALSBE</b>
35	337-339	Discussion and possible action to reconsider Election Day Vote Center locations for the November 3, 2020 General Election. <b>BECERRA</b>

36	340	Discussion and possible action to purchase additional election equipment. <b>BECERRA</b>
37	341-342	Discussion and possible action to consider naming a private driveway in precinct 4, Harmony Wood Lane. <b>SMITH/STRICKLAND</b>
38	343	Discussion and possible action to create the Hays County Salary Grievance Committee for the remainder of the fiscal year Pursuant to Chapter 152 of the Local Government Code. <b>BECERRA</b>
39	344	Discussion and possible action to award RFP 2020-P14 CDBG Mitigation Funding to Langford Community Management Services, LLC and authorize staff and General Counsel to negotiate a contract. <b>SHELL/CRUMLEY</b>
40	345-349	Discussion and possible action to approve a Funding Agreement between Hays County and the City of Kyle regarding payment of the Tyler New World Maintenance Agreement for the Computer Aided Dispatch (CAD) System in the new 911 co-located communications center. <b>SHELL</b>
41	350-352	Discussion and possible action to authorize the County Judge to execute a Termination of Access Restriction Agreement related to four parcels along FM110 in Precinct 1. <b>INGALSBE</b>
42	353	Discussion and possible action to vote on a proposed budget and tax rate for Fiscal Year 2021 and schedule public hearings. <b>BECERRA</b>

### WORKSHOP

43	354	1:00 p.m. - Budget Workshop regarding the FY 2021 Hays County Budget. Possible action may follow. <b>BECERRA</b>
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### 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.

44	355	Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange or value of Right of Way along proposed FM110 in Precinct 1. Possible discussion and/or action may follow in open court. <b>INGALSBE</b>
45	356	Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding purchase, exchange or value of Right of Way along the former Hays County Civic Center and contiguous properties located on Clovis Barker in Precinct 1. 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.

46	Discussion and possible action related to the burn ban and/or disaster declaration. <b>BECERRA</b>
47	Discussion related to the Hays County inmate population, to include current population counts and costs. <b>BECERRA</b>
48	Discussion of issues related to the Hays County Census program including updates from Jessica Mejia. <b>BECERRA</b>
49	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>
50	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 21<sup>st</sup> day of August, 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. Possible discussion and action may follow.

#### ITEM TYPE

PROCLAMATIONS/PRESENTATIONS

#### MEETING DATE

August 25, 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

Presentation by K Friese and Associates regarding the Hays County Master Transportation Plan.

#### ITEM TYPE

PROCLAMATIONS/PRESENTATIONS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Jerry H. Borcharding

#### SPONSOR

SMITH

#### CO-SPONSOR

N/A

#### SUMMARY

K Friese and Associates is actively involved in updating the Hays County Master Transportation Plan. This presentation will provide an update on the on-going technical and public involvement efforts.

## 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

August 25, 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

August 25, 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 August 11, 2020 and August 18, 2020.

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 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



AUGUST 11, 2020

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 11<sup>th</sup> DAY OF AUGUST 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  
ELAINE H. CÁRDENAS

COUNTY JUDGE  
COMMISSIONER, PCT. 1  
COMMISSIONER, PCT. 2  
COMMISSIONER, PCT. 3  
COMMISSIONER, PCT. 4  
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 Stella Burkhalter of the Kyle United Methodist 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

Dan Lyon made public comment against the Hays County disbursements. Sharon O'Neil made public comment against holding indigent jail detainees. Sam Brannon made public comment regarding elections. Christine Terrell made public comment in favor of a Public Defender's office. Lauren Hubele made public comment in favor of the Criminal Justice – Public Defender's office. Rodrigo Amaya made public comment regarding accountability of Hays County elected officials. Herman Fabela made public comment regarding the budget item for Precinct 5 staff positions. James Reece made public comment against the Hays County Courthouse closures, County Clerk office closure, and against the Cite and Divert Program. Jordan Buckley made public comment regarding the human rights crisis in the Hays County Jail. Anita Collins, Executive Assistant to the County Judge, made public comment against the Commissioners and Sheriff Cutler stating that the elected officials' disrespect and discriminate against the Judge's office.

#### UPDATE FROM THE COUNTY JUDGE AND STAFF REGARDING THE LOCAL DISASTER DECLARATION AND COVID-19. POSSIBLE DISCUSSION AND ACTION MAY FOLLOW.

Mike Jones, Director of Office of Emergency Services, gave an update to the Court. Tammy Crumley, County Wide Operations Director, spoke. Mark Kennedy, Office of General Counsel, spoke. No action was taken.

#### INTRODUCTION OF THE OFFICE OF EMERGENCY SERVICES (OES) STAFF BY MIKE JONES, DIRECTOR OF OES.

Mike Jones, Director of Office of Emergency Services, introduced his staff to the Court. He explained how each person contributed to Hays County. The Court thanked the staff for their work and dedication. No action was taken.

#### PRESENTATION AND DISCUSSION BY DAN WEGMILLER OF SPECIALIZED PUBLIC FINANCE INC. REGARDING REFUNDING OF EXISTING BONDS.

Dan Wegmiller, Specialized Public Finance Inc., presented to the Court their financial standing and options regarding refunding of existing bonds. No action was taken.

#### 35462 APPROVE PAYMENTS OF COUNTY INVOICES.

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



AUGUST 11, 2020

**35463 APPROVE PAYMENT OF JUROR CHECKS.**

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

**35464 APPROVE THE PAYMENT OF UNITED HEALTHCARE CLAIMS.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to approve payments of United Healthcare claims. All present voted "Aye." MOTION PASSED.

**35465 APPROVE COMMISSIONERS COURT MINUTES OF JULY 28, 2020.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to approve Commissioners Court Minutes of July 28, 2020. All present voted "Aye." MOTION PASSED.

**35466 APPROVE THE PAYMENT OF THE AUGUST 15, 2020 PAYROLL DISBURSEMENTS IN AN AMOUNT NOT TO EXCEED \$2,995,000.00 EFFECTIVE AUGUST 14, 2020 AND POST TOTALS FOR WAGES, WITHHOLDINGS, DEDUCTIONS AND BENEFITS ON THE HAYS COUNTY WEBSITE ONCE FINALIZED.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to approve the payment of the August 15, 2020 payroll disbursements in an amount not to exceed \$2,995,000.00 effective August 14, 2020 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized. All present voted "Aye." MOTION PASSED.

**35467 APPROVE THE SHERIFF'S OFFICE JAIL DIVISION TO UTILIZE SAVINGS OF \$3,000 FROM CONTINUING ED FUNDS TO ENTER INTO A MASTER SERVICE AGREEMENT WITH LEXIPOL FOR CORRECTIONS ONE ACADEMY AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to approve the Sheriff's Office Jail Division to utilize savings of \$3,000 from Continuing Ed Funds to enter into a master service agreement with Lexipol for CorrectionsOne Academy and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**35468 AUTHORIZE THE COUNTY CLERK'S OFFICE TO PURCHASE EIGHT (8) CREDIT CARD READERS TOTALING \$5,285.64 FROM JR'S POS DEPOT, AUTHORIZE A PURCHASING POLICY WAIVER AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to Authorize the County Clerk's Office to purchase eight (8) Credit Card Readers totaling \$5,285.64 from JR's POS Depot, authorize a purchasing policy waiver and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**35469 RATIFY A TEMPORARY RIGHT OF ENTRY AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS FOR THE HAYS COUNTY PROPERTY LOCATED AT 755 CIVIC CENTER, SAN MARCOS, TEXAS.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to ratify a Temporary Right of Entry Agreement between Hays County and the City of San Marcos for the Hays County property located at 755 Civic Center, San Marcos, Texas. All present voted "Aye." MOTION PASSED.

**35470 AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR NEW DRIPPING SPRINGS ELEMENTARY SCHOOL LOCATED AT 11091 DARDEN HILL ROAD, AUSTIN, TEXAS 78737.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize On-Site Sewage Facility Permit for new Dripping Springs Elementary school located at 11091 Darden Hill Road, Austin, Texas 78737. All present voted "Aye." MOTION PASSED.



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AUGUST 11, 2020

**35471      AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR NEW 7-ELEVEN  
LOCATED AT 12212 W US 290, AUSTIN, TEXAS 78737.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize On-Site Sewage Facility Permit for new 7-Eleven located at 12212 W US 290, Austin, Texas 78737. All present voted "Aye." MOTION PASSED.

**35472      AMEND THE CONSTABLE PCT. 2 OPERATING BUDGET FOR \$341.00 FOR  
COSTS RELATED TO THE MOBILE RADIO EQUIPMENT APPROVED IN  
THE FY20 BUDGET PROCESS.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to amend the Constable Pct. 2 operating budget for \$341.00 for costs related to the mobile radio equipment approved in the FY20 budget process. All present voted "Aye." MOTION PASSED.

**35473      AMEND THE APPOINTMENT DATE OF NATHAN MENDENHALL TO FIRE  
MARSHAL FROM AUGUST 10, 2020 TO AUGUST 4, 2020.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to amend the appointment date of Nathan Mendenhall to Fire Marshal from August 10, 2020 to August 4, 2020. All present voted "Aye." MOTION PASSED.

**35474      AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR NEW  
RESTAURANT LOCATED AT 14111 WINTER'S MILL PARKWAY,  
WIMBERLEY, TEXAS 78676.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize On-Site Sewage Facility Permit for new restaurant located at 14111 Winter's Mill Parkway, Wimberley, Texas 78676. All present voted "Aye." MOTION PASSED.

**35475      AUTHORIZE ON-SITE SEWAGE FACILITY PERMIT FOR THE ROSEMARY  
HALL DORMITORY IN THE BURKE CENTER FOR YOUTH AT 20710 W FM  
150, DRIFTWOOD, TEXAS 78619.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize On-Site Sewage Facility Permit for the Rosemary Hall Dormitory in the Burke Center for Youth at 20710 W FM 150, Driftwood, Texas 78619. All present voted "Aye." MOTION PASSED.

**35476      APPROVE UTILITY PERMITS.**

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

**35477      APPROVE THE OFFICIAL BOND OF THE NEWLY APPOINTED FIRE  
MARSHAL, NATHAN PAUL MENDENHALL.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to approve the official bond of the newly appointed Fire Marshal, Nathan Paul Mendenhall. All present voted "Aye." MOTION PASSED.

**35478      AUTHORIZE PAYMENT TO ELECTROTECHNICS CORPORATION (ELTEC)  
FOR \$1,960.83 RELATED TO REPLACING A DAMAGED SCHOOL ZONE  
FLASHER POST FOR SCIENCE HALL ELEMENTARY SCHOOL STEMMING  
FROM AN AUTO ACCIDENT THAT OCCURRED ON DACY LANE IN WHICH  
NO PURCHASE ORDER WAS ISSUED AS REQUIRED PER COUNTY  
PURCHASING POLICY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize payment to Electrotechnics Corporation (Eltec) for \$1,960.83 related to replacing a damaged school zone flasher post for Science Hall Elementary School stemming from an auto accident that occurred on Dacy Lane in which no purchase order was issued as required per County Purchasing Policy. All present voted "Aye." MOTION PASSED.



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AUGUST 11, 2020

- 35479      APPROVE AND CONFIRM THE APPOINTMENTS OF PORTER KING FEAREY DEWAR AS DEPUTY CONSTABLE AND TIMOTHY WALKER AS RESERVE DEPUTY CONSTABLE IN THE HAYS COUNTY CONSTABLE PRECINCT 1 OFFICE, EFFECTIVE DATE AUGUST 11, 2020.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to Approve and confirm the appointments of Porter King Fearey Dewar as Deputy Constable and Timothy Walker as Reserve Deputy Constable in the Hays County Constable Precinct 1 Office, effective date August 11, 2020. All present voted "Aye." MOTION PASSED.

- 35480      AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN AMENDMENT TO THE COUNTY'S AGREEMENT WITH TYLER TECHNOLOGIES, INC. FOR PURPOSES OF TEXT MESSAGE AND EMAIL REMINDER NOTIFICATIONS RELATED TO COURT APPEARANCES, DIVERSION APPEARANCES, WARRANTS, AND PAYMENT COMPLIANCE AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize the County Judge to execute an Amendment to the County's Agreement with Tyler Technologies, Inc. for purposes of text message and email reminder notifications related to court appearances, diversion appearances, warrants, and payment compliance and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 35481      AUTHORIZE THE COUNTY JUDGE TO EXECUTE A WORK ORDER AND FIRE ALARM SYSTEM AGREEMENT WITH SECURITY ONE, INC. FOR FIRE ALARM MONITORING SERVICES FOR THE PUBLIC SAFETY BUILDING.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize the County Judge to execute a Work Order and Fire Alarm System Agreement with Security One, Inc. for Fire Alarm Monitoring Services for the Public Safety Building. All present voted "Aye." MOTION PASSED.

- 35482      APPROVE SPECIFICATIONS FOR RFP 2020-P08 ELECTION FORM PRINTING SERVICES AND AUTHORIZE PURCHASING TO SOLICIT FOR PROPOSALS AND ADVERTISE.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to approve specifications for RFP 2020-P08 Election Form Printing Services and authorize Purchasing to solicit for proposals and advertise. All present voted "Aye." MOTION PASSED.

- 35483      AUTHORIZE THE INFORMATION TECHNOLOGY DEPARTMENT TO PURCHASE REPLACEMENT COMPUTER EQUIPMENT FOR VARIOUS DEPARTMENTS AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Information Technology Department to purchase replacement computer equipment for various departments and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 35484      AUTHORIZE THE OFFICE OF EMERGENCY SERVICES DEPARTMENT TO PURCHASE ONE UPGRADED IPHONE SE128 GB VALUED AT \$123.99 IN ORDER TO LOAD APPLICATIONS FOR EMERGENCY PREPAREDNESS.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the Office of Emergency Services department to purchase one upgraded iPhone SE128 GB valued at \$123.99 in order to load applications for emergency preparedness. All present voted "Aye." MOTION PASSED.

- 35485      AUTHORIZE A WAIVER TO THE PURCHASING POLICY FOR THE ELECTION OFFICE TO PURCHASE BALLOT PAPER FOR THE NOVEMBER 3, 2020 GENERAL ELECTION.**



AUGUST 11, 2020

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize a waiver to the purchasing policy for the Election Office to purchase ballot paper for the November 3, 2020 General Election. All present voted "Aye." MOTION PASSED.

**35486 APPROVE THE OFFICIAL BOND OF THE NEWLY-APPOINTED HAYS COUNTY CONSTABLE FOR PRECINCT #3, DON MONTAGUE.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to approve the official bond of the newly appointed Hays County Constable for Precinct #3, Don Montague. All present voted "Aye." MOTION PASSED.

**35487 APPROVE AND CONFIRM THE APPOINTMENTS OF DEPUTY CONSTABLES DESIGNATED BY THE NEWLY-APPOINTED CONSTABLE, DON MONTAGUE, IN THE HAYS COUNTY CONSTABLE PRECINCT 3 OFFICE, EFFECTIVE AUGUST 10, 2020.**

Don Montague spoke to the Court. Judge Becerra spoke. Mark Kennedy, Office of General Counsel spoke to the Court. A motion was made by Commissioner Shell, seconded by Commissioner Smith to approve and confirm the appointments of Deputy Constables designated by the newly appointed Constable, Don Montague, in the Hays County Constable Precinct 3 Office, effective August 10, 2020. All present voted "Aye." MOTION PASSED.

**35488 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT (PSA)/CONTRACT BETWEEN HAYS COUNTY AND RPS INFRASTRUCTURE, INC. TO PROVIDE ENGINEERING DESIGN SERVICES FOR RM 12 AT RM 3237 INTERSECTION PROJECT IN PRECINCT 3 AS PART OF THE 2016 ROAD BOND PROGRAM.**

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute a Professional Services Agreement (PSA)/contract between Hays County and RPS Infrastructure, Inc. to provide engineering design services for RM 12 at RM 3237 intersection project in Precinct 3 as part of the 2016 Road Bond Program. All present voted "Aye." MOTION PASSED.

**35489 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A CHANGE ORDER NO. 1 TO A CONTRACT BETWEEN HAYS COUNTY AND RPS INFRASTRUCTURE, INC. ON THE RM 12 AT RM 3237 INTERSECTION PROJECT IN PRECINCT 3 AS PART OF THE 2016 ROAD BOND PROGRAM EXECUTED ON OR ABOUT APRIL 9, 2019.**

A motion was made by Commissioner Shell, seconded by Commissioner Smith to authorize the County Judge to execute a Change Order No. 1 to a Contract between Hays County and RPS Infrastructure, Inc. on the RM 12 at RM 3237 Intersection project in Precinct 3 as part of the 2016 Road Bond Program executed on or about April 9, 2019. All present voted "Aye." MOTION PASSED.

**Clerk's Note Agenda Item #32 RE: DISCUSS AND POSSIBLE ACTION TO AUTHORIZE THE COUNTY JUDGE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT (PSA)/CONTRACT BETWEEN HAYS COUNTY AND COBB, FENDLEY & ASSOCIATES, INC. TO PROVIDE ENGINEERING DESIGN AND ROW ACQUISITION SERVICES ON THE WINTERS MILL INTERSECTION IMPROVEMENTS AT RM 12 AND RM 3237 PROJECT IN PRECINCT 3 AS PART OF THE 2016 ROAD BOND PROJECT. – WAS PULLED.**

**35490 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A CONTRACT AMENDMENT NO. 1 TO A CONTRACT BETWEEN HAYS COUNTY AND DOUCET & ASSOCIATES, INC. FOR THE DARDEN HILL ROAD (FM1826 TO SAWYER RANCH ROAD) WIDENING AND TURN LANES PROJECT AS PART OF THE 2016 ROAD BOND PROGRAM EXECUTED ON OR ABOUT OCTOBER 30, 2018.**

Commissioner Smith noted this is part of the 2016 Road bond. A motion was made by Commissioner Smith, seconded by Commissioner Shell to authorize the County Judge to execute a Contract Amendment No. 1 to a Contract between Hays County and Doucet & Associates, Inc. for the Darden Hill Road (FM1826 to Sawyer Ranch Road) widening and turn lanes project as part of the 2016 Road Bond Program executed on or about October 30, 2018. All present voted "Aye." MOTION PASSED.



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**35491      AWARD CONTRACTS FOR IFB 2020-B09 ROADWAY IMPROVEMENTS - HOT MIX OVERLAY TO BENNETT PAVING, INC.**

A motion was made by Commissioner Jones, seconded by Commissioner Smith to award contracts for IFB 2020-B09 Roadway Improvements - Hot Mix Overlay to Bennett Paving, Inc. All present voted "Aye." MOTION PASSED.

**35492      AWARD CONTRACTS FOR IFB 2020-B16 ROADWAY IMPROVEMENTS - REMOVE & REPLACE HOT MIX TO TURNER PAVING & CONSTRUCTION INC.**

A motion was made by Commissioner Jones, seconded by Commissioner Smith to award contracts for IFB 2020-B16 Roadway Improvements - Remove & Replace Hot Mix to Turner Paving & Construction Inc. All present voted "Aye." MOTION PASSED.

**35493      APPROVE THE RESULTS OF THE RETURNED BALLOTS OF THE PROPERTY OWNERS WHO VOTED ON THE PROPOSED IMPROVEMENTS OF ROADWAYS WITHIN RIVER MOUNTAIN RANCH SUBDIVISION PRECINCT 3 OF HAYS COUNTY PURSUANT TO CHAPTER 253 OF THE TEXAS TRANSPORTATION CODE.**

Elaine Cárdenas, County Clerk, presented the Court with the ballot results. She announced the majority vote came in as "Yes." Mark Kennedy, General Counsel, Spoke to the Court about the next steps. A motion was made by Commissioner Shell, seconded by Commissioner Smith to approve the results of the returned ballots of the property owners who voted on the proposed improvements of roadways within River Mountain Ranch Subdivision Precinct 3 of Hays County pursuant to Chapter 253 of the Texas Transportation Code. All present voted "Aye." MOTION PASSED.

**35494      GRANT A VARIANCE FROM TABLE 10-1 OF THE HAYS COUNTY RULES FOR ON-SITE SEWAGE FACILITIES AND CHAPTER 715.3.01 (C) OF THE HAYS COUNTY DEVELOPMENT REGULATIONS, PLN-1400-PC; PENN SUBDIVISION, LOT 1A-1, REPLAT (2 LOTS).**

Caitlyn Strickland, Development Services, announced the property owners request is a regular request. A motion was made by Commissioner Smith, seconded by Commissioner Shell to grant a variance from Table 10-1 of the Hays County Rules for On-Site Sewage Facilities and Chapter 715.3.01 (C) of the Hays County Development Regulations, PLN-1400-PC; Penn Subdivision, Lot 1A-1, Replat (2 Lots). All present voted "Aye." MOTION PASSED.

**35495      GRANT A VARIANCE FROM SECTION 10. W. 1. OF THE HAYS COUNTY RULES FOR ON-SITE SEWAGE FACILITIES AND ALLOW ISSUANCE OF DEVELOPMENT PERMITS TO THE OWNER OF 560 DEAD MANS HOLE RD, DRIPPING SPRINGS, TX 78620.**

Commissioner Smith stated this lot is over 200 acres and this request is to address some issues. Caitlyn Strickland, Development Services, clarified the situation to the Court. A motion was made by Commissioner Smith, seconded by Commissioner Shell to grant a variance from section 10. W. 1. of the Hays County Rules for On-Site Sewage Facilities and allow issuance of development permits to the owner of 560 Dead Mans Hole Rd, Dripping Springs, TX 78620. All present voted "Aye." MOTION PASSED.

**35496      REISSUE THE KINDER MORGAN PERMIAN HIGHWAY PIPELINE ROAD CROSSING PERMITS FOR PUMP STATION ROAD, MT. SHARP ROAD, AND LEDGEROCK ROAD, ALLOWING CONSTRUCTION ACTIVITIES TO CONTINUE FOR THE 42" NATURAL GAS PIPELINE CONTINGENT UPON THE CERTAIN CRITERIA.**

Commissioner Shell stated these are permits to allow work for crossings.

A motion was made by Commissioner Shell, seconded by Commissioner Smith to reissue the Kinder Morgan Permian Highway Pipeline road crossing permits for Pump Station Road, Mt. Sharp Road, and Ledgerock Road, allowing construction activities to continue for the 42" natural gas pipeline contingent upon the certain criteria. The issuance of these permits is contingent upon the following criteria;

1. Kinder Morgan will provide the schedule, order of the road crossing work and notify the County and HTGCD staff at least 10 calendar days in advance.



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2. Hays County and HTGCD staff will be granted access to the construction sites during and after the boring process
3. Kinder Morgan will notify HTGCD in the event a significant karst feature is encountered during the course bore construction.
4. Kinder Morgan provided HTGCD staff with access to all crossing activities including boring and camera imaging.

All present voted "Aye." MOTION PASSED.

**35497      AUTHORIZE THE EXECUTION OF A \$1,000,000 LETTER OF AGREEMENT BETWEEN HAYS COUNTY AND CHRISTUS Santa Rosa HOSPITAL (CSRSM) AS BUDGETED FOR FY2020 TO INDIGENT HEALTH CARE COSTS.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize the execution of a \$1,000,000 Letter of Agreement between Hays County and CHRISTUS Santa Rosa Hospital (CSRSM) as budgeted for FY2020 to indigent health care costs. All present voted "Aye." MOTION PASSED.

**35498      AUTHORIZE MIKE JONES TO ACCEPT THE AIRWORTHINESS STATEMENT (AWS) ON BEHALF OF THE HAYS COUNTY OFFICE OF EMERGENCY SERVICES.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize Mike Jones to accept the Airworthiness Statement (AWS) on behalf of the Hays County Office of Emergency Services. All present voted "Aye." MOTION PASSED.

**35499      ACCEPT THE \$19,058.41 VISIONALITY SECOND PHASE PROPOSAL, ADDING INDIVIDUAL MONITORS WITH ACCESS TO AGENDA AND BACKUP, AS WELL AS AUTOMATED PARLIAMENTARY PROCEDURES AND RECORDING OF VOTES AND AMEND THE BUDGET ACCORDINGLY.**

Commissioner Ingalsbe stated that she felt this equipment would benefit the Court. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to accept the \$19,058.41 Visionality Second Phase Proposal, adding individual monitors with access to agenda and backup, as well as automated parliamentary procedures and recording of votes and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**35500      AUTHORIZE THE COUNTY JUDGE TO EXECUTE A CONTRACT WITH BRIZO CONSTRUCTION, LLC FOR PROJECTS LISTED ON THE ATTACHED BID TABULATION FOR RFP 2020-P05 BUILDER SERVICES RELATED TO THE CDBG-DR HOUSING PROGRAM.**

Commissioner Jones announced this is a grant fund. Tammy Crumley, County Wide Operations Director, stated these are two of the rehab projects. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to authorize the County Judge to execute a contract with Brizo Construction, LLC for projects listed on the attached bid tabulation for RFP 2020-P05 Builder Services related to the CDBG-DR Housing Program. All present voted "Aye." MOTION PASSED.

**35501      ORDER A GENERAL ELECTION TO BE HELD ON NOVEMBER 3, 2020.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Shell to order a General Election to be held on November 3, 2020. All present voted "Aye." MOTION PASSED.

**35502      APPROVE ELECTION DAY VOTE CENTER LOCATIONS FOR THE NOVEMBER 3, 2020 GENERAL ELECTION.**

Mary Clarkson made public comment against Precinct 4 building as a voting location. Brandon James made public comment in favor of voting. Lexy Garcia of Texas Rising, made public comment for an additional voting location for the Texas State University. Roland Saucedo made public comment in favor of the vote center locations. Jennifer Anderson, Elections Administrator spoke to the Court. The Court had questions regarding the voting locations for Jennifer Anderson, Elections Administrator. Judge Becerra spoke to the Court about his participation in a meeting with Texas State University. Commissioner Ingalsbe spoke about voting locations. A motion was made by Commissioner Smith, seconded by Commissioner Shell to adopt the recommended list as recommended by the Citizens Advisory Committee and as indorsed by the Texas



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State University. Commissioner Ingalsbe, Commissioner Jones, Commissioner Shell, and Commissioner Smith voted "Aye." Judge Becerra voted "No." MOTION PASSED.

**35503 APPROVE EARLY VOTING LOCATIONS AND SCHEDULE FOR THE NOVEMBER 3, 2020 GENERAL ELECTION.**

Mary Clarkson made public comment against Precinct 4 building as a voting location. Catherine Wicker of Texas Rising made public comment regarding a voter friendly campus at Texas State University. Isabella Briseno of Texas Rising made public comment in favor of voting locations on the Texas State University campus. Judge Becerra stated that he had a meeting with the leadership at Texas State University regarding moving the voting locations. He stated that he toured the Performing Art Center. He announces that he negotiated using the Recreation Center on the Texas State University campus for Election Day. Jennifer Anderson, Elections Administrator spoke to the Court. Rolando Saucedo, Chair of the Citizens Election Committee, spoke to the Court. **A motion was made by Commissioner Shell, seconded by Commissioner Smith to approve Early Voting locations and schedule for the November 3, 2020 General Election. All present voted "Aye."** MOTION PASSED.

**DISCUSSION RELATED TO THE HAYS COUNTY PARKS AND OPEN SPACE ADVISORY COMMISSION (POSAC) RECOMMENDATIONS AND RECEIPT OF THE PUBLIC OUTREACH REPORT FROM KAREN FORD, CONSULTANT FOR THE COMMISSION.**

Kathryn Chandler and MaryJane Hetrick, gave public comment in favor of the Parks and Open Space Advisory Commission recommendations particularly regarding Patriot's Hall. Karen Ford presented the recommendations of the Parks and Open Space Advisory Commission. The Court members discussed if they should move forward with this decision or wait. Judge Becerra called up the remaining public comment speakers who opted to speak after the recommendations were made. Dan Lyon made public comment against the recommendations. Sam Brannon made public comment against the recommendations. Lori Olson made public comment for the recommendations. George Cofer, member of the Hill Country Conservancy, made public comment for the recommendations. The following public comments were read to the Court by Elaine Cárdenas, Hays County Clerk. David Hixon made public comment for the recommendations. Emily Magee made public comment for the recommendations. Joan Harrison made public comment against the recommendations. Kathryn Williams made public comment for the recommendation but against the city center. Lynn Morris made public comment against the recommendations. Jonathan Lustri made public comment for the recommendations. Madonna Kimball made public comment against the recommendations at this time. Chana Temple made public comment for the recommendations. Representative Erin Zwiener made public comment for the recommendations. Veronica Hawk made public comment for the recommendations. Kathleen Ochoa made public comment to make parks and trails wheelchair accessible. Rachel Porter made public comment for the recommendations. Robin Gary made public comment for the recommendations. Lindsay Loftin made public comment for the recommendations. Nina Powers made public comment for the recommendations. Scott Way made public comment in favor of the recommendations. Lauren Haygood made public comment in favor of the recommendations. Andy Witkowski made public comment in support of the recommendations. Scott Price made public comment in support of the recommendations. Martin McConahay made public comment against the recommendations. Cristin Hearne made public comment against the recommendations. David Baker, Wimberley Valley Watershed Association, made public comment in favor of the recommendations. Ray Don Tilley made public comment in favor of the recommendations. No action was taken.

**35504 APPROVE AN ORDER BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS CALLING A BOND ELECTION TO BE HELD ON NOVEMBER 3, 2020 IN HAYS COUNTY, TEXAS; DESIGNATING VOTER POLLING PLACES; PROVIDING FOR EARLY VOTING AND ELECTION DAY VOTING; MAKING PROVISION FOR THE CONDUCT OF THE ELECTION, MAKING PROVISION FOR THE CONDUCT OF A JOINT ELECTION WITH VARIOUS POLITICAL SUBDIVISIONS; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO SUCH ELECTION.**

Dan Lyon made public comment against the recommended bond. Sam Brannon made public comment against the bond. Kathrine Romans, Executive Director of the Hill Country Alliance, gave public comment in favor of the bond. Commissioner Shell stated he can see the value of investing into the County's future. He noted that the County tax rates have been lowered over that past ten years. He stated the Court has worked hard to try to keep taxes lowered. He stated he did not foresee the debt rate lowering this year. He explained his reasons for supporting the bond on the November ballot as he feels this November election will have a high turnout. Commissioner Ingalsbe stated she supports the Parks and Open Space projects; however, it is hard for her to move forward on this item at this time. She stated should this bond pass that she would watch very closely for the issuance. Commissioner Jones stated that he has heard from several people in his precinct who support the Parks and Open Space projects. Commissioner Jones echoed Commissioner Shell in favor of a November ballot. Commissioner Smith stated the overall cost for these projects is astronomical. He stated using the County money as seed money. He agreed that we are in hard economic times but also believes that the County needs to capitalize on some of the projects now. Judge Becerra stated this item is calling for a bond election to let the voters decide. He listed options that are available to the Court such as releasing bonds slowly, not selling



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bonds and issuance of the bonds. Mark Kennedy, General Counsel, reviewed with the Court the next steps should they move forward. Julie Houston, Orrick Bond Counsel, advised the Court on their options. Commissioner Ingalsbe thanked Karen Ford for her work. Commissioner Shell listed the following under this item; The four general categories found in the bond proposition language will consist of Open Spaces Conservation Connectivity, Multilevel Improvements for alternative Transportation, Urban Parks, and Flood Mitigation repairing and health. The bond order to be followed with information on how the Court will invest in specific projects that will become part of the contract with the voters. Commissioner Shell requested the documentation that Julie Houston mentioned in section 10 be changed per language. The total value of the bond be set at \$75million. **A motion was made by Commissioner Shell, seconded by Commissioner Smith to approve an Order by the Commissioners Court of Hays County, Texas calling a Bond Election to be held on November 3, 2020 in Hays County, Texas; designating voter polling places; providing for early voting and election day voting; providing for performance that required administrative duties; making provision for the conduct of the election, making provision for the conduct of a joint election with various political subdivisions; resolving other matters incident and related to such election. Commissioner Jones, Commissioner Shell, Commissioner Smith, and Judge Becerra present voted "Aye." Commissioner Ingalsbe voted "No." MOTION PASSED.**

**10:00 A.M. - BUDGET WORKSHOP REGARDING THE FY 2021 HAYS COUNTY BUDGET. POSSIBLE ACTION MAY FOLLOW.**

Christine Terrell made public comment regarding the approval of line items. Caitlyn Strickland, Director of Development Services requested from the Court to include two leased vehicles, new personnel, and a salary increase for an Administrative Assistant III. Jerry Borcharding, Director of Transportation Department, requested the Court include new personnel in the budget for his department. Kyle Hayungs, Founder and CEO of MRG Medical Group spoke to the Court regarding the meeting from April 14, 2020. Sheriff Gary Cutler and Captain Julie Villalpando of the Sheriff's Office requested the Court include Personnel for the Jail and Contract Detention for Jail Division. No action was taken.

**35505 EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING THE PURCHASE, EXCHANGE OR VALUE OF RIGHT OF WAY ALONG DACY LANE IN PCT 1. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize a purchase agreement between Hays County and Danny and Sandra Acosta A.K.A. Sandra and Troy Ray Acosta, totaling \$40,000 which includes the costs of moving a septic system, and acquisition of 0.080 acres of Right of Way along Dacy Lane, in Precinct 1. All present voted "Aye." MOTION PASSED.

**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 THE HAYS COUNTY TRANSPORTATION DEPARTMENT. POSSIBLE DISCUSSION AND/OR ACTION MAY FOLLOW IN OPEN COURT.**

No action was taken.

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.072 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL REGARDING THE PARKS AND OPEN SPACE ADVISORY COMMISSION PROPOSALS AND THE PROSPECTIVE PARK AND OPEN SPACE PROGRAM; AND DELIBERATION REGARDING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY REGARDING PARKS AND OPEN SPACE WITHIN HAYS COUNTY. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT.**

No action was taken.

**35506 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 THE HAYS COUNTY HUMAN RESOURCES DEPARTMENT. POSSIBLE DISCUSSION AND/OR ACTION MAY FOLLOW IN OPEN COURT.**

HAYS COUNTY COMMISSIONERS' COURT MINUTES



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A motion was made by Commissioner Jones, seconded by Commissioner Smith to authorize the Risk Management Specialist position to be double filled by the Human Resource Specialist slot 1 effective 7/1/2020 – 8/14/2020 and by the Risk Management slot effective 7/16/2020-9/15/2020 at their current hourly rates funded through Salary Savings and amend the budget accordingly. All present voted “Aye.” MOTION PASSED.

**Clerk’s Note Agenda Item #54 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.**

No action taken.

**Clerk’s Note Agenda Item #56 RE:** *DISCUSSION OF ISSUES RELATED TO THE HAYS COUNTY CENSUS PROGRAM INCLUDING UPDATES FROM JESSICA MEJIA. – WAS PULLED*

**Clerk’s Note Agenda Item #57 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 #58 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 6:05 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 August 11, 2020.



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



HAYS COUNTY COMMISSIONERS' COURT MINUTES



AUGUST 18, 2020

STATE OF TEXAS \*  
COUNTY OF HAYS \*

ON THIS THE 18<sup>th</sup> DAY OF AUGUST 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  
ELAINE H. CÁRDENAS

COUNTY JUDGE  
COMMISSIONER, PCT. 1  
COMMISSIONER, PCT. 2  
COMMISSIONER, PCT. 3  
COMMISSIONER, PCT. 4  
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 Josh Murrillo, of 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 COMMENT**

Dan Lyon made public comment regarding bonds. Jeff Arnold made public comment for increasing the law enforcement budget. Tom Keyser made public comment to increase law enforcement funding. Kelly Puryear made public comment for the funding of law enforcement. Candy Holberg made public comments in favor of funding the law enforcement; she also made comments in favor of keeping criminals in jail. Sheila Wray made public comment in favor of funding law enforcement. Carl Aubrey made public comment against cutting the budget for the County Law Enforcement. Melanie Aubrey made public comment against reducing funding for the Hays County Law Enforcement. Michelle German made public comment against cutting the law enforcement budget. Peggy Davis made public comment for funding the police. Christine Terrell made public comment in favor of a Public Defender's Office. Lauren Hubele made public comment regarding the Criminal Justice system. Naomi Narvaiz made public comment in support of law enforcement. Rodrigo Amaya made public comment regarding law enforcement. Rylee German made public comment for the funding of law enforcement. Jennifer Cross made public comment for the funding of law enforcement. Mitzi Ison made public comment in support of police officers. Charles Richardson made public comment in support of local police. Kathy Powell made public comment in support of the law enforcement. Linda Freeman made public comment regarding Hays County law enforcement budget. Shiila Safer made public comment in support of the Parks and Open space bonds. Jennifer Krou made public comment against the pipeline noise. Gail Pigg made public comment against the Parks and Open space bonds. Marilyn Minnar made public comment against the lack of voting centers in Dripping Springs. Trevor Newman made public comment in support of a second voting location on the Texas State University. Dr. Linda Calvert made public comment in favor of adding a polling site for Texas State University and a better mail in ballot process. Kasey Cheek made public comments in support of the Texas 1033 Surplus program, additional voting location somewhere other than Texas State University, and in favor of funding law enforcement. Aaron Arguello made public comment in favor of an additional voting location on the Texas State University Campus. Mahlin Musgrove made public comment in favor of a second voting location on the Texas State University Campus. Bryan Burke made public comment in favor of a second voting location on the Texas State University Campus. Ida Miller made public comment in favor of a second voting location on the Texas State University Campus. Maria Rocha made public comment in favor of a second voting location on the Texas State University Campus. Christine Lynn Norton made public comment in favor of a second voting location on the Texas State University Campus. Mark Trahan made public comment in favor of a second voting location on the Texas State University Campus. April Coldsmith made public comment in favor of a second voting location on the Texas State University Campus. Karen O'Grady-Young made public comment in favor of a second voting location on the Texas State University Campus. Suzy Robins made public comment in favor of a second voting location on the Texas State University Campus. Amanda Hargrave made public comments regarding the lack of social distancing and in support of a second voting location on the Texas State University campus. Kim Blackson made public comment in favor of a second voting location on the Texas State University Campus.

**UPDATE FROM THE COUNTY JUDGE AND STAFF REGARDING THE LOCAL DISASTER DECLARATION AND COVID-19. POSSIBLE DISCUSSION AND ACTION MAY FOLLOW.**

Alex Villalobos, Chief of Staff and Emergency Management Coordinator, and Tammy Crumley, County Wide Operations Director, gave an update to the Court. No action was taken.



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**35507 APPROVE PAYMENTS OF COUNTY INVOICES.**

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

**35508 APPROVE PAYMENTS OF JUROR CHECKS.**

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

**35509 APPROVE THE PAYMENT OF UNITED HEALTHCARE CLAIMS.**

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

**35510 APPROVE COMMISSIONERS COURT MINUTES OF AUGUST 7, 2020.**

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to approve Commissioners Court Minutes of August 7, 2020. All present voted "Aye." MOTION PASSED.

**Clerk's Note Agenda Item #6 RE:** *AUTHORIZE THE COUNTY JUDGE TO EXECUTE A RENEWAL CONTRACT FOR \$21,608.40 WITH WEST THOMPSON REUTERS FOR ONLINE LEGAL RESEARCH SERVICES IN THE HAYS COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE WITH FUNDS BUDGETED FOR FY2021. – WAS PULLED.*

**35511 AMEND THE SHERIFF'S OFFICE OPERATING BUDGET FOR NEEDED VEHICLE REPAIRS IN WHICH INSURANCE PROCEEDS WERE RECEIVED.**

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to amend the Sheriff's Office operating budget for needed vehicle repairs in which insurance proceeds were received. All present voted "Aye." MOTION PASSED.

**35512 AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN APPLICATION FOR PARTICIPATION IN THE TEXAS 1033 SURPLUS PROPERTY PROGRAM BY THE HAYS COUNTY SHERIFF'S OFFICE.**

Lieutenant Ronnie Strain stated some of the items purchased consist of software, safety equipment, and tools. He stated they are not purchasing tanks or military equipment. A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to authorize the County Judge to execute an application for participation in the Texas 1033 Surplus Property Program by the Hays County Sheriff's Office. All present voted "Aye." MOTION PASSED.

**35513 AUTHORIZE THE JUVENILE PROBATION DEPARTMENT TO PURCHASE ONE (1) 5' X 10" UTILITY TRAILER FOR JUVENILE PROGRAMS UTILIZING GRANT FUNDS FROM THE TEXAS JUVENILE JUSTICE DEPARTMENT (TJJD) AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to Authorize the Juvenile Probation Department to purchase one (1) 5' X 10" utility trailer for Juvenile Programs utilizing grant funds from the Texas Juvenile Justice Department (TJJD) and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

**35514 AMEND THE HAYS COUNTY CONSTABLE, PCT. 4 OPERATING BUDGET FOR MILEAGE REIMBURSEMENTS FOR THE JUSTICE CLERK RELATED TO BUILD OUT AND TRAINING FOR THE NEW RMS/CAD SYSTEMS FOR LAW ENFORCEMENT.**

A motion was made by Commissioner Smith, seconded by Commissioner Shell to amend the Hays County Constable, Pct. 4 operating budget for mileage reimbursements for the Justice Clerk related to Build out and Training for the new RMS/CAD systems for law enforcement. All present voted "Aye." MOTION PASSED.



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- 35515      AUTHORIZE PAYMENT TO COWBOY HARLEY-DAVIDSON OF AUSTIN FOR REPLACEMENT OF A REAR TIRE AND REAR BRAKE PAD IN THE AMOUNT OF \$522.88 FOR THE HAYS COUNTY CONSTABLE, PCT. 4 OFFICE IN WHICH A PURCHASE ORDER WAS NOT OBTAINED AS REQUIRED PER THE COUNTY PURCHASING POLICY.**

Commissioner Smith stated when the tire was removed, they realized the brake pad needed to be replaced as well, so the decision was made to address the issue at the same time as the approved tire. A motion was made by Commissioner Smith, seconded by Commissioner Ingalsbe to authorize payment to Cowboy Harley-Davidson of Austin for replacement of a rear tire and rear brake pad in the amount of \$522.88 for the Hays County Constable, Pct. 4 Office in which a purchase order was not obtained as required per the County Purchasing Policy. All present voted "Aye." MOTION PASSED.

- 35516      AUTHORIZE THE COUNTY JUDGE TO EXECUTE CHANGE ORDER #1 WITH CONFERENCE TECHNOLOGIES, INC. RELATED TO THE AUDIO-VISUAL EQUIPMENT FOR THE NEW PUBLIC SAFETY BUILDING AND AMEND THE BUDGET ACCORDINGLY.**

Commissioner Ingalsbe stated this it to maintain continuity. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize the County Judge to execute Change Order #1 with Conference Technologies, Inc. related to the Audio-Visual Equipment for the new Public Safety Building and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 35517      ACCEPT THE DELIVERY OF THE FISCAL YEAR 2019 INTERNAL EXAMINATION REPORTS FOR THE DISTRICT ATTORNEY'S DRUG FORFEITURE ACCOUNT, SHERIFF'S OFFICE FEDERAL DISCRETIONARY ACCOUNT, AND THE SHERIFF'S OFFICE DRUG FORFEITURE ACCOUNT.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to accept the delivery of the Fiscal Year 2019 Internal Examination Reports for the District Attorney's Drug Forfeiture Account, Sheriff's Office Federal Discretionary Account, and the Sheriff's Office Drug Forfeiture Account. All present voted "Aye." MOTION PASSED.

- 35518      AUTHORIZE THE TRANSPORTATION DEPARTMENT TO PURCHASE ONE NEW DELL LATITUDE 5400 LAPTOP FOR THE DIRECTOR OF TRANSPORTATION AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize the Transportation Department to purchase one new Dell Latitude 5400 Laptop for the Director of Transportation and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 35519      APPROVE THE APPOINTMENT OF DARRELL DEBISH TO THE BOARD HAYS COUNTY EMERGENCY SERVICES DISTRICT #1 TO REPLACE WALTER KRUDOP FOR A TERM ENDING DECEMBER 31, 2021.**

Commissioner Smith thanked Darrell Debish for taking on this position. Commissioner Shell thanked Walter Krudop for his service to the Board Hays County Emergency Services District #1. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to approve the appointment of Darrell Debish to the Board Hays County Emergency Services District #1 to replace Walter Krudop for a term ending December 31, 2021. All present voted "Aye." MOTION PASSED.

- 35520      AUTHORIZE THE ELECTION'S OFFICE TO PURCHASE A MARTIN YALE PAPER FOLDER FOR THE NOVEMBER 3, 2020 GENERAL ELECTION UTILIZING THE HAVA CARES ACT FUNDING AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize the Election's Office to purchase a Martin Yale Paper Folder for the November 3, 2020 General Election utilizing the HAVA Cares Act Funding and amend the budget accordingly. All present voted "Aye." MOTION PASSED.



AUGUST 18, 2020

- 35521 CALL FOR A PUBLIC HEARING ON AUGUST 25, 2020 REGARDING AN APPLICATION FOR HOUSING TAX CREDITS RELATED TO SUBMITTED BY MISSION DEVELOPMENT GROUP, LTD, PURSUANT TO SECTION 230.67071 OF THE TEXAS GOVERNMENT CODE.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to call for a public hearing on August 25, 2020 regarding an application for housing tax credits related to submitted by Mission Development Group, Ltd, pursuant to Section 230.67071 of the Texas Government Code. All present voted "Aye." MOTION PASSED.

- 35522 AUTHORIZE REPAIRS TO THE LBJ MUSEUM RELATED TO CONSTRUCTION SEALANT AND BAT ERADICATION FOR THE COUNTY OWNED BUILDING LOCATED AT 131 NORTH GUADALUPE STREET; AUTHORIZE A PURCHASING POLICY WAIVER REQUIRING THREE QUOTES AND AMEND THE BUDGET ACCORDINGLY.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize repairs to the LBJ Museum related to Construction Sealant and Bat Eradication for the County Owned Building located at 131 North Guadalupe Street; authorize a Purchasing Policy Waiver requiring three quotes and amend the budget accordingly. All present voted "Aye." MOTION PASSED.

- 35523 APPROVE EXTENSION OF RFP 2016-P06 BANK DEPOSITORY WITH SAGE CAPITAL BANK, N.A. FOR AN ADDITIONAL PERIOD NOT TO EXCEED 91 DAYS (NOVEMBER 30, 2020).**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to approve extension of RFP 2016-P06 Bank Depository with Sage Capital Bank, N.A. for an additional period not to exceed 91 days (November 30, 2020). All present voted "Aye." MOTION PASSED.

- 35524 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT/CONTRACT BETWEEN HAYS COUNTY AND BGE, INC TO PROVIDE CONSTRUCTION ENGINEERING, INSPECTION & TESTING (CE&I) SERVICES RELATED TO HAYS COUNTY ROAD IMPROVEMENT PROJECTS ON AN AS-NEEDED BASIS.**

Commissioner Jones noted once construction starts up the County will want someone overseeing the work. He believes BGE Inc. will do a good job. A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to authorize the County Judge to execute a Professional Services Agreement/Contract between Hays County and BGE, Inc. to provide construction engineering, inspection & testing (CE&I) services related to Hays County Road Improvement Projects on an as-needed basis. All present voted "Aye." MOTION PASSED.

- 35525 AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF KYLE RELATED TO THE RM 150 CENTER TURN LANE PROJECT.**

Commissioner Ingalsbe stated this will allow the County to conduct their work within Kyle. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to authorize the County Judge to execute an Interlocal Agreement between Hays County and the City of Kyle related to the RM 150 Center Turn Lane Project. All present voted "Aye." MOTION PASSED.

- 35526 AUTHORIZE THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE HAYS COUNTY LOCAL HEALTH DEPARTMENT (LHD) AND THE DEPARTMENT OF STATE HEALTH SERVICES (DSHS) FOR CERTAIN CONFIDENTIAL DATA WHICH DSHS MAINTAINS.**

Tammy Crumley, Director of County Wide Operations, stated this memorandum will allow her office to gain access to death records held by the Department of State Health Services. The records are needed for COVID-19 processes and recordings by the Health Department. The Court thanked Tammy Crumley for her work. A motion was made by Commissioner Smith, seconded by Commissioner Jones to authorize the execution of a Memorandum of Understanding (MOU) between the Hays County Local Health Department (LHD) and the Department of State Health Services (DSHS) for certain confidential data which DSHS maintains. All present voted "Aye." MOTION PASSED.



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AUGUST 18, 2020

**35527 RESCIND THE AWARD PREVIOUSLY GIVEN TO RUNBECK ELECTION SERVICES IN RELATION TO RFP 2020-P11 ELECTION BALLOT PRINTING, INSERTION AND MAILING SERVICES.**

Mark Kennedy, General Counsel, stated the company was not able to commit to a hard deadline for the ballots. The Elections office has decided to print in-house. **A motion was made by Commissioner Jones, seconded by Commissioner Ingalsbe to rescind the award previously given to Runbeck Election Services in relation to RFP 2020-P11 Election Ballot Printing, Insertion and Mailing Services. All present voted "Aye." MOTION PASSED.**

**35528 APPOINT DAN O'BRIEN TO THE BOARD OF DIRECTORS FOR THE DRIPPING SPRINGS TAX INCREMENT REINVESTMENT ZONES NO. 1 AND NO. 2 TO REPLACE MIKE FIGER, TERM ENDING DECEMBER 31, 2022.**

Commissioner Smith thanked Dan O'Brien. **A motion was made by Commissioner Smith, seconded by Commissioner Shell to appoint Dan O'Brien to the Board of Directors for the Dripping Springs Tax Increment Reinvestment Zones No. 1 and No. 2 to replace Mike Figer, term ending December 31, 2022. All present voted "Aye." MOTION PASSED.**

**35529 AUTHORIZE THE COUNTY JUDGE TO EXECUTE A MASTER INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY AND TEXAS STATE UNIVERSITY.**

Commissioner Shell stated this is mainly dealing with the Meadow Center and groundwater monitoring. Task orders will be brought back to Court for approval. Commissioner Smith stated he is in support of this master agreement and thanked Commissioner Shell for his work on this. **A motion was made by Commissioner Shell, seconded by Commissioner Jones to authorize the County Judge to execute a Master Interlocal Agreement between Hays County and Texas State University. All present voted "Aye." MOTION PASSED.**

**35530 APPROVE THE COLLECTION AGREEMENT WITH THE CITY OF SAN MARCOS, ACTING AS BOARD OF DIRECTORS FOR THE WHISPER PUBLIC IMPROVEMENT DISTRICT.**

**A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to approve the Collection Agreement with the City of San Marcos, acting as Board of Directors for the Whisper Public Improvement District. All present voted "Aye." MOTION PASSED.**

**DISCUSSION AND POSSIBLE ACTION GRANTING THE HAYS COUNTY SHERIFF'S OFFICE WITH THE AUTHORITY TO ENACT FUTURE AMENDMENTS OF THE HAYS COUNTY SHERIFF'S OFFICE WRECKER POLICY WITHOUT REQUIRING THE POLICY BE BROUGHT BACK TO THE COMMISSIONERS COURT FOR APPROVAL.**

Rodrigo Amaya made public comment against granting the Sheriff's office authority over future amendments. Esther Garcia public comment against granting the Sheriff's office authority over future amendments. Discussion was had among the Court members about past procedures and processes when dealing with the Wrecker policy and the Sheriff's office. Chief Mike Davenport spoke to the Court about the new wrecker policy. No action was taken.

**35531 AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS RELATED TO SAN MARCOS TEXAS TAX INCREMENT REINVESTMENT ZONE NO.5.**

Commissioner Shell stated the County would reduce their percentage of tax increments. Discussion was had between the Court and Marisol Villarreal-Alonzo, Auditor regarding the percentage that will be contributed and the percentage that will go towards the general fund. **A motion was made by Commissioner Shell, seconded by Commissioner Ingalsbe to authorize the County Judge to execute the Second Amendment to the Interlocal Agreement between Hays County and the City of San Marcos Related to San Marcos Texas Tax Increment Reinvestment Zone No.5. All present voted "Aye." MOTION PASSED.**



AUGUST 18, 2020

**DISCUSSION AND POSSIBLE ACTION TO RECONSIDER ELECTION DAY VOTE CENTER LOCATIONS FOR THE NOVEMBER 3, 2020 GENERAL ELECTION.**

Rolando Saucedo made public comment regarding the Citizens Elections Advisory Committee. Brandon James made public comment for a second voting location on the Texas State University Campus. Lisa Prewitt made public comment regarding voting access. Catherine Wicker made public comment for voting access and an additional voting location on the Texas State University campus. Discussion was had between the Court and Jennifer Anderson, Elections Administrator, regarding funds for additional voting locations, equipment for additional locations, and the process for mail ballots. Mark Kennedy, General Counsel, announced the Court's options regarding designating a different location for the main early voting location. Further discussion was had regarding staff available for voting locations. The Court called on Rolando Saucedo, Chair of the Citizens Elections Advisory Committee to review a proposed location for Texas State University. Commissioner Ingalsbe announced she would be willing to pass a second location at Texas State University campus at the next Commissioners' Court meeting. Commissioner Smith presented a power point regarding political influence entering the voting location selection process. No action was taken.

**10:00 A.M. - BUDGET WORKSHOP REGARDING THE FY 2021 HAYS COUNTY BUDGET. POSSIBLE ACTION MAY FOLLOW.**

Wes Mau, District Attorney, requested the Court include in the budget for re-grades of the Administrative staff. Brittany Richie, Treasurer, requested the Court make no change to the retirement plan, and include new personnel for her office in the budget. Elaine Cárdenas, County Clerk, requested new personnel and related equipment. Judge Tacie Zelhart spoke to the Court in support of the County Clerk's request for additional personnel. Mike Jones, Director of Office of Emergency Services, requested the Court include changes to the equipment requested. Constable John Ellen, Constable of Precinct 5, requested the Court include in the budget new Deputy Constables and associated equipment, and a salary increase for the Justice Clerk. Constable Ron Hood, Constable of Precinct 4, requested the Court include in the budget a new Deputy Constable with associated equipment and re-grade and re-title from Justice Clerk to Justice Clerk Trainer. Constable David Peterson, Constable of Precinct 1, requested the Court include into the budget a re-grade for Justice Clerk with a salary increase, and one leased vehicle with associated equipment. Russell Hayter made public comments in support of Constable John Ellen of Precinct 5 as well as the other Constables requests for the budget. James Blodgett made public comments in support of Constable John Ellen of Precinct 5 and Constable Ron Hood of Precinct 4 requests for the budget. Dan Lyon made public comment against requests for increasing the budget. Rodrigo Amaya made public comment regarding accountability.

**Clerk's Note:** Executive Session began at 4:07p.m. and resumed back into open court at 5:00 p.m.

**35532 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 AND/OR DISCUSSION MAY FOLLOW IN OPEN COURT.**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Jones to amend the authorization granted to the General Counsel to settle claims of actual damages from \$5,000.00 to \$10,000.00 with sign off by the Auditor's Office. All present voted "Aye." MOTION PASSED.

**EXECUTIVE SESSION PURSUANT TO SECTIONS 551.071 AND 551.074 OF THE TEXAS GOVERNMENT CODE: CONSULTATION WITH COUNSEL REGARDING THE COLLECTIVE BARGAINING AGREEMENT BETWEEN HAYS COUNTY AND THE HAYS COUNTY LAW ENFORCEMENT ASSOCIATION (HCLEA); AND CONSULTATION WITH COUNSEL AND DELIBERATION REGARDING ALL INDIVIDUAL POSITIONS SUBJECT TO SAID COLLECTIVE BARGAINING AGREEMENT. POSSIBLE DISCUSSION AND/OR ACTION MAY FOLLOW IN OPEN COURT.**

No action was taken.

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

Judge Becerra announced the burn ban is still in place.

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

HAYS COUNTY COMMISSIONERS' COURT MINUTES



\*\*\*\*\*

AUGUST 18, 2020

Judge Becerra read the Sheriff's update of the inmate population. The estimated cost for outsourcing was \$58,052 for the week of August 9 – August 15, 2020. The number of outsourced males was 167 inmates and females were 5 inmates. The number of arrest made by agency are as follows; Buda Police Department - 6, Department of Public Safety – 2, Hays County Sheriff's Department – 36, this includes court ordered commitments, warrant pick-ups from all agencies, and self-surrender warrants from all agencies, Kyle Police Department – 35, San Marcos Police Department - 30. No action taken.

**Clerk's Note Agenda Item #35 RE:** *DISCUSSION OF ISSUES RELATED TO THE HAYS COUNTY CENSUS PROGRAM INCLUDING UPDATES FROM JESSICA MEJIA. – WAS PULLED.*

**Clerk's Note Agenda Item #36 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 #37 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 5:05 p.m.

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I, ELAINE H. CÁRDENAS, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on August 18, 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

Approve the payment of the August 31, 2020 payroll disbursements in an amount not to exceed \$3,850,000.00 effective August 31, 2020 and post totals for wages, withholdings, deductions and benefits on the Hays County website once finalized.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 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
Britney Richey, Hays County Treasurer	BECERRA	N/A

#### SUMMARY

Approve the August end of month payroll disbursements not to exceed \$3,850,000.00.

## 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

Approve Utility Permits.

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Jerry Borcharding

#### SPONSOR

INGALSBE

#### CO-SPONSOR

JONES

#### SUMMARY

##### Permit #:

1186  
1187  
1188

##### Road Name:

Mathias Lane(Bore)  
Engelke Road(Bore)  
Centerpoint Road(Road Trench)

##### Utility Company:

Goforth SUD(Water)  
Goforth SUD(Water)  
Crystal Clear SUD(Water)

# HAYS COUNTY TRANSPORTATION DEPARTMENT



## UTILITY PERMIT APPROVAL LETTER

**\*Notification must be given IN WRITING at least 48 hours before work begins, and proper traffic control must be implemented throughout the work zone.  
Contact Tim Vande Vorde (512)-738-0747 and Tyler Pendergrass (512)-395-7286  
Prior to Work**

Approval of Utility **Permit # 1186**

Application Date: August 10, 2020

Commissioner Court Approval Date: August 25, 2020

### **Utility Company Info:**

- Name: Goforth SUD
- Address: 8900 Niederwald Strasse, Niederwald, Tx. 78640
- Phone: (512) 644-4640
- Contact: Mario Tobias

### **Engineer/Contractor Info:**

- Name: Goforth SUD
- Address: 8900 Niederwald Strasse, Niederwald, Tx. 78640
- Phone: (512) 644-4640
- Contact: Mario Tobias

**Type of Utility Service: Water**

**Road Name(s): 1851 Mathias Lane**

**Subdivision:**

**Pct. #: 2**

Proposes to do a ¾" bore inside a 2" PVC casing under Mathias Lane for a water service line.



Road and Bridge Department  
2171 Yarrington Road  
P O Box 906  
San Marcos, TX 78667-0906  
(512) 393-7385

## Application for Installation

### Utility Line on Hays County Right of Way

Date: 8-10-2020

Formal notice is hereby given that Gobeth SLD  
Company proposes to place a 3/4 inch bore inside a 2" PVC casing  
line within the right-of way of 1851 Mathis Road AKA CR 123  
as follows: (give location, length, general design, etc.)

See Attachment

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County, in accordance with governing laws, including but not limited to the "Federal Clean Water Act," the "Federal Endangered Species Act," and the "Federal Historic Preservation Act." Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions."

Our firm will insure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by 1 complete sets of drawings attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road; and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days' written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

Applicant agrees to notify HCRD prior to commencement of any routine of periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

Construction of this line will begin on or after the 19 day of August, 2020.

General Special Provisions: Gobeth will not bore until we have county approval.

By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm Gobeth SLD

Title General Manager

By (Print) Mario Tobias

Address 8900 Niedermuhl Street

Signature [Signature]

Niedermuhl To 78640

Phone 512-644-4640

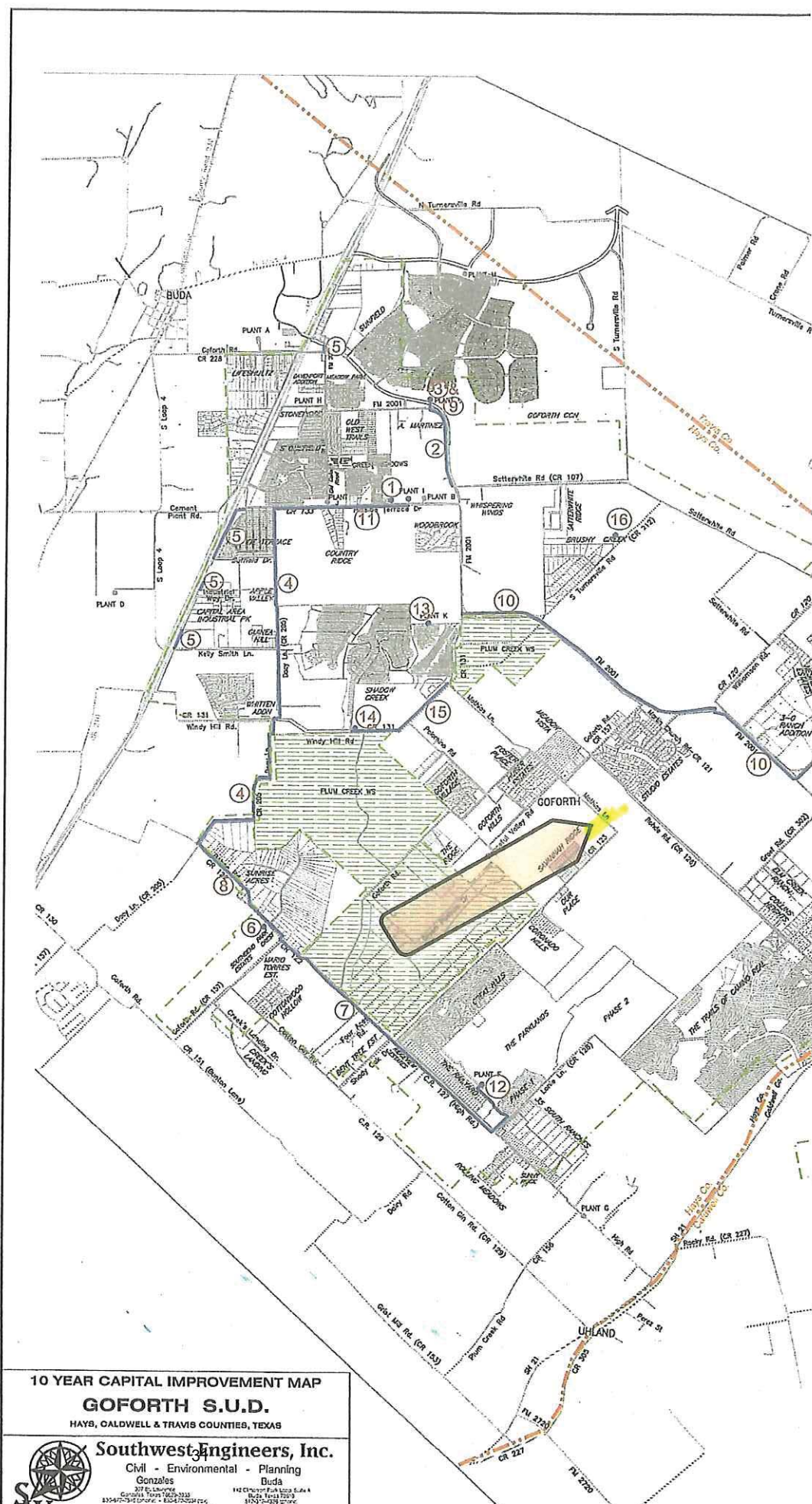
Approved by Hays County Road & Bridge Department

Signature

30

Title

Date



**10 YEAR CAPITAL IMPROVEMENT MAP**

**GOFORTH S.U.D.**

HAYS, CALDWELL & TRAVIS COUNTIES, TEXAS



**Southwest Engineers, Inc.**

Civil - Environmental - Planning

Gonzales      Buda

307 E. Lohmeyer      142 Chiswick Park Lane, Suite 4

Gonzales, Texas 76208-3333      Buda, Texas 76020

817-254-7250 (office)      817-254-7250 (cell)

www.southwesteng.com

**Southwest Engineers, Inc.**

Civil - Environmental - Planning

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307 E. Lohmeyer      142 Chiswick Park Lane, Suite 4

Gonzales, Texas 76208-3333      Buda, Texas 76020

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www.southwesteng.com

# HAYS COUNTY TRANSPORTATION DEPARTMENT



## UTILITY PERMIT APPROVAL LETTER

**\*Notification must be given IN WRITING at least 48 hours before work begins, and proper traffic control must be implemented throughout the work zone.  
Contact Tim Vande Vorde (512)-738-0747 and Tyler Pendergrass (512)-395-7286  
Prior to Work**

Approval of Utility **Permit # 1187**

Application Date: August 2, 2020

Commissioner Court Approval Date: August 25, 2020

### **Utility Company Info:**

- Name: Goforth SUD
- Address: 8900 Niederwald Strasse, Niederwald, Tx. 78640
- Phone: (512) 644-4640
- Contact: Mario Tobias

### **Engineer/Contractor Info:**

- Name: Goforth SUD
- Address: 8900 Niederwald Strasse, Niederwald, Tx. 78640
- Phone: (512) 644-4640
- Contact: Mario Tobias

**Type of Utility Service: Water**

**Road Name(s): 1091 Engelke Road**

**Subdivision:**

**Pct. #: 2**

Proposes to do a 1" PVC casing Bore, tubing, and meter set under Engelke Road for water service line.



Road and Bridge Department  
2171 Yarrington Road  
P O Box 906  
San Marcos, TX 78667-0906  
(512) 393-7385

## Application for Installation

### Utility Line on Hays County Right of Way

Date: 8-2-2020

Formal notice is hereby given that

Company proposes to place a 1" PVC Caseline base, tubing and anchor set  
line within the right-of way of 1091 Engcke Road  
as follows: (give location, length, general design, etc.)

*Please see attachments*

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County, in accordance with governing laws, including but not limited to the "Federal Clean Water Act," the "Federal Endangered Species Act," and the "Federal Historic Preservation Act." Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions."

Our firm will insure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by 1 complete sets of drawings attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road; and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days' written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

Applicant agrees to notify HCRD prior to commencement of any routine of periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

Construction of this line will begin on or after the 12 day of August, 2020.

General Special Provisions:

*Note: Gobeth will not bore until we have approval from Hays County Commissioners Court.*

By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm Gobeth SUD

By (Print) Mario Tobias

Signature [Signature]

Title General Manager

Address 8900 Niedauehl Strasse

Niedauehl Tx 78640

Phone 512-644-4640

Approved by Hays County Road & Bridge Department

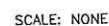
Signature

33

Title

Date

[Signature] Permit Coordinator 8/19/20



# HAYS COUNTY TRANSPORTATION DEPARTMENT



## UTILITY PERMIT APPROVAL LETTER

**\*Notification must be given IN WRITING at least 48 hours before work begins, and proper traffic control must be implemented throughout the work zone.  
Contact Tim Vande Vorde (512)-738-0747 and Tyler Pendergrass (512)-395-7286  
Prior to Work**

Approval of Utility **Permit # 1188**

Application Date: July 29, 2020

Commissioner Court Approval Date: August 25, 2020

### **Utility Company Info:**

- Name: Crystal Clear SUD
- Address: 2370 FM 1979 San Marcos, Tx. 78666
- Phone: (512) 738-3377
- Contact: Caleb Franke

### **Engineer/Contractor Info:**

- Name: Crystal Clear SUD
- Address: 2370 FM 1979 San Marcos, Tx. 78666
- Phone: (512) 738-3377
- Contact: Caleb Franke
- 

**Type of Utility Service: Water**

**Road Name(s): Intersection of Centerpoint Road and Viewpoint Drive**

**Subdivision:**

**Pct. #: 1**

Proposes to trench the road to relocate a 6" HOPE water mainline for the Centerpoint Road Project.



Road and Bridge Department  
2171 Yarrington Road  
P O Box 906  
San Marcos, TX 78667-0906  
(512) 393-7385

## Application for Installation

### Utility Line on Hays County Right of Way

Date: 7/29/2020

Formal notice is hereby given that CRYSTAL CLEAR SUD  
Company proposes to place a 6" HDPE MAINLINE  
line within the right-of-way of CENTERPOINT & VIEWPOINT DR.  
as follows: (give location, length, general design, etc.)

If the proposed installation is a parallel installation, then the installation shall be located two feet within the edge of right-of-way unless otherwise approved by the County.

The line will be constructed and maintained on the road right-of-way as directed by the Hays County Road Department (HCRD), an agency of the Commissioners Court of Hays County, in accordance with governing laws, including but not limited to the "Federal Clean Water Act," the "Federal Endangered Species Act," and the "Federal Historic Preservation Act." Upon request by the HCRD, proof of compliance with all governing laws, rules, and regulations will be submitted to HCRD before commencement of construction.

Our firm will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "General Special Provisions."

Our firm will insure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained during this installation.

The location and description of the proposed line and appurtenances is more fully shown by 1 complete sets of drawings attached to this notice.

It is expressly understood that Hays County does not purport, hereby, to grant any right, claim, title, or easement in or upon this road: and it is further understood that Hays County may require the owner to relocate this line, subject to provisions of governing laws, by giving thirty (30) days' written notice.

It is understood and agreed that any damages sustained to the appurtenances installed under this proposal as a result of road construction and/or maintenance, including but not limited to mowing, ditch cleaning, culvert repair or replacement, roadway excavation and base work shall be the sole burden and expense of the owner.

Applicant agrees to notify HCRD prior to commencement of any routine of periodic maintenance which requires pruning of trees within the road right-of-way, so that the County may provide specifications for the extent and methods to govern in trimming, topping, tree balance, type of cuts, painting cuts and clean up.

The installation shall not damage any part of the road and adequate provisions must be made to cause minimum inconveniences to traffic and adjacent property owners. In the event the Applicant fails to comply with any or all of the requirements as set forth herein, Hays County may take such action as it deems appropriate to compel compliance.

Construction of this line will begin on or after the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

General Special Provisions:

↑ PRIOR TO HAYS COUNTY LOWERING CENTERPOINT  
RD AT THE LOCATION SPECIFIED IN ATTACHED PLANS

By signing below, I certify that I am authorized to represent the Firm listed below, and that the Firm agrees to the conditions/provisions included in this permit.

Firm CRYSTAL CLEAR SUD

By (Print) CALEB FRANK

Signature Caleb Frank

Title CONSTRUCTION FOREMAN

Address 2370 FM 1979

SAN MARCOS, TX 78666

Phone (512) 738-3377

Approved by Hays County Road & Bridge Department

Signature

Title

Date

# CRYSTAL CLEAR SPECIAL UTILITY DISTRICT

## CENTER POINT ROAD PIPELINE RELOCATION PROJECT

MAY 2020



Sheet List Table	
Sheet Number	Sheet Title
C0.0	COVER SHEET
C1.0	GENERAL NOTES, LEGEND AND QUANTITY SUMMARY TABLE
C2.0	SHEET LAYOUT AND CONTROL POINT LOCATION MAP
C2.1	WATERLINE A PLAN AND PROFILE
C2.2	WATERLINE B PLAN AND PROFILE
C2.3	WATERLINE C PLAN AND PROFILE
C3.0	STANDARD CONSTRUCTION DETAILS - SHEET 1
C3.1	STANDARD CONSTRUCTION DETAILS - SHEET 2



### VICINITY MAP

NOT TO SCALE



MAIN OFFICE  
P.O. BOX 970  
SPRING BRANCH, TX 78070  
PHONE \* (830) 228-5446  
FAX \* (830) 885-2170

BRANCH OFFICE  
376 LANDA ST.  
NEW BRAUNFELS, TEXAS 78130

C0.0

## 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 utilize existing funds to purchase a refrigerator for the new Allen Bridges Training Center and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	\$850.00

#### LINE ITEM NUMBER

001-618-00.5719\_400

#### 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

A refrigerator is needed for the new training center; this item is not included in the bond. The total cost is \$850.00 and the S.O. has identified existing funds from the Training Academy Expense general ledger.

Budget Amendment

001-618-00.5333 Training Academy Expense (\$850.00)

001-618-00.5719\_400 Miscellaneous Equipment Operating \$850.00

## 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 Sheriff's Office to utilize salary savings to purchase 13 replacement Surface Pro Laptops and Axon In-Car Camera Systems valued at \$68,408 and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	\$68,408

#### LINE ITEM NUMBER

001-618-00]

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

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

#### SUMMARY

The Sheriff's Office is requesting to use salary savings to purchase 13 Surface Pro laptops and 13 Axon In-Car Camera systems. These systems will replace Coban Equipment that is included in the FY21 budget so the equipment can be ordered immediately in preparation for the new RMS/CAD System. The total cost of the Surface Pro packages is \$20,477 and the total cost of Axon Fleet equipment is \$47,931. This includes the laptops, vehicle mounts, cradlepoints, antennas, in-car camera system, evidence.com and the officer safety plan. Salary savings have been identified to fund this request.

Attachments: Microsoft Store Quote #0000777502  
DIR Contract #DIR-CPO-4471  
Axon Enterprise, Inc. Quote #Q263057-44040.912  
BuyBoard Contract #568-18

Budget Amendment  
001-618-00.5021 Staff Salaries (\$68,408)  
001-618-00.5202 Data Processing Supplies \$10,868  
001-618-00.5712\_400 Computer Equipment Operating \$57,540



## (13) Surface Pro 7|Hays County|Adgutie

### Microsoft Store

The Domain 3309 Esperanza Crossing, Suite 104

US Austin, TX 78758-7762

EFFECTIVE FROM : 7/9/2020

EFFECTIVE TO : 8/31/2020

<b>Company Name:</b>	Hays County	<b>Bill To:</b>	Hays County, Auditor 712 South Stagecoach Trail, Ste 1071
<b>Account Number:</b>	USA-0000777502		
<b>Contact Email:</b>	Marva@co.hays.tx.us		
<b>Phone:</b>	5123932845		San Marcos, TX 78666

<b>Comments:</b>	TX DIR-CPO 4471
------------------	-----------------

QTY	DESCRIPTION	SKU	MSRP	DISCOUNT	UNIT PRICE	LINE TAX	LINE TOTAL
13	Microsoft Surface Pro 7 - i5/8/256 (Platinum) Commercial	PVR-00001	\$1,299.99	\$2,366.00	\$1117.9900	\$0.00	\$14,533.87
13	MS CFB ADH SRFC Pro US 4Y from Prchse	HP3-00002	\$299.00	\$621.92	\$251.1600	\$0.00	\$3,265.08
13	Microsoft Surface Pro Type Cover - Black	FMM-00001	\$129.99	\$337.97	\$103.9923	\$0.00	\$1,351.90
13	Microsoft Ethernet Adapter - USB 3.0 Gigabit	EJR-00002	\$39.99	\$103.97	\$31.9923	\$0.00	\$415.90
1	Microsoft Tracking SKU - Texas DIR Dept of Info Resources	QL6-00005	\$0.00	\$0.00	\$0.0000	\$0.00	\$0.00
1	Microsoft Tracking SKU - Surface DR	QL6-00007	\$0.00	\$0.00	\$0.0000	\$0.00	\$0.00
13	UAG Surface Pro Case Black SFPRO4-BLK-VP	QF6-00093	\$69.95	\$0.00	\$69.9500	\$0.00	\$909.35

<b>In-Store Services</b>
Personalized 1 on 1 Training (1hr.) Group Training Answer Desk Free Virus Removal Out Of The Box Setup Experience Microsoft Signature Image

<b>TOTAL DISCOUNT</b>	\$3,429.86
<b>SHIPPING COST</b>	\$0.00
<b>Fee/Charges</b>	\$0.00
<b>SUBTOTAL</b>	\$20,476.10
<b>TOTAL TAX</b>	\$0.00
<b>TOTAL</b>	\$20,476.10

<b>OnSite Services</b>
Group Training

<b>Authorized Buyer:</b>	Marisol Villarreal-Alonzo
<b>Authorized to Pick:</b>	Marisol Villarreal-Alonzo

<b>Quote Status:</b>	Draft
<b>CreatedBy:</b>	Adrian Gutierrez

This Quote is not a binding offer and is subject to change without notice until such time as a purchase has been completed. A purchase shall be deemed to have been completed when the product, in the quantity agreed to, has shipped and either payment has been made (by cash, credit, or other mutually-agreed method) to Microsoft or a purchase order has been accepted by Microsoft. Product prices and availability are subject to change at any time and without notice. If the Quote includes promotional pricing, the Quote expires when the promotion ends. Microsoft may place a limit, at any time and for any reason, on quantities that may be purchased per order, per account, per credit card, per person, per business entity, or per household. Microsoft may also refuse, reject, or cancel any order at any time and for any reason. Microsoft also reserves the right, in its sole discretion, to restrict or prohibit sales to dealers or resellers. This Quote does not apply to and cannot be combined with any other offers or promotions. This Quote does not include shipping charges. Any shipping charges will be calculated and applied at the time of purchase.

**Thank you for shopping at Microsoft!**

Microsoft Stores Direct Business Sales Terms – United States  
September 2019

By submitting a purchase order to Microsoft, or by making payment to Microsoft for the Device(s), Customer agrees that the following device purchase terms shall apply to the product, device or hardware (the "Device(s)") purchase identified herein ("Agreement"). This Agreement is separate and independent from any other agreement between Microsoft and Customer that involves or may involve the purchase of any software or other products from Microsoft, including but not limited to any Volume Licensing or other agreement. To the extent such other agreement may apply to Devices or other products covered by this Agreement, and unless otherwise mutually agreed to in writing, its terms supersede any inconsistent or conflicting terms in this Agreement or any resulting agreement between the parties. The Customer's purchase order terms and conditions will not apply to this purchase.

If you are purchasing a Surface Hub or a HoloLens 2 device from the Microsoft Store, please see applicable terms below in Sections 14 and 15, respectively.

If Customer is a federal, state or local government entity (including education), Customer and Microsoft may have entered into separate and independent terms and conditions via requests for proposal, purchasing programs, procurement cooperatives, or otherwise (e.g. NASPO, Texas DIR, CPV). To the extent such other agreement may apply to the Devices or other products covered by, and purchased under, this Agreement, such terms supersede any inconsistent or conflicting terms in this Agreement or any other resulting agreement between the parties.

1. Acceptance. Each Customer purchase order is subject to Microsoft's acceptance and the availability of Devices. Microsoft may decline or cancel any order, or reduce the amount of Devices due to availability, at any time prior to shipping to the Customer. Customer may not cancel any order once Microsoft has notified Customer of Microsoft's acceptance of the purchase order. Microsoft may, in its sole discretion, impose a minimum order requirement to which Customer must agree prior to Microsoft accepting its purchase order.

2. Affiliates and Resale. Customer may make Devices purchased under this Agreement available for use by their Affiliates within a country in which Microsoft makes the same Devices available. Absent Microsoft's written consent, Customer may not, in any circumstance, make Devices purchased under this Agreement available for use by any unrelated third party. Absent Microsoft's written consent, Customer may not, in any circumstance, resell, lease or transfer for any value any Device purchased under this Agreement.

3. Delivery. Unless otherwise agreed in writing by the parties, Microsoft will deliver Devices purchased under this Agreement to the location Customer designates on any applicable order form (DDP, Incoterms 2010, or any updates thereto). Unless otherwise agreed, Microsoft will use ground shipping to ship Devices to Customer.

4. Preorders. If a Purchase Order includes any Device(s) that will be released at a future date (a "Preorder"), a Microsoft representative will notify Customer's designated contact person when the Device(s) covered by the Preorder are scheduled to ship. Unless Customer notifies Microsoft within 10 days of receipt of this notification with a request to cancel its Preorder (the "Cancellation Notice"), Microsoft will fulfill the Preorder and invoice Customer upon Device shipment. Microsoft may fulfill the Preorder in whole or in part, and Customer agrees to accept Devices covered by its Preorder in one or multiple shipments, provided that Microsoft will only invoice Customer for units actually shipped.

5. Limitation of Liability. The total liability of each party for all claims related to each purchased Device and this Agreement is limited to direct damages up to the amount Customer paid for the purchased Device(s) or the total amount paid under this Agreement, whichever is less. Customer may not recover any other damages, including consequential, incidental, indirect, special, reliance or punitive damages, or lost profits. These limitations apply to all damages related in any way to this Agreement, including anything related to any applicable manufacturer's warranty and claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, reliance or other torts to the extent permitted by applicable law. It also applies even if Microsoft knew or should have known about the possibility of the damages. Some States or Provinces do not allow limitations on liability as stated above, so some or all of this limitation may not apply to Customer.

6. Software Licenses. Software included with, or preloaded on, the Devices ("Included Software") purchased under this Agreement may be subject to separate license terms included with that software ("EULA"). Customer accepts the EULA (1) by signing and/or clicking "Submit" on any Microsoft order form page (if the EULA is attached or available online), (2) by breaking the seal on packaging of a Device that refers to the EULA, (3) by using the Device or (4) by installing, copying or otherwise using the Included Software. If more than one software product is included in the Included Software, e.g., operating system software and a productivity software suite, then each product may have its own EULA. Customer is not authorized to install or use the Included Software unless Customer first agrees to the Included Software's EULA or has a separate license agreement with Microsoft governing use of such Included Software. If Customer does not want to agree to a EULA, Customer may return the Device unused to Microsoft for a full refund. Each EULA is not part of this Agreement, but to the extent of any conflict with this Agreement, the EULA will control solely for the Included Software to which it applies.

7. Services. Microsoft may be asked to provide training, support or depot (customized device), or other services incidental to the Devices purchased under this Agreement (the "Services"). Unless otherwise stated in this Agreement, the following terms shall apply to the delivery of all such Services:

- (a) Insurance. Microsoft will maintain industry-appropriate insurance coverage at all times when performing Professional Services on Customer's premises under this agreement via commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative. Microsoft will provide Customer with evidence of coverage on request.
- (b) Use of technical information from Services. Microsoft may use any technical information Microsoft derives from providing Services for problem resolution, troubleshooting, product functionality enhancements, fixes, and for Microsoft's knowledge base. Microsoft agrees not to identify Customer or disclose any of Customer's Confidential Information in any item in the knowledge base.
- (c) Microsoft as independent contractor. Microsoft provides Services as an independent contractor and will be responsible for all social security, unemployment, workers' compensation and other withholding taxes for all of Microsoft's employees. Customer and Microsoft each may develop products independently without using the other's Confidential Information.

8. Warranties. The sole warranty Microsoft provides for Devices is the manufacturer's warranty (if any) provided with the Device(s). Microsoft warrants that Services it provides will be performed in a professional and workmanlike manner, consistent with industry standards. If Microsoft fails to meet the warranty and Customer notifies Microsoft within 90 days of the date of performance, then Microsoft will either re-perform the Services or return the price paid for them. MICROSOFT PROVIDES NO OTHER WARRANTIES OR CONDITIONS AND DISCLAIMS ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING WARRANTIES OF QUALITY, TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This disclaimer will apply except to the extent not permitted by applicable law.

9. Payment Terms for Microsoft's Invoice; Credit Review.

Payments to Microsoft must be made in the currency and according to the terms stated on Microsoft's invoice. The terms of any extension of credit under this agreement may be withdrawn by Microsoft upon notice. Microsoft may assess a finance charge on all past due amounts, payable on demand and equal to the lesser of an annual rate of 1% per month or the highest amount allowed by law, applied from the first day the amount is past due until paid in full. Microsoft has no obligation to continue to provide Services if Customer fails to make timely payment. All payment terms are net

30 days from date of invoice.

By accepting the terms of this Agreement, Customer also agrees that Microsoft may obtain a current credit report related to the business entity identified in the credit application and conduct a review of the credit report. Upon request, Microsoft will tell Customer the name and address of each credit reporting agency from which Microsoft obtained a current credit report. Microsoft may also request audited financial statements to verify financial condition. Microsoft may periodically review the credit performance of the Customer. Deterioration in payment history, financial strength, new reports of judgments/liens or bankruptcy could result in adjustments to the credit terms granted to the Customer.

10. Returns. Unless as otherwise stated below, Microsoft will accept returns for Devices that meet the return criteria set forth below for 30 days from the date of purchase or download, as applicable. All returns and exchanges must be accompanied by the original documentation, instruction manuals, registration, parts and components (including cables, controllers, and accessories) and the original manufacturer packaging. Refunds will equal the amount paid less the original shipping and handling charges, if any. The following items may not be returned: (i) items that have been personalized or customized; (ii) special order items; (iii) items that have been used, altered or that show wear or damage; (iv) gift cards and Skype cards; and (v) items that are not in resalable condition.

Services that have already been performed may not be returned or refunded.

For software and games, you may only return opened items during the return period if: (i) you don't agree with the license agreement, or (ii) the media does not work, and (iii) only if you do not make or retain any copies. Opened software and games may only be exchanged for the same product. If we no longer have the same product, we will issue you a Microsoft Store credit.

ALL SALES ARE FINAL for random access memory ("RAM") products and clearance items or those marked with a designation such as "Final Sale" or "Non-Returnable." For promotional items and bundles, and unless otherwise stated in writing, all included products and/or Services must be returned together. If a service included in the promotion and/or bundle has been used (for example a used promotional promo code), the full retail value of the service will be deducted from the refund amount. When a bundle is purchased and only part of the bundle is returned, the bundle discount is void, and the total bundle discount will be deducted from the refund.

A restocking fee of ten percent (10%) may be deducted from the refund amount for hardware products.

Microsoft is not responsible for any personal data included on returned or exchanged items. Please ensure that your personal data is removed from all items prior to return or exchange.

Notwithstanding the foregoing, nothing in this section will be construed as a waiver of your statutory rights under the law regarding returns, exchanges or withdrawal rights.

#### 11. Compliance with laws, privacy and security.

Microsoft and Customer will each comply with all applicable laws and regulations (including applicable security breach notification laws). However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not also generally applicable to information technology services providers. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement.

Customer may choose to provide the personal information of third parties to Microsoft (including Customer's contacts, resellers, distributors, administrators, and employees) as part of this Agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

#### 12. Defense of third-party claims.

Microsoft will defend Customer against any claim by an unaffiliated third party that a Device infringes its patent, copyright or trademark, or makes unlawful use of its trade secret. Microsoft will pay any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (1) Customer Data; (2) non-Microsoft software; (3) modifications to a Device made by Customer or any specifications or material Customer provides; (4) Customer's combination of the Device with (or damages based on the value of) a non-Microsoft product, business process or data; (5) Customer's use of a Microsoft trademark without express, written consent, or Customer's use of a Device after being notified to stop due to a third-party claim; (6) Customer's use or distribution of a Device in violation of this agreement, or (7) Devices provided free of charge.

If Microsoft reasonably believes that a third party claim under this section may bar Customer's use of the Device, Microsoft will seek to obtain the right for Customer to keep using it or modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer's right to the Device and refund any amounts Customer has paid.

Customer must (1) notify Microsoft of any claim subject to this section, (2) give Microsoft sole control over the defense or settlement, and (3) provide reasonable assistance in the defense of the claim. Out-of-pocket expenses incurred in providing reasonable assistance will be reimbursed. Microsoft must approve any settlement. The remedies provided in this section are the exclusive remedies for the claims described in this section.

#### 13. Additional Terms.

- (a) Non-Microsoft software and technology. Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Devices or otherwise in connection with this agreement. Customer will direct and control the installation and use of such software or technology through its actions (including the use of APIs and other technical means). Microsoft is not a party to and is not bound by any terms governing Customer's use of non-Microsoft software or technology. Microsoft will not run or make any copies of such software or technology outside of its relationship with Customer. Customer may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement.
- (b) Applicable law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement.
- (c) U.S. export. Devices are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies. For additional information related to Microsoft compliance with export rules, see <http://www.microsoft.com/exporting>. Customer must notify Microsoft at [cmec@microsoft.com](mailto:cmec@microsoft.com) as to any regulatory or legal controls on the use, access or transfer of Customer's software or technology prior to such use, access or transfer to or by Microsoft. Customer will provide sufficient information to permit Microsoft to comply with applicable controls on Customer's software or technology.
- (d) Taxes.
  - (i) If any amounts are to be paid to Microsoft, the amounts owed by Microsoft are exclusive of any taxes. Customer shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order submitted under this agreement and which are permitted to be collected from Customer by Microsoft under applicable law. Customer shall be responsible for any applicable stamp

taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on transactions between Customer and its Affiliates. Microsoft shall be responsible for all taxes based upon its net income or its property ownership.

- (ii) For qualified Customers, prices may exclude any sales or use taxes, duties, and other governmental charges (including any value added taxes). Customer will provide Microsoft a valid exemption certificate, and then Microsoft will not collect the taxes covered by such certificate.
- (iii) If any taxes are required to be withheld on payments made by Customer to Microsoft, Customer may deduct such taxes from the amount owed Microsoft and pay them to the appropriate taxing authority; provided however, that Customer promptly secures and delivers an official receipt for those withholdings and other documents reasonably requested by Microsoft to claim a foreign tax credit or refund. Customer will make certain that any taxes withheld are minimized to the extent possible under applicable law. Customer remains obligated to pay Microsoft for the amount of tax withheld until Customer provides to Microsoft the official receipt and other documents reasonably requested.
- (e) Use of contractors. Microsoft may use contractors to perform Services, but will be responsible for their performance, subject to the terms of this agreement.
- (f) No third-party beneficiaries. This agreement does not create any third-party beneficiary rights.
- (g) Survival. Provisions regarding ownership and license rights, fees, Use Rights, restrictions on use, warranties, limitations of liability, confidentiality, defense of claims by either party, compliance verification, obligations on termination, and the provisions in the section titled "Miscellaneous," will survive termination of the agreement.
- (h) Severability. If any provision of this agreement is held to be illegal, invalid, or unenforceable, the remaining provisions will remain in effect and the agreement will be deemed amended to give maximum effect to the eliminated provision.
- (i) Waiver. Failure to exercise any right or remedy will not constitute a waiver. Any waiver must be in writing and executed by the waiving party.

14. HoloLens Terms of Use and Sale. The following additional terms (Section 14) apply if you are purchasing a HoloLens device.

(a) HoloLens 2 Commercial Terms (for Commercial and Developer versions).

1. Applicable Terms.

- i. Microsoft HoloLens 2 is intended for sale to commercial businesses and education entities, and, in the case of the developer edition, to developers. It is not intended for sale to consumers or individuals. By purchasing, you hereby agree not to resell the product. Unless otherwise agreed to in writing, ALL SALES OF A HOLOLENS 2 COMMERCIAL AND DEVELOPER DEVICE ARE FINAL AND NON-REFUNDABLE, AND HAVE A MANUFACTURER'S LIMITED WARRANTY.
- ii. This product is not intended for use by children under the age of 13.
- iii. In addition to these Microsoft Stores Direct Business Sales Terms, the Microsoft HoloLens 2 Commercial Terms of Use and Sale (the "HoloLens Commercial Store Terms") apply to you if you submit a purchase order for a HoloLens 2. Please visit: <https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE1YIXi> to review the HoloLens Commercial Terms. By purchasing you also agree to the software license here: [https://www.microsoft.com/en-us/Useterms/OEM/Windows/10Mobile/UseTerms\\_OEM\\_Windows\\_10Mobile\\_English.htm](https://www.microsoft.com/en-us/Useterms/OEM/Windows/10Mobile/UseTerms_OEM_Windows_10Mobile_English.htm)

2. Order of Precedence. In the event of a conflict between the HoloLens 2 Commercial Store Terms and the Microsoft Stores Direct Business Sales Terms, and except as set forth in Section 14(b) below, the HoloLens 2 Commercial Store Terms prevail.

- (b) Notwithstanding the terms set forth in Section 14(a) above, you agree that, as it pertains to any HoloLens device sold under these Microsoft Stores Direct Business Sales Terms: (i) the HoloLens device is being sold to you by Microsoft Corporation, a U.S. entity; and (ii) the sale is governed by the law, and is subject to the exclusive jurisdiction, as set forth in Section 13(b) (Applicable Law) above.

15. Surface Hub Terms of Sale. The following additional terms (Section 15) apply if you are purchasing a Surface Hub device.

- (a) The Surface Hub is intended for sale to business and education entities. It is not intended for sale to consumers. By purchasing a Surface Hub, you hereby agree not to resell the product. Unless otherwise agreed to in writing, and subject to the standard manufacturer's warranty, ALL SALES OF A SURFACE HUB DEVICE, INCLUDING ADDITIONAL ACCESSORIES AND SERVICES ARE FINAL AND NON-REFUNDABLE.

[Customer]

[MICROSOFT CORPORATION]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

RETURN POLICY



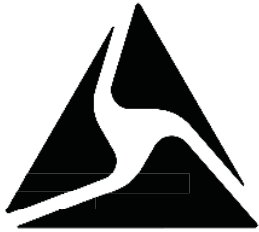
# AXON

## Hays County Sheriff's Office- TX

### AXON SALES REPRESENTATIVE

Danny Thielen  
(480) 434-8810  
dthielen@axon.com

**ISSUED**  
7/28/2020



**Axon Enterprise, Inc.**  
17800 N 85th St.  
Scottsdale, Arizona 85255  
United States  
Phone: (800) 978-2737

**Q-263057-44040.912DT**

Issued: 07/28/2020



**Quote Expiration: 09/01/2020**

**Account Number: 112056**

Payment Terms: Net 30  
Delivery Method: Fedex - Ground  
Contract Number: 00027237

**SALES REPRESENTATIVE**

Danny Thielen  
Phone: (480) 434-8810  
Email: dthielen@axon.com  
Fax:

**PRIMARY CONTACT**

David Burns  
Phone: (512) 738-0721  
Email: david@co.hays.tx.us

**SHIP TO**

David Burns  
Hays County Sheriff's Office- TX  
1307 UHLAND ROAD  
San Marcos, TX 78666  
US

**BILL TO**

Hays County Sheriff's Office- TX  
1307 UHLAND ROAD  
San Marcos, TX 78666  
US

**Year 1**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Axon Plans &amp; Packages</b>						
80217	FLEET 2 UNLIMITED WITH TAP PAYMENT	12	13	1,548.00	1,548.00	20,124.00
<b>Hardware</b>						
11634	CRADLEPOINT IBR900-1200M-NPS+5 YEAR NETCLOUD ESSENT (PRIME)		13	1,509.00	1,509.00	19,617.00
11511	ROUTER ANTENNA, FLEET		13	270.00	270.00	3,510.00
80214	FLEET EVIDENCE.COM UNLIMITED STORAGE	60	13	0.00	0.00	0.00
71088	AXON FLEET 2 KIT		13	0.00	0.00	0.00
87069	TECH ASSURANCE PLAN FLEET 2 KIT WARRANTY		13	0.00	0.00	0.00
74110	CABLE, CAT6 ETHERNET 25 FT, FLEET		13	0.00	0.00	0.00
71100	CABLE ASSEMBLY, POWER HARNESS, FLEET 2		13	0.00	0.00	0.00
<b>Other</b>						
87050	FLEET VIEW XL ACCESS LICENSE	60	13	0.00	0.00	0.00
Subtotal						43,251.00
Estimated Shipping						0.00
Estimated Tax						0.00
Total						43,251.00

## Year 2

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80217	FLEET 2 UNLIMITED WITH TAP PAYMENT	12	13	1,548.00	1,548.00	20,124.00
					Subtotal	20,124.00
					Estimated Tax	0.00
					Total	20,124.00

## Year 3

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80217	FLEET 2 UNLIMITED WITH TAP PAYMENT	12	13	1,548.00	1,548.00	20,124.00
					Subtotal	20,124.00
					Estimated Tax	0.00
					Total	20,124.00

## Year 4

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80217	FLEET 2 UNLIMITED WITH TAP PAYMENT	12	13	1,548.00	1,548.00	20,124.00
					Subtotal	20,124.00
					Estimated Tax	0.00
					Total	20,124.00

## Year 5

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80217	FLEET 2 UNLIMITED WITH TAP PAYMENT	12	13	1,548.00	1,548.00	20,124.00

Year 5 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73335	FLEET CAMERA REFRESH (ONE FRONT AND ONE REAR)		13	0.00	0.00	0.00
					Subtotal	20,124.00
					Estimated Tax	0.00
					Total	20,124.00
Grand Total						123,747.00

## Summary of Payments

Payment	Amount (USD)
Year 1	43,251.00
Year 2	20,124.00
Year 3	20,124.00
Year 4	20,124.00
Year 5	20,124.00
<b>Grand Total</b>	<b>123,747.00</b>

STATEMENT OF WORK & CONFIGURATION DOCUMENT

## Axon Fleet In-Car Recording Platform





This document details a proposed system design

Agency Created For: Hays County Sheriff's Office- TX

Quote: Q-263057-44040.912DT

Sold By:	Danny Thielen
Designed By:	Evan Bates
Installed By:	Customer
Target Install Date:	

## VEHICLE OVERVIEW

SITE NAME	CUSTOMER NAME
Headquarters	Hays County Sheriff's Office- TX
<div> <div> <b>Total Configured Vehicles</b> <ul style="list-style-type: none"> <li>13 Total Vehicles with this Configuration</li> </ul> </div> <div> <b>Video Capture Sources</b> <ul style="list-style-type: none"> <li>26 Total Cameras Deployed</li> <li>1 Axon Signal Unit(s) Per Vehicle</li> </ul> </div> <div> <b>Mobile Data Terminal Per Vehicle</b> <ul style="list-style-type: none"> <li>1 Located In Each Vehicle</li> </ul> </div> <div> <b>Mobile Router Per Vehicle</b> <ul style="list-style-type: none"> <li>1 Cradlepoint IBR900-1200</li> </ul> </div> <div> <b>Offload Mechanism</b> <ul style="list-style-type: none"> <li>4G LTE Cellular</li> </ul> </div> <div> <b>Evidence Management System</b> <ul style="list-style-type: none"> <li>Evidence.com</li> </ul> </div> </div> <div>  <p>Axon Camera</p>  <p>Signal Unit</p>  <p>In-Car Router</p>  <p>Battery Box</p> </div>	

## SYSTEM CONFIGURATION DETAILS

The following sections detail the configuration of the Axon Fleet In-Car System

### Vehicle Hardware

Vehicle Hardware	2	Axon Fleet Cameras will be installed in each vehicle
	2	Axon Fleet Battery Boxes will be installed in each vehicle
	1	Axon Signal Units will be installed in each vehicle
	1	Cradlepoint IBR900-1200 router will be installed in each vehicle
Axon Battery Boxes	The battery box provides power to its connected camera for up to 4 hours allowing for video offload while the vehicle ignition state is OFF and the MDT is connected and available.	
Signal Activation Methods	When triggered, the Axon Signal Vehicle (ASV) device will activate the recording mechanism for all configured Axon cameras within 30 feet of the vehicle.	
Mobile Data Terminal	Each vehicle will be equipped with a Mobile Data Terminal provided by the customer.	
Mobile Data Terminal Requirements	<p><b>Operating System:</b> Windows 7 or Windows 10 - x32 or x64 with the most current service packs and updates</p> <p><b>Hard Drive:</b> Must have 25GB+ of free disk space</p> <p><b>RAM/Memory:</b> Windows 7 - 4GB or greater   Windows 10 - 8GB or greater</p> <p><b>Ethernet Port:</b> The system requires the MDT to have one dedicated and available Ethernet port reserved for an Ethernet cable from router. The Ethernet port can be located on an electronic and stationary mobile docking station. If a docking station is used, it is the preferred location for the Ethernet port.</p> <p><b>Wi-Fi Card:</b> The system requires an 802.11n compatible Wi-Fi card using 5Ghz band.</p> <p><b>USB Ports:</b> If the computer is assigned to the officer and does not remain with the vehicle, then the number dongles ordered should equal the number of officers or the number of computers assigned. At least one dedicated and available USB 2.0 port for the Fleet USB dongle USB Port on MDT or Dock.</p>	

<b>Additional Considerations</b>	If the customer has a MiFi hotspot, embedded cellular, or USB 4G, then the customer must purchase a Cradlepoint router with an external antenna and Cradlecare. For agencies that use NetMotion Mobility, Axon traffic must be passed through; such that it does not use the Mobility VPN tunnel. Customer must provide IT and / or Admin resources at time of installation to ensure data routing if functional for Axon Fleet operation.	
	In the event an Agency is unable to support the IT requirements associated with the installation, Axon reserves the right to charge the Agency for additional time associated with on-site work completed by an Axon Employee.	
<b>Hardware Provisioning</b>	Axon will provide the following router for all vehicles:	Cradlepoint IBR900-1200
	The customer will provide a MDT for each vehicle	

### In-Car Network Considerations

Network Requirements	Cradlepoint IBR900-1200 will create a dedicated 5Ghz WiFi network within each vehicle. This network will join the Axon Fleet cameras and Mobile Data Terminal together.			
Network Addressing	IP Addressing		Total IPs Required	
	Axon Fleet Cameras	26	52	
	Mobile Data Terminal	13		
	Cradlepoint IBR900-1200	13		
Hardware Provisioning	Customer to provide all IP addressing and applicable network information			

### Network Consideration Agreement

<b>Network Consideration Agreement</b>	Customer acknowledges the minimum requirements for the network to support this Statement of Work.
	All Axon employees performing services under this SOW are CJIS certified.
	If the network provided by Customer does not meet the minimum requirements, or in the event of a requested change in scope of the project, a Change Order will be required and additional fees may apply. Additional fees would also apply if Axon is required to extend the installation time for reasons caused by the customer or the customer network accessibility.

## Professional Services & Training

<b>Project Management</b>	Axon will assign a Project Manager that will provide the expertise to execute a successful Fleet camera deployment and implementation. The Project Manager will have knowledge and experience with all phases of the project management lifecycle and with all application modules being implemented. He/she will work closely with the customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables.
<b>Vehicle Installation</b>	<p>Customer will be performing the installation of all Axon Fleet vehicle hardware. Installation services purchased from Axon include a "clip" and removal of existing in-car system hardware. This does not include "full removal" of existing wiring. A "full removal" of all existing hardware and wiring is subject to additional fees. Axon provides basic Fleet operation overview to the customer lead and/or Admin at the time of install.</p> <p>Clip vs Rip installation removal:</p> <ul style="list-style-type: none"> <li>○ It is necessary to differentiate between the type of equipment removal to be provided by Axon. Standard Fleet Installation includes hardware removal in a fashion considered "Clip" which means Axon cuts the wires from the old system without removing multiple panels, removing all wiring and parts from the old system. In the case Axon removes the hardware Axon is not responsible for the surplus of hardware or any devices that may have been physically integrated with the removed system. In some situations, radar systems are integrated with the in-car video system and have a cable that connects to the system, if Axon removes the old in car system then Axon is not responsible for the radar system as part of the removal.</li> <li>○ A "Rip" removal should be contracted through ProLogic directly. The Rip would be similar to a complete and full removal, which is more common when they retire a vehicle from service.</li> </ul>
<b>Custom Trigger Installation</b>	Axon Signal Units have multiple trigger configuration options. Any trigger configurations that include a door or magnetic door switch are considered "custom" and may be subject to additional fees. An Axon representative has discussed with the Agency the standard triggers of the Fleet System. Those standard triggers include light-bar activation, speed, crash and gun-locks. The light-bar must have a controller to allow Axon to interface for the desired position, gun-locks must be installed with existing hardware in the vehicle. Doors are considered "CUSTOM" since they required additional hardware and time for installation, typically requiring the door may need to be taken apart for the installation.
<b>Training</b>	<p>End-user go-live training provides individual device set up and configuration assistance, training on device use, Evidence.com and AXON View XL.</p> <p>End-user go-live training and support is not included in the installation fee scope.</p>

## 4G / Cellular Offload Considerations

Network Considerations	The Cradlepoint IBR900-1200 will be the connection which allows 4G upload of recorded video
	The customer will ensure that their cellular contract does not allow for data throttling, or service denial, once a set data threshold is met. Throttling or denial of service will negatively affect Fleet upload capabilities.
	The MDT's 4G connection will facilitate the upload of recorded video content.
Hardware Provisioning	The customer will provide all 4G sim cards as required by their mobile provider.

## Notes

BuyBoard 568-18 used for pricing and purchasing justification.

This quote is co-termed with quote Q-250766 (executed contract #27237). Year one has been set to align with agency annual billing dates. This has been done according to an anticipated ship date range of 9/1/2020-9/15/2020. The end date of these subscriptions is subject to change if the ship/start date changes.

Tax is subject to change at order processing with valid exemption.

## Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement entered into between Axon and Hays County on May 12, 2020, as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature:

Date:

Name (Print):

Title:

PO# (Or write  
N/A):

Please sign and email to Danny Thielen at [dthielen@axon.com](mailto:dthielen@axon.com) or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store [buy.axon.com](http://buy.axon.com)

The trademarks referenced above are the property of their respective owners.

### \*\*\*Axon Internal Use Only\*\*\*

		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
		SO #:
Review 1	Review 2	
Comments:		

## 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 utilize salary savings to purchase replacement SWAT law enforcement equipment valued at and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	\$49,596

#### LINE ITEM NUMBER

001-618-00]

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

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

#### SUMMARY

The Sheriff's Office is requesting to replace expired rifle plates, ballistic carriers, helmets, and communication headsets for the SWAT Division. This equipment was requested in the FY21 budget, however, was removed and requested to purchase in current year. Salary savings have been identified to fund this request.

Attachments: GT Distributors Quote #QTE0126224  
BuyBoard Contract #603-20  
Galls Quote #16329109  
BuyBoard Contract #587-19

##### Budget Amendment:

001-618-00.5021 Decrease Staff Salaries (\$49,596)  
001-618-00.5717\_400 Increase Law Enforcement Equipment\_Ops \$49,596



GT Distributors - Austin  
P.O. Box 16080  
Austin TX 78761  
(512) 451-8298 Ext. 0000

Quote	QTE0126224
Date	8/14/2020
Page:	1

**Bill To:**

Hays County Sheriffs Office (TX)  
712 South Stagecoach Trail  
Ste 1071  
San Marcos TX 78666

**Ship To:**

Hays County Sheriffs Office (TX)  
1307 Uhland Road  
San Marcos TX 78666

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
TCI 081420	000262	BF	FACTORY DIRECT	NET 15	0/0/0000	2,200,342
Quantity	Item Number	Description	UOM	Unit Price	Ext. Price	
13	TCI-LIB4_A_P53/LDEU-	TCI Liberator 4 - Right Side Shooters	Each	\$1,229.50	\$15,983.50	
1	NOTES:	For left side shooters - LIB4_A_P53/RDEU-GM-V Notes:  Quotation reflects BuyBoard Contract 603-20. Contract period 04/01/20-03/31/21. Email BuyBoard PO's to info@buyboard.com	EA	\$0.00	\$0.00	

All returns must be authorized by GT Distributors. Interest charges on past due invoices at the maximum rate allowed by law.

Thank you, your salesman was Adam Balak

Subtotal	\$15,983.50
Misc	\$0.00
Tax	\$0.00
Freight	\$0.00
Total	\$15,983.50



## Quote

Customer: (1002240124) HAYS COUNTY SHERIFF  
 Date: 08/13/2020  
 Sales Rep: CECILIA RAMIREZ

Page 1 of 1  
 Quote Number: 16329109  
 Quote Expiration: 11/11/2020

Sold To:  
 HAYS COUNTY SHERIFF  
 712 S STAGECOACH TRAIL  
 SUITE 1071  
 SAN MARCOS, TX 78666  
 MARGARET VIEGER

Ship To:  
 HAYS CNTY SHERIFFS OFC  
 1307 UHLAND RD  
 SAN MARCOS, TX 78666  
 RYAN WATKINS

Line	Item	Description	Qty	Retail	Your Price	Ext Total
3	IFQUOTE	Item No. TBD Paraclete SOHPC Gen IV Plate Carrier w/ Quik Clip	13		279.00	3,627.00
6	IFQUOTE	Item No. TBD Buy Board # 587-19	1			
7	TE1842 TAN LG	OPERATOR ELITE HELMET	13		700.00	9,100.00
8	BL334	LVL III STAND ALONE PLATE 10 X 12 FULL (30260-02)	26		650.00	16,900.00
9	BF029	15 INCH SIDE PANEL BALLISTIC INSERTS, LVL AXIIIA	13		295.00	3,835.00

Quote is valid for 90 days

Galls is required to collect sales tax on shipments to certain states. Sales tax will be added where applicable. For tax exempt customers, state laws require us to have signed tax exemption or resale certificates on file at our office. If you are tax exempt, please email or fax this information, (including your Galls account number) to Tax@galls.com or fax 859-268-5946.

SUBTOTAL: 33,462.00  
 SHIPPING: 150.00  
 TAX.....  
 TOTAL.... 33,612.00

Export Restrictions - This may contain commodities restricted in the United States International Trade Regulations.

1340 Russell Cave Rd  
 Lexington, KY 40505  
 Tel: 800-876-4242 Fax: 877-914-2557

## Galls, LLC Invoice Credit Terms and Conditions of Sale

Payment - Invoices for items delivered pursuant to any sales order are payable only in United States currency. You, your business, and/or your agency (the "Buyer") understand that Galls, LLC (the "Seller") may impose and charge a finance charge that is the greater of 1.5% per month or the highest rate allowed by law on any amount which becomes past due and delinquent. Returned checks may be assessed a \$25.00 service fee. Additionally, Buyer shall be responsible for all collection costs, court costs, and reasonable attorney's fees in connection with the recovery of delinquent amounts.

All sales are made pursuant to these Credit Terms and Conditions of Sale, and Seller objects to any different or additional terms or conditions contained in Buyer's purchase order or any other document submitted by Seller. Payments may be applied against open balances at the sole discretion of Seller and may be applied across accounts if Buyer has more than one account with Seller. Credit memos are non-refundable and may be applied to open invoices at Seller's sole discretion.

Credit Terms - Any extension of credit is based upon all amounts payable on or before the due date on any written, quoted, or agreed terms, and shall be paid in accordance with such terms. If not paid on or before such date, accounts shall be considered delinquent and subject to the additional finance charges as set forth herein.

Buyer agrees to provide Seller, upon request, with an updated credit application as a condition to the continued extension of credit. Buyer acknowledges and agrees that Seller may utilize outside credit reporting services and financial institutions to obtain information on the Buyer as a condition precedent to or for continued extension of credit. Seller may terminate any credit availability within its sole discretion and without prior notice. Buyer's continued solvency is a precondition to any sale made by Seller.

Delays - Where a specific shipping date is not designated on the face hereof or in a subsequent writing signed by the Seller, the Seller shall not be responsible for any delays, nor shall Seller be liable for any loss or damages resulting from such delays. Seller shall not be liable for any delays in filling this order caused by accidents to machinery, differences with employees, strikes, labor shortage, fire, floods, priorities requested or required by an instrumentality of the United States Government or the government of any state, delays in transportation, restrictions imposed by any federal, state or municipal law or regulation, whether valid or invalid, or causes beyond the control of the Seller.

Warranty - Seller shall pass through to Buyer all manufacturer warranties and return policies applicable to Buyer's order. Seller shall take all reasonable actions to ensure that Buyer receives the benefit of such pass through warranties and return policies. Buyer's sole remedies for any goods sold hereunder shall be as provided in such warranties and return policies and shall be solely against the applicable manufacturer. SELLER, ON BEHALF OF ITSELF, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO SUCH GOODS.

Restocking - If a cancellation of an order or a return by Buyer is accepted or initiated by Seller and/or the manufacturer, it may be subject to a restocking charge at the discretion of Seller.

Delivery and Transportation - Products sold herein are sold FOB at the place indicated on the face of this sales order unless otherwise agreed to in writing by Seller and Buyer. The method and agency of transportation and the routing will be designated by the Seller. In the event the Buyer requests alternative shipment or routing, all extra packing, shipping and transportation charges thereby resulting will be for the Buyer's account.

Waiver - No provision herein shall be deemed a waiver by reason of any previous waiver, and no breach of any provision shall be deemed a waiver by reason of any previous breach.

Governing Law - The sole jurisdiction and venue shall be the courts of the Commonwealth of Kentucky.

Export Restrictions - This transaction may contain commodities restricted in the United States International Trade Regulations. If at a later date the Buyer decides these commodities will be exported from the United States please reference the United States Department of Commerce Bureau of Industry and Security Export Administration Regulations (15 CFR 730-774), the United States Department of State International Traffic in Arms Regulations (22 CFR 120-130) as well as any other applicable laws. These laws apply to private, commercial, and government agency export transactions. As an exporter, the Buyer will be responsible for compliance with all U.S. laws relating to the export of these items.

\*Designates this item is on the Galls GSA Contract (GS-07F-0157M) all other items are OPEN MARKET.

## 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 On-Site Sewage Facility Permit for a 3-bedroom residence and a small office at 31620 Ranch Road 12, Dripping Springs, Texas 78620.

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Caitlyn Strickland, Director of Development Services

#### SPONSOR

SMITH

#### CO-SPONSOR

N/A

#### SUMMARY

Scott Hemphill of Pine Street Family, LP is proposing a new On-Site Sewage System to accommodate an existing 3-bedroom Single Family Residence and a small office building. This 1.18-acre tract of land is Lot 9A in the Wildwood Hills subdivision and will be served by a private well for a potable water supply.

The system designer, Hugo Elizondo, P.E., has designed a proprietary treatment system. After treatment, the effluent will be dispersed via drip irrigation tubing for a maximum daily rate of 340 gallons.

## 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 execution of a grant contract amendment with United Way for Greater Austin (United Way ATX) to extend the term of the Census Outreach grant to September 30, 2020.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	N/A

#### LINE ITEM NUMBER

001-712-16-129]

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

**PURCHASING GUIDELINES FOLLOWED:** N/A      **AUDITOR REVIEW:** MARISOL VILLARREAL-ALONZO

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

#### SUMMARY

On January 1, 2020 the Commissioners' Court authorized the execution of a grant contract with United Way ATX in the amount of \$8,000 and an amendment on April 21, 2020 for an additional \$7,500 for Census outreach efforts. This original project period was from January 1, 2020 through July 30, this amendment extends the period through September 30, 2020, effective August 14, 2020.

Attachments: United Way 2020 Census Grant No-Cost Extension



## 2020 Census Grant No-Cost Extension

This amendment is made to the 2020 Census Grant Agreement previously executed by and between Hays County, hereinafter called "Grantee," and United Way for Greater Austin, hereinafter called "United Way ATX."

It is mutually understood and agreed by and between the undersigned contracting parties to amend the previously executed agreement with a no-cost extension. The details of the amendment are as follows:

Recitals 2 and 11 are amended effective August 14, 2020 to read:

### 2. Term

The term of this Contract begins on the 1st of January, 2020 and ends on the 30th of September, 2020<sup>1</sup> (the "Term"), unless terminated at an earlier date in accordance with Section 3 of this Contract. Grantee shall, within thirty (30) days following any termination of this Contract for any reason, return to United Way ATX any portion of the Aggregate Amount not yet expended by Grantee, and/or not encumbered in accordance with the Specific Contract Requirements as of the termination date.

### 11. Notices

All notices given or required hereunder shall be in writing by email and directed as follows:

If to United Way ATX:

United Way for Greater Austin

Attention: Alison Bentley

Email: [alison.bentley@uwatx.org](mailto:alison.bentley@uwatx.org)

Telephone: 303.859.2524

Attachment A, Specific Contract Requirements, is amended effective August 14, 2020 to include the following reporting schedule.

### 1. REPORTING

#### Reporting Schedule

Report	Due Date*
January Activities	February 7, 2020
February Activities	March 9, 2020
March & April Activities	May 7, 2020
May Activities	June 7, 2020
June Activities	July 8, 2020
July Activities	August 7, 2020
August Activities	September 7, 2020
September Activities + Final Report	October 16, 2020



United Way for Greater Austin

This amendment shall take precedent over any previous amendments. All other terms and conditions that are not hereby amended, including program description and scope of work are to remain in full force and effect.

*[Signature Page Follows.]*



United Way for Greater Austin

**IN WITNESS WHEREOF**, the Parties hereto, acting through their duly authorized officers, have executed this Agreement as of the Effective Date.

United Way for Greater Austin	Hays County
<b>By:</b> _____ <i>Signature</i>	<b>By:</b> _____ <i>Signature</i>
<b>Name:</b> <u>David C. Smith</u>	<b>Name:</b> Ruben Becerra
<b>Title:</b> <u>CEO</u>	<b>Title:</b> Hays County Judge
<b>Date:</b> _____	<b>Date:</b> _____
	<b>Federal Tax ID#:</b> 74-6002241

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<sup>i</sup> Date reflects the new deadline announced by the Census Bureau on August, 3, 2020.

## 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 IFB 2020-B15 RM 150 Center Turn Lane Gap Project and authorize Purchasing to solicit for proposals and advertise.

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Jerry Borcharding

#### SPONSOR

INGALSBE

#### CO-SPONSOR

N/A

#### SUMMARY

The IFB 2020-B15 RM 150 Center Turn Lane Gap Project will improve the existing road at 1.612 Miles east of Lehman road to 2.506 miles west of SH 21. The project consists, but is not limited to, construction of intersection and operational improvements which are adding centering turn lanes and shoulders. The project consists but is not limited to drainage improvement for the area in which the center turn lane and shoulders are constructed.

Project specifications sent separately to the 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

Amend various departmental operating, special revenue and capital project budgets in preparation for Fiscal Year 2020 4th Quarter financial reporting.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	N/A

#### LINE ITEM NUMBER

Various

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: MARISOL VILLARREAL-ALONZO

REQUESTED BY	SPONSOR	CO-SPONSOR
Marisol Villarreal-Alonzo	INGALSBE	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

Authorize the purchase and installation of modular office furniture for the Transportation Department and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	\$4,867

#### LINE ITEM NUMBER

020-710-00.5711\_400

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry H. Borcharding	JONES	N/A

#### SUMMARY

Currently the Transportation Department has personnel "doubled-up" in two locations at the Yarrington office building. Development Services has made an office suite available which is allowing Transportation to provide an office for the recently hired Planner and Engineering Tech. This Court action will also provide for an additional space for another inspector and for the Assistant Maintenance Superintendent. These workstations are included in the FY21 budget request; however, we would like to use this year's funds to purchase this modular furniture in order to have installation completed for functionality for current staffing.

Attachment: Workplace Resource Quote SM200038  
US Communities Contract #4400003403

Budget Amendment:  
Reduce Materials .5351  
Increase Office Eqpt\_Ops .5711\_400

Quote# SM200038  
HAYS COUNTY / ROAD DEPARTMENT RECONFIGURE  
US COMMUNITIES CONTRACT# 4400003403  
Pricing Valid for 30 Days

Item	Qty.	Product	Unit	Extended
<b>Alias 1: Herman Miller</b>				
1	1	<b>A2310.3054L</b>		
		+Work Surf,Sq-Edge Rect, Lam Top/TP Edge 30D 54W	List: \$579.00 Sell: \$179.49 Sell Discount %:	\$579.00 \$179.49 69.00
		Top Finish ZZ @open line laminate (nonstandard)		
		9Y0L WHEAT FIBER		
		Edge Finish WA +wheat		
		Support Finish HF +inner tone light		
2	2	<b>A2310.3060L</b>		
		+Work Surf,Sq-Edge Rect, Lam Top/TP Edge 30D 60W	List: \$631.00 Sell: \$195.61 Sell Discount %:	\$1,262.00 \$391.22 69.00
		Top Finish ZZ @open line laminate (nonstandard)		
		9Y0L WHEAT FIBER		
		Edge Finish WA +wheat		
		Support Finish HF +inner tone light		
3	1	<b>A2310.2472L</b>		
		+Work Surf,Sq-Edge Rect, Lam Top/TP Edge 24D 72W	List: \$582.00 Sell: \$180.42 Sell Discount %:	\$582.00 \$180.42 69.00
		Top Finish ZZ @open line laminate (nonstandard)		
		9Y0L WHEAT FIBER		
		Edge Finish WA +wheat		
		Support Finish HF +inner tone light		
4	12	<b>A2394.24</b>		
		+H-Leg for 24D Wk Surf	List: \$325.00 Sell: \$100.75 Sell Discount %:	\$3,900.00 \$1,209.00 69.00
		Leg Finish HF +inner tone light		
5	8	<b>FK29B.2</b>		
		+Surf Ganging Bracket,pair	List: \$43.00 Sell: \$13.33 Sell Discount %:	\$344.00 \$106.64 69.00
<b>Subtotal:</b>			List: \$6,667.00 Sell: \$2,066.77	\$6,667.00 <b>\$2,066.77</b>
<b>Alias 1: Services</b>				
6	1	<b>INSTALL</b>		
		Receive, Deliver & Install During Normal Business Hours	List: \$2,800.00 Sell: \$2,800.00 Sell Discount %:	\$2,800.00 \$2,800.00 0.00
		Includes demo/move & reinstall Janice & DS Engineer's office, demo/recon Inspecotrs office and build out 2 stations for Vendors room.		
<b>Subtotal:</b>			List: \$2,800.00 Sell: \$2,800.00	\$2,800.00 <b>\$2,800.00</b>
<b>Total:</b>			List: \$9,467.00 Sell: \$4,866.77	\$9,467.00 <b>\$4,866.77</b>

## 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

Ratify the submission of the County Feral Hog Abatement Grant submission to the Texas A&M AgriLife Extension Services, Wildlife Services Program.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	N/A

#### LINE ITEM NUMBER

--

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
CRUMLEY	JONES	N/A

#### SUMMARY

The County Feral Hog Abatement Grant is designed to encourage counties across the State of Texas to make a concentrated and coordinated effort to reduce the feral hog population and the damage caused by these animals throughout the year. Hays County will participate in a co-managed, regional feral hog abatement effort with cooperating counties including, Caldwell and Guadalupe.

The total project cost \$7,500.00

## Request for County Feral Hog Grant

### Statement of Purpose

Pursuant to the Texas Legislature, Texas A&M AgriLife Extension Service, Wildlife Services (WS) program hereby requests applications for County Feral Hog Abatement Grants (Grant). The Grant program (“Program”) is designed to encourage counties across the State of Texas to make a concentrated and coordinated effort to reduce the feral hog population and the damage caused by these animals throughout the year. Successful applicants will receive grants to initiate or continue feral hog abatement activities in their county. This document (“RFGA”) sets forth Program requirements and procedures.

Current abatement methods in Texas vary depending on the geographic terrain and vegetation. WS recognizes that the responsibility for management rests with landowners and local constituents who know the surrounding land and waterways, as well as the potential challenges to combating feral hogs. Through this program, the highest ranking counties will receive assistance to continue local activities which may range from educating the landowners on abatement methods, coordinating trapping and hunting programs, conducting aerial gunning and addressing public safety hazards related to feral hogs.

### Projected Timeline of Events

August 1, 2020	Applications Available
August 28, 2020	Applications Due
October 1, 2020	Anticipated Award Date
August 31, 2021	Project End date

### Eligibility

To be eligible for an award under the Program, the applicant must be a Texas county. The county must have or develop a method to accurately track the number of feral hogs taken in the county as well as documentation for other provisions included in the application (e.g. receipts for purchases, trap loan numbers, etc.) for the eligible period September 1, 2020-August 31, 2021.

### Grantee Responsibilities and Accountability

Selected Applicants (grantees) will be responsible for conducting a project supported by the Program and for achieving the results described in the application. Each grantee shall monitor the day-to-day performance of the grant project to assure adherence to statutes, regulations, and grant terms and conditions. The grantee must carry out the activities described in the approved scope of work.

The grantee will be accountable for documenting the use of grant funds and must ensure funds are used solely for authorized purposes. The grantee must ensure:

- Funds are used only for activities covered by the approved project.

- Funds are not used in violation of the restrictions and prohibitions of applicable statutes and regulations.
- All budget and performance reports are completed in a timely manner.

Each grantee must ensure they have an adequate accounting system in place and good internal controls to ensure expenditures and reimbursements are reported and maintained for seven (7) years after the conclusion of the project.

## **Funding Parameters**

Awards are subject to the availability of funds. If funds are not appropriated or collected for this Program, applicants will be informed accordingly.

WS will make awards after all applications are processed. Grant funds will be available on a cost reimbursement basis for county use on feral hog abatement expenditures during the grant term. A total of \$100,000 is available. WS anticipates awarding up to 15 grants ranging from \$5,000 to \$20,000 each. Applications will be reviewed through a competitive evaluation process.

Bounty programs may be included in a county's proposal, however WS will limit State funding of bounties to 50% of the amount actually paid out.

To receive grant funds, counties that are awarded Program grants must enter into a written agreement with Texas A&M AgriLife Extension Service. Grant funds will be distributed on a reimbursement basis after awarded counties submit proof of allowable expenditures.

WS reserves the right to accept or reject any or all applications submitted. WS is under no legal or other obligation to execute a grant award on the basis of a response submitted to this RFGA.

Public announcements and written notifications will be made to all applicants and their affiliated agencies, organizations, or institutions. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

## **Term of Funding or Duration of Projects**

A Notice of Grant Award is *anticipated* to be made in October 2020. However, it is the intention of the legislature that Texas A&M AgriLife Extension Service continue to make available a level of funding similar to previous grants administered by the Texas Department of Agriculture (TDA). Counties may have continued feral hog projects following the conclusion of the TDA program. Therefore, approved projects may claim expenditures which have occurred since September 1, 2020. Projects under this funding request must be completed by August 31, 2021. No expenditures incurred after August 31, 2021 will be reimbursed.

## **Application Requirements**

To be considered, applications must be complete and include all of the following information.

*Grant Applications*—Interested applicants must include all of the following information:

A narrative including:

- *County Information.* This is the name and address for the county.

- *Primary Program Contact.* This is the individual who can answer questions about the county's activities and performance.
- *Authorized Official.* This is the person legally able to bind the county in contracts or agreements, generally the county judge.
- *Previous Participation.* For counties which participated in the Feral hog grant program, a copy of the final report is required.
- *Description of Activities.* Include information on:
  - i. Description of the proposed program including abatement activities supported or used;
  - ii. Type and number of county-sponsored education program(s) about feral hog abatement technologies proposed; and
  - iii. A proposed budget (total cost for educational and operational activities, county share of bounty if proposed);
- *Certifications.* The authorized official must sign the application.

### Evaluation and Selection Information

WS will conduct an administrative review to determine whether the applicant was responsive to the requirements of this RFGA. WS will take into consideration the status of any continuing project's progress.

Applications will be evaluated on the following criterion:

- The degree to which the proposal meets or supports established watershed or agricultural protection programs (*a maximum of 30 points will be awarded to those county proposals which are consistent with watershed protection plans or agricultural protection programs*).
- The estimated contribution of the proposal to removing feral hogs from the landscape (*a maximum of 30 points will be awarded for aspects of the project which contribute to fewer hogs, including trap loan programs, aerial hunting contracts, equipment purchased for control and bounties. NOTE: WS will only reimburse counties 50% of actual bounties paid. Counties planning on bounty programs need to state the total bounty pool and the county commitment to the remaining 50%. Programs which remove feral hogs but contribute to perpetuation of hogs as a resource may not receive full points.*)
- The number of landowner outreach events planned or conducted from September 1, 2020 through August 31, 2021 which include at least 1 hour of feral hog management topics, including biology, management strategies and damage assessment. We recognize that outreach in the current pandemic environment will be challenging and encourage applicants to develop adaptive and innovative outreach plans. Media articles, 4-H presentations and collaborations with schools may be included in outreach planning (*a maximum of 5 points per event planned and 10 points per event conducted up to 20 points per application will be awarded*).
- The degree to which the county project conducts a formalized damage and control assessment (*a maximum of 10 points will be awarded if the county project records numbers of feral swine removed and up to 10 additional points will be recorded for a formalized county level damage assessment*).

WS will include outside reviewers in evaluating proposals. County Primary Point of Contact may be queried during the evaluation process to clarify proposals.

#### **Deadline for Submission of Responses**

**LATE APPLICATIONS WILL NOT BE ACCEPTED.**

**Only materials actually received by WS by 5:00 pm CDT on application due date will be reviewed as part of the application. Applicant will not be allowed to supplement the application after the application deadline.**

One complete application package, including narrative and final reports (if applicable) must be **received by WS before close of business (5:00 p.m. CT) on Friday, August 28, 2020.** It is the applicant's responsibility to ensure the timely delivery of all required materials.

WS will send an acknowledgement receipt by email indicating the application was received.

Preferred:

Electronic Version

Email: Michael.J.Bodenchuk@usda.gov

**Email subject line must contain the program and applicant name (Ex: 2021 Feral Hog Grant– Travis County).** The respondent is solely responsible for ensuring that their complete electronic submission is sent to, and actually received by, WS in a timely manner and at the proper destination server.

**IMPORTANT NOTE:** All submissions must be sent in Microsoft Word or other Word compatible format or as .PDF files. Unreadable submissions may be deemed unresponsive and will not be reviewed for funding consideration.

WS takes no responsibility for electronic bids that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software. WS will send an acknowledgement receipt by email indicating the application was received.

#### **Hard Copy Submissions.**

All applications must be **received** by WS (P.O. Box 690170, San Antonio, TX 78269) by closing date and time. Applications will be documented with a date/time stamp for receipt documentation purposes.

For questions regarding submission of the application and/or WS requirements, please contact WS at (210) 561-3801, or by email at

Michael.J.Bodenchuk@usda.gov

#### **Successful Application Requirements**

**Reporting.** Selected applicants will be required to submit periodic performance reports. Reporting timelines will be provided in the grant agreement. As part of WS's ongoing monitoring of grant funds, grantees must show both a strong progress of work completed on all projects as well as

financial progress. Failure to comply with reporting requirements may result in the withholding of a request for reimbursement and/or termination of the award.

#### **Budget Development Information.**

- A. Payment. *Selected grantees will be paid on a cost reimbursement basis.* Grantees will be required to submit payment requests quarterly, but no more frequently than monthly in order to show significant financial and programmatic progress. Payment requests must include sufficient detail and supporting documentation. Backup detail may include, but is not limited to, documentation of personnel expenses, or copies of invoices.
- B. Payment Schedule. Up to 90% of the total grant award may be reimbursed provided the work for which payment is requested has been completed and proper documentation has been submitted. The remaining 10% will only be disbursed once all reporting requirements have been met, including, but not limited to, the final performance report.
- C. Eligible Expenses. Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of the project are eligible. Examples of eligible expenditures include:
1. Personnel costs – including salary and benefits related to temporary or event staff, grant funds may not be used to pay for existing employees in the performance of their day-to-day duties;
  2. Direct operating expenses that directly relate to project activities, this may include facility rental or other workshop related expenses (note: meals, food, or beverages of any kind are not considered an eligible expense);
  3. Supplies that cost less than \$5,000, such as office supplies, printing services, and materials needed to accomplish the proposed project;
  4. Contracts – agreements made with a third-party to perform a portion of the award;
  5. Controlled Assets are defined as certain items valued \$500.00 - \$4,999.99 which must also be inventoried,  
<https://fmx.cpa.texas.gov/fmx/pubs/spaproc/appendices/appa/index.php>; and
  6. If grant funds are proposed to be used to fund bounty efforts, Grantee must have a written policy implemented to prevent the intentional breeding and raising of feral hogs for the purpose of meeting bounty requirements. **Bounty-related grant fund reimbursement is limited to 50% of the bounty paid and a maximum of \$5.00 per feral hog.**
- D. Ineligible Expenses. Expenses may be prohibited by state or federal law or determined to be ineligible by program guidelines. Examples of these expenditures include, but are not limited to the following:
1. Alcoholic beverages;
  2. Entertainment;
  3. Contributions, charitable or political;
  4. Expenses falling outside of the contract period;
  5. Items not listed in the project budget or an approved amendment;
  6. Expenses that are not adequately documented;
  7. Travel, including but not limited to mileage reimbursement, meals and lodging; and
  8. Meals, food or beverage costs of any kind, including those associated with an educational workshop.

It is important to ensure that all costs meet the criteria, of allowable, allocable, and reasonable.

### **General Information**

Selected applicants will receive a Notice of Grant Award (NGA) letter and an official Grant Agreement from WS. The NGA is not legally binding until a grant agreement is fully executed.

WS reserves the right to fund projects partially or fully. WS reserves the right to negotiate individual elements of any application and to reject any and all applications. Where more than one application is acceptable for funding, WS may request cooperation between grantees or revisions/adjustments to an application in order to avoid duplication and to realize the maximum benefit to the state. Selected projects will receive funding on a cost-reimbursement basis.

WS reserves the right to reject all applications and is not liable for costs incurred by the Applicant in the development, submission, or review of the application; or costs incurred by the Applicant prior to the effective date of grant agreement.

#### *Right to Amend or Terminate Program*

WS reserves the right to alter, amend, or clarify any provisions, terms, or conditions of this program or any grant awarded as a result thereof, or to terminate this program at any time prior to the execution of an agreement, if WS deems any such action to be in the best interest of WS and of the State of Texas. The decision of WS will be administratively final in this regard.

#### *Proprietary Information/Public Information*

If it is necessary for Grantee to include confidential, proprietary, trade secret or privileged information (Proprietary Information) in its application or other submitted information, Grantee must clearly mark and label all Proprietary Information in 14-point or higher bold font on each page as it appears, and identify the specific exception to disclosure in the Texas Public Information Act (PIA) for each specific piece of Proprietary Information. Additionally, all Proprietary Information must be segregated in a separate and discrete section of the application or other submitted information, which must be able to be conveniently separated and detached from the other sections of the application.

Failure to properly label, identify and segregate any Proprietary Information in the application or other submitted information may result in all such information or material being disclosed as public information.

Unless specifically exempt from disclosure under the PIA, all applications and materials submitted under this program are subject to release under the PIA.

#### *Conflict of Interest*

The Applicant is required to disclose any existing or potential conflicts of interest relative to this grant program. Failure to disclose any such relationship may result in the Applicant's disqualification or termination of any resulting grant agreement.

### **General Compliance Information**

1. Grantees must comply with WS's reporting requirements and financial procedures outlined in the grant agreement. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award must be approved in advance by WS and shall not relieve the Grantee of its responsibilities to WS for their performance.

2. All grant awards are subject to the availability of funds appropriated and authorized by the Texas Legislature.
3. Grantees must remain in full compliance with state and federal laws and regulations. Non-compliance may result in termination of the grant or ineligibility for reimbursement of expenses.
4. Grantees must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for seven (7) years after the completion of the project, or as otherwise agreed upon with WS. WS and the Texas State Auditor's Office (SAO) reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If any litigation, claim, negotiation, audit or other action is initiated prior to the expiration of the retention period, then the records must be retained until authorized by WS. WS and the SAO shall have access to the physical locations related to project activities.
5. If the Grantee has a financial audit performed during the time the Grantee is receiving funds from WS, upon request, WS shall have access to information about the audit, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.
6. Grantees must comply with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and the Uniform Grant Management Standards (UGMS) and 2 CFR Part 200.

Application must be received by: **Friday, August 28, 2020**. Late or incomplete applications will not be considered.

#### County Information

County Name	<u>Hays County</u>		
Mailing Address:	<u>111 E. San Antonio Street Ste. 300</u>		
	<i>Street Address</i>		
	<u>San Marcos</u>	<u>TX</u>	<u>78666</u>
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
Physical Address:	<u>111 E. San Antonio Street Ste. 300</u>		
	<i>Street Address</i>		
	<u>San Marcos</u>	<u>TX</u>	<u>78666</u>
	<i>City</i>	<i>State</i>	<i>Zip Code</i>

#### Contact Personnel

**(1) Name of Primary Program Contact** *(This person can answer day-to-day questions about the project.)*

Full Name:	<u>Nick</u>	<u>Dornack</u>	X <input type="checkbox"/> Mr.	<input type="checkbox"/> Dr.
	<i>First</i>	<i>Last</i>	<input type="checkbox"/> Ms.	<input type="checkbox"/> Other _____
Position Title:	<u>Director of Watershed Services, Meadows Center for Water and the Environment</u>			
Email Address:	<u>nickdornack@txstate.edu</u>			
Phone:	<u>(512) 245 - 6697</u>	Ext.	<u>Alt #:(512) 213 - 7389</u>	

**(2) Name of Authorized Official** *(This person is authorized to enter into legal agreements on behalf of the organization. This person's name will appear on the grant agreement for signature.)*

Full Name:	<u>Ruben</u>	<u>Becerra</u>	<input type="checkbox"/> Mr.	<input type="checkbox"/> Dr.
	<i>First</i>	<i>Last</i>	<input type="checkbox"/> Ms.	<input type="checkbox"/> Other <u>Judge</u>
Position Title:	<u>County Judge</u>			
Email Address:	<u>Judge.becerra@co.hays.tx.us</u>			
Phone:	<u>(512) 393 - 2205</u>	Ext.	<u>Alt #:( )</u>	<u>-</u>

## Program Information

### Previous Participation

- Has your County previously participated in the feral hog abatement grants? ☒ Yes ☐ No
- If yes, what years? 2012, 2013, 2018, 2019, & 2020
- Has your County previously received a grant through any TDA or Texas A&M AgriLife Extension Service feral hog abatement program? ☒ Yes\* ☐ No
- If yes, what years? 2013, 2018, 2019, 2020

### Quantifiable Information and Description of Activities

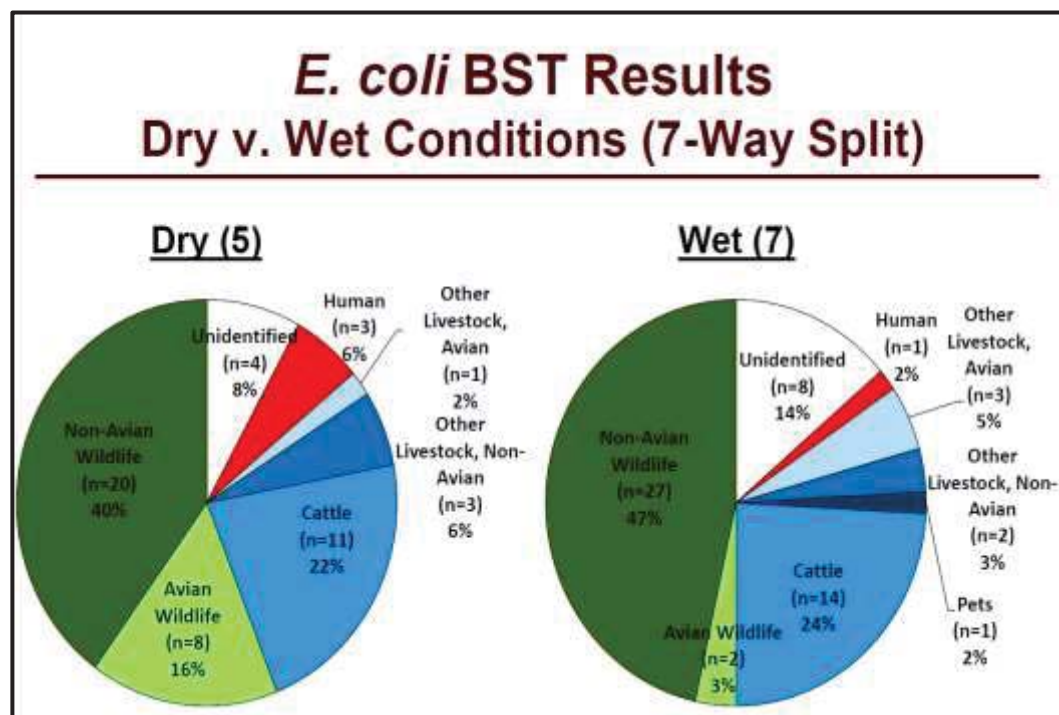
Please provide a narrative describing the feral hog abatement program and your use of the funds. Include as much detail as necessary for the reviewers to evaluate your proposal against the evaluation criteria. Include budget, past final reports and bounty pool commitments as appropriate.

Hays County is requesting a Texas A&M AgriLife Extension Service, Wildlife Services (WS) County Feral Hog Abatement Grant (grant) in the amount of \$7,500.

Grant funds will be used to develop stakeholder engagement programs and to purchase supplies and equipment toward the goal of reducing the damage and extent of feral hog (*Sus scrofa*) activity in Hays County, Texas. **This effort will be strengthened and enhanced by Hays County's participation in The Central Texas Feral Hog Task Force, a co-managed, regional feral hog abatement effort with cooperating counties including, Guadalupe and Caldwell.** The grant will enable Hays County to take advantage of a regional communication network and share resources with partner counties while also implementing specific mitigation efforts designed for the cultural and land use priorities that make Hays County unique.

Hays County and its partners are not alone in suffering millions of dollars in damages to property and natural resources from feral hog activity. What sets Hays County and our partners apart, however, are the tools and experience each county possesses in grant management, stakeholder engagement and watershed protection that will serve to ensure grant funds achieve program goals. Four watershed protection plans (WPP) are currently being implemented in the three-county region: Cypress Creek WPP and Upper San Marcos River WPP (Hays); Plum Creek WPP (Hays-Caldwell); Geronimo-Alligator Creek WPP (Caldwell). Historic and ongoing impacts to water quality from feral hogs in these watersheds have been well documented. A 12-month Bacterial Source Tracking (BST) study completed for Plum Creek in 2018 demonstrated that non-avian wildlife was the most dominant source of *E. coli* throughout the watershed

(Figure 1). Feral hogs are highly suspected to be the driver of wildlife *E. coli* in Plum Creek as well as Geronimo and Alligator Creeks in Guadalupe County due to their active population, biology and behavioral patterns that keep them close to the cool, vegetated riparian areas along streams. More information on the Plum Creek Watershed Protection Plan can be found at <http://plumcreek.tamu.edu/>.



**Figure 1.** Results of 12-month Plum Creek Watershed, Bacterial Source Tracking Study (Wet versus Dry Conditions) completed by the Plum Creek Watershed Partnership, Guadalupe-Blanco River Authority and the Texas A&M Soil and Aquatic Microbiologic Laboratory

Each partner county in this co-managed, regional efforts, has successfully participated in feral hog management activities, most notable being Caldwell County's Feral Hog Task Force established in 2013, whose ongoing outreach, education and direct abatement efforts have led to the documented removal of over 15,000 feral hogs in Caldwell County and the Plum Creek Watershed.

The continued development of The Central Texas Feral Hog Task Force, a regional feral hog abatement program for Caldwell, Guadalupe and Hays County through this grant program will ensure the following deliverables: (1) a *continuation of multifaceted feral hog management programs for partner counties*; (2) a centralized website, [www.feralhogtaskforce.com](http://www.feralhogtaskforce.com), for sharing information about feral hog programs, tracking progress and announcing upcoming opportunities throughout the region with links to existing resources as well as dedicated pages for each partner county; (3) development and allocation of shared resources for participating counties including: a *county-level damage assessment*, miscellaneous program forms (ex.

landowner surveys, bounty participation forms, etc.); (4) equipment sharing cooperatives (ex. remote operated traps); (5) cost-sharing incentive programs (ex. trapping supplies); (6) coordinated educational programming including webinars AND one county-based workshop for each partner county; and (7) a dynamic social media campaign to enhance program success and expand program reach. Partner counties may also participate in bounty programs and aerial hunting contracts.

Public-private partnerships will serve as a catalyst for greater program impact by leveraging grant funds to expand projects and incentivize stakeholder ownership in the feral hog abatement effort.

Hays County and our cooperating partners, Guadalupe Co. and Caldwell Co., will work with county staff, AgriLife, Texas State University – Meadows Center for Water and the Environment, the Plum Creek Watershed Partnership, local business, NGOs and others to coordinate efforts and deliver feral hog abatement programs with a goal of the documented removal of 6,000 feral hogs throughout the region during the project period.

*(Additional sheets may be attached if more space is needed.)*

Attached is a Proposed Work Plan, Anticipated Project Results, Project Oversight, and Proposed Budget.

## Proposed Work Plan

ACTIVITY	ACTIVITY COMPLETED BY	TIMELINE	
		START DATE	END DATE
Grant administration	Hays County	9/01/2020	8/31/2021
General Project Management	Interlocal Contract with Texas State University – Meadows Center for Water and the Environment (Meadows)	9/01/2020	8/31/2021
Website maintenance and networking	Meadows	9/01/2020	8/31/2021
Two (2) landowner outreach events	Hays County, Meadows, Hays County AgriLife Extension will coordinate one (1) Hays Co. Feral Hog Abatement Workshop. Meadows will develop one 1-hour subject specific webinars.	9/01/2020	8/31/2021
Hays County Feral Hog Removal Tracking including a County Level Damage and Control Assessment	Meadows	9/01/2020	8/31/2021
Remote-operated feral hog trap sharing cooperative	Central Texas Feral Hog Task Force (assisted by Meadows)	9/01/2020	8/31/2021
Cost-sharing incentive programs - trapping supplies and aerial hunting	Meadows (assisted by Local Business Partners)	9/01/2020	8/31/2021
Development of Final Report	Hays County	9/01/2019	8/31/2021

## **Anticipated Project Results**

Documentation of harvested feral hogs through voluntary reporting and/or aerial hunting programs will be completed by Meadows. This includes a harvest log.

- Remote-operated feral hog trap sharing cooperative – Estimated number of hogs to be taken = 100
- Cost-sharing incentive program: trapping supplies – Estimated number of hogs to be taken = 100
- Cost-sharing incentive program: professional aerial hunting Services (3 hours) – Estimated number of hogs to be taken = 100
- Voluntary Reporting – Estimated number of hogs to be taken = 200

Total feral hogs estimated to be taken through use of grant funds = 500

## **Project Oversight**

### Nick Dornak, Director of Watershed Services - Meadows

Nick Dornak is currently the Director of Watershed Services for Meadows, has served as Coordinator of the Plum Creek Watershed Partnership from 2012 through 2018 and is the founder and administrator of the Caldwell County Feral Hog Task Force, now the Central Texas Feral Hog Task Force, established in 2013. Mr. Dornak has written and/or managed over 30 local, state and federal grants since 2012.

The Hays County AgriLife Extension will assist in coordinating Feral Hog Abatement Workshop.

The Hays County Auditor's Office will oversee financial terms of the grant. Any payments and reimbursements must be approved by the Hays County Judge and/or Hays County Commissioners.

**Proposed Budget**

Category	Amount	Description
Personnel	\$0.00	n/a
Equipment	\$0.00	n/a
Supplies	\$850.00	Provide \$850 toward trapping supplies for 2 program participants. Partner with local retailer, King Feed. Supplies may include panels, posts, mechanical components, game camera/modem combinations.
Contractual	\$1,050.00	Provide 3.0 hours of aerial gunning services program participants with approved LOAs. (\$1,050 @ \$350/hr. X 3.0 hrs.)
Other	\$5,600.00	<p><b>\$5,000</b> - ICA with Texas State University Meadows Center for Water and Environment to provide professional services toward: project management; assist in coordination of one (1) Hays Co. workshop; develop one 1-hour webinar; website management, <a href="http://www.feralhogtaskforce.com">www.feralhogtaskforce.com</a>; manage social media campaign; feral hog removal tracking; delivery of County Level damage and Control Assessment; assist coordination of remote-operated feral hog trap sharing cooperative (utilize existing Hays Co. trap); implementation of cost-sharing incentive programs - trapping supplies and aerial control.</p> <p><b>\$600</b> - FY2020 annual service contract with Wireless Traps for existing Hays Co. Remote-Operated Trap</p>
Total	<b>\$7,500.00</b>	

## 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 execution of the FY2020 Statewide Automated Victim Notification Services (SAVNS) Maintenance Grant Contract in the amount of \$30,122.51.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	N/A

#### 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
T. CRUMLEY	BECERRA	N/A

#### SUMMARY

The purpose of the OAG Statewide Automated Victim Notification Service (SAVNS) grant program is to assist Texas counties and other entities in maintaining a statewide system that will provide relevant offender release information, notification of relevant court settings or events to crime victims and other interested individuals, promote public safety, and support the rights of victims of crime.

OAG Contract Number: 2111177

The Grant Contract period is from September 1, 2020 - August 31, 2021. Grant acceptance will be done via DocuSign.



**RE: FY 2021 SAVNS Grant Contract**

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**Contract Number:** 2111177

**Grantee:** Hays County

**Amount:** \$30,122.51

**Executed:**

**Term:** September 1, 2020 – August 31, 2021

**Budget Coding:**

<b>ORG</b>	<b>PCA</b>	<b>Agy Obj</b>
966	10352	5137

# SAVNS MAINTENANCE GRANT CONTRACT

OAG Contract No. 211177

This grant contract ("Grant Contract") is executed between the Office of the Attorney General (OAG) and Hays County (GRANTEE) for certain grant funds. The OAG and GRANTEE may be referred to in this Grant Contract individually as "Party" or collectively as "Parties."

## SECTION 1. PURPOSE OF THE CONTRACT

The purpose of the OAG Statewide Automated Victim Notification Service (SAVNS) grant program is to assist Texas counties and other entities in maintaining a statewide system that will provide relevant offender release information, notification of relevant court settings or events to crime victims and other interested individuals, promote public safety, and support the rights of victims of crime. To ensure a standard statewide service to a variety of political subdivisions of the State of Texas, including counties, county Sheriffs, clerks and attorneys, district attorneys, and courts ("Participating Entities"), including GRANTEE, the OAG makes grant funds available for eligible expenses related to SAVNS services delivered to GRANTEE by the vendor certified by the OAG.

The OAG published a Request for Offer (RFO) for Statewide Automated Victim Services May 11, 2019. After an evaluation of offers, the OAG identified, certified, and entered into a contract with a single vendor to provide statewide automated victim notification services ("SAVNS Services"). The initial term of the OAG Vendor Certification and Service Agreement ("OAG Certification Agreement") is/was from September 1, 2019 to August 31, 2020 ("Initial Term"). On June 25, 2020, OAG exercised its right to renew the OAG Certification Agreement with the renewal term to begin on September 1, 2020 and end on August 31, 2022 ("First Renewal Term"). The vendor certified to provide the services is Appriss, Inc., ("Certified Vendor"), a Kentucky corporation authorized to do business in Texas.

## SECTION 2. TERM OF THE CONTRACT

This Grant Contract shall begin on September 1, 2020 and shall terminate August 31, 2021, unless it is terminated earlier in accordance with another provision of this Grant Contract.

## SECTION 3. GRANTEE'S CONTRACTUAL SERVICES

**3.1. Grantee Participating Entity Service Contract.** GRANTEE shall execute a service agreement with the Certified Vendor to provide services consistent with, and subject to the limitations contained in, the OAG Certification Agreement and documents incorporated therein.

Specifically, the Participating Entity Service Contract attached hereto as Exhibit B shall be used by GRANTEE in entering into a contractual relationship with the Certified Vendor. All grant funds provided under this Grant Contract shall be conditioned on the GRANTEE's use of the exemplar Participating Entity Service Contract, as attached hereto, and in addition to any requisite amendment, renewal, or extensions made or otherwise exercised by GRANTEE pursuant to Section 1 therein. GRANTEE further acknowledges and agrees that no changes or modifications may be made to the Participating Entity Service Contract or to any executed Participating Entity Service Contract between GRANTEE and the Certified Vendor, except as specifically authorized within this Grant Contract in Section 3.1.1 below, as otherwise separately authorized by the OAG in writing, or to accomplish an amendment, renewal, or extension made or otherwise exercised by GRANTEE pursuant to Section 1 therein. Notwithstanding the foregoing, GRANTEE is encouraged to negotiate and include additional terms and conditions individually tailored to meet the GRANTEE's unique needs related to the SAVNS program, only to the extent any such additional terms and conditions do not limit or otherwise conflict with the exemplar Participating Entity Service Contract as attached hereto as Exhibit B.

**3.1.1 Authorized Modifications to the Participating Entity Service Agreement.** GRANTEE is hereby authorized, without additional approval of the OAG, to include additional terms, conditions, or requirements related to the following sections of the Participating Entity Service Agreement as attached hereto as Exhibit B:

- a. 6 Additional Services: GRANTEE may require, negotiate, and include additional terms or conditions relating to the mutual agreement, provision, and payment for Additional Services that do not otherwise modify, impact, or limit the services required under the exemplar Participating Entity Service Agreement;
- b. Section 7.1 Performance Reports: GRANTEE may require reports relating to the performance standards and requirements of the SAVNS system under the exemplar Participating Entity Service Agreement;
- c. Section 7.2 Performance Remedies: GRANTEE may require additional terms or conditions relating to the calculation and withholding mechanism for Certified Vendor's failure to meet its performance requirements the exemplar Participating Entity Service Agreement;
- d. Sections 9.2(a) and 9.2(b)(iii) Standard of Care: GRANTEE may require Certified Vendor to comply with its own internal security standards, in addition to any security standards included in the exemplar Participating Entity Service Agreement, and incorporate such standards into the Participating Entity Service Agreement by reference;
- e. Sections 9.3(b), 9.3(c), and 9.3(d) Information Security: GRANTEE may require Certified Vendor to comply with its own internal security standards, in addition to any security standards included in the exemplar Participating Entity Service Agreement, and incorporate such standards into the Participating Entity Service Agreement by reference;
- f. Section 9.4(b)(iv) Security Breach Procedures: GRANTEE may require

- Certified Vendor to comply with its own internal security standards, in addition to any security standards included in the exemplar Participating Entity Service Agreement, and incorporate such standards into the Participating Entity Service Agreement by reference;
- g. Section 9.5 Oversight of Security Compliance: GRANTEE may require Certified Vendor to comply with its own internal security standards, in addition to any security standards included in the exemplar Participating Entity Service Agreement, and incorporate such standards into the Participating Entity Service Agreement by reference;
  - h. Section 10.4 Exclusions: GRANTEE may require Certified Vendor to comply with its own internal security standards, in addition to any security standards included in the exemplar Participating Entity Service Agreement, and incorporate such standards into the Participating Entity Service Agreement by reference;
  - i. Section 12.1 Limitation of Liability: The Certified Vendor may request a limitation of liability to be included. It is incumbent on the GRANTEE to determine if the proposed limitation is sufficient, permissible under applicable state and local law, and whether or not to include and incorporate such limitation into the Participating Entity Service Agreement;
  - j. Section 12.2 Indemnification: GRANTEE may require, negotiate, and include additional or alternative indemnification provisions, to the extent such provisions are permissible under applicable state and local law, either in addition to or in lieu of those included within the Participating Entity Service Agreement; and
  - k. Section 14.5 Dispute Resolution: GRANTEE may require specific dispute resolution provisions compliant with its local laws, regulations, and other policies applicable to the GRANTEE.

**3.1.2 Executed Copy of Financial Participating Entity Service Contract Required.** GRANTEE is hereby placed on immediate financial hold, consistent with Section 9.2 of this Grant Contract, and will remain on financial hold until OAG receives an executed copy of the Participating Service Contract along with any requisite amendment, renewal, or extensions made or otherwise exercised by GRANTEE pursuant to Section 1 therein in accordance with and as required by this section. To the extent the executed Participating Entity Service Contract includes any additional terms or conditions that limit or otherwise conflict with the exemplar Participating Entity Service Contract as attached here as Exhibit B, the GRANTEE will continue to remain on financial hold until GRANTEE provides OAG an executed Participating Service Contract in accordance with and as required by this section and consistent with the exemplar Participating Entity Service Contract as attached here as Exhibit B.

**3.2 Grantee Maintenance Plan.** GRANTEE agrees to establish and follow a “Maintenance Plan.” The Maintenance Plan, at a minimum, will be designed to accomplish the following: make

available offender information that is timely, accurate, and relevant to support the SAVNS Services; verify the Certified Vendor's performance according to the Participating Entity Service Contract; satisfactorily discharge GRANTEE's obligations as described in the Participating Entity Service Contract; and identify and dedicate GRANTEE staff, resources, and equipment necessary to maintain the SAVNS services in the Participating Entity Service Contract.

**3.3 GRANTEE Service Levels.** In addition to other service levels that the GRANTEE may impose, GRANTEE will inspect, monitor, and verify the performances required of the Certified Vendor as provided in the Participating Entity Service Contract as well as this Grant Contract. GRANTEE will execute a Participating Entity Service Contract with the Certified Vendor for the term of this Grant Contract. GRANTEE will verify that input data (the jail and court data elements used by the SAVNS system) is entered accurately and on a timely basis.

GRANTEE will allow on-site monitoring visits to be conducted by OAG or its authorized representative.

**3.4 Cooperation with Statewide Stakeholders.** GRANTEE will reasonably cooperate with and participate in Statewide Stakeholder meetings and efforts to monitor and improve the SAVNS services on a statewide basis. GRANTEE may reasonably agree to designate third-parties to assist the OAG, GRANTEE, and the other Statewide Stakeholders in the overall monitoring, inspection, and verification of the Certified Vendor's performances.

**3.5 E-Vine Upgrade and Cooperation for Implementation.** As part of the contract award and certification by the OAG, the Certified Vendor will begin transitioning to a new system to deliver the SAVNS services known as "E-Vine" with an expected completion by early FY 2023. E-Vine will provide the GRANTEE enhanced functionality and services such as a Service Provider Directory, an Offender Watch List, a Contact List, a quick escape button and Interactive Voice Response Technology. To facilitate this transition, funds for the E-VINE upgrade costs have been added to this Grant Contract. The Certified Vendor will perform work on the transition to E-Vine throughout the next three years and will bill E-Vine costs on a quarterly basis and in addition to the regular SAVNS maintenance fees. The OAG will advise GRANTEE of any associated transition activities as needed and GRANTEE shall reasonably cooperate with the Certified Vendor in these transition activities.

**3.6 Scope of Services.** For the purpose of this Grant Contract, the requirements, duties, and obligations contained in Section 3 of this Grant Contract are collectively referred to as the "Scope of Services." As a condition of reimbursement, GRANTEE agrees to faithfully, timely, and in a good and workman-like manner implement and maintain the services in compliance with the Scope of Services. GRANTEE shall bear full and sole responsibility for the integrity of the fiscal and programmatic management of its SAVNS program.

**3.7 Special Conditions.** The OAG may, at its sole discretion, impose additional requirements not specifically provided for in this Contract based on a need for information, ("Special Conditions") on GRANTEE, without notice and without amending this Grant Contract. The

imposition of any Special Conditions places GRANTEE on immediate financial hold, consistent with section 9.2, without further notice, until all Special Conditions are satisfied.

## **SECTION 4. GRANTEE'S OBLIGATIONS AND REQUIRED REPORTS**

### **4.1 General Matters**

**4.1.1 Required Reports; Form of Reports; Filings with the OAG.** GRANTEE shall forward to the OAG all applicable reports on forms as specified by the OAG. GRANTEE shall ensure that it files each document or form required by the OAG in an accurate and timely manner. Unless filing dates are given herein, all other reports and other documents that GRANTEE is required to forward to the OAG shall be promptly forwarded. From time to time, the OAG may require additional information from GRANTEE.

**4.1.2 Cooperation; Additional Information.** GRANTEE shall cooperate fully with the OAG. In addition to the information contained in the required reports, other information may be required as requested by the OAG.

**4.1.3 Notification of Changes in Organization, Changes in Authorized Official or Grant Contact.** GRANTEE shall submit written notice to the OAG of any change in the following: GRANTEE's name; contact information; key personnel, officer, director or partner; organizational structure; legal standing; or authority to do business in Texas. Such notice shall be provided, when possible, in advance of such change, but in no event later than ten (10) business days after the effective date of such change. A change in GRANTEE's name requires an amendment to the contract.

To change an Authorized Official, GRANTEE must submit a written request on GRANTEE's letterhead, with an original signature of someone with actual authority to act on behalf of GRANTEE. To change the grant contact, GRANTEE must submit a written request on GRANTEE's letterhead signed by an Authorized Official.

**4.1.4 Standards for Financial and Programmatic Management.** GRANTEE and its governing body shall bear full and sole responsibility for the integrity of the fiscal and programmatic management of the organization including financial and programmatic policies and procedures.

Such fiscal and programmatic management shall include but is not limited to the following: accountability for all funds and materials received from the OAG; compliance with OAG rules, policies and procedures, and applicable federal and state laws and other applicable requirements; and correction of fiscal and program deficiencies identified through self-evaluation and/or the OAG's monitoring processes. Ignorance of any contract provisions or other requirements referenced in this Grant Contract shall not constitute a defense or basis for waiving or failing to comply with such provisions or requirements.

GRANTEE shall develop, implement, and maintain appropriate financial management and control systems. The systems must include budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs; accurate and complete payroll, accounting, and financial reporting records; cost source documentation; effective internal and budgetary controls; allocation of costs; and timely and appropriate audits and resolution of any findings and applicable annual financial statements, including statements of financial position, activities, and cash flows, prepared on an accrual basis in accordance with Generally Accepted Accounting Principles or other recognized accounting principle.

**4.1.5 Security and Confidentiality of Records.** GRANTEE shall establish a method to secure the confidentiality of records required to be kept confidential by applicable federal or state law, rules or regulations. This provision shall not be construed as limiting the OAG's access to such records and other information.

**4.1.6 Public Information Act.** GRANTEE acknowledges that information, documents, and communications created or exchanged in the provision of services required by this Grant Contract may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly accessible format at no charge to the State, pursuant to Section 2252.907 of the Texas Government Code.

## **4.2 Programmatic Reports**

**4.2.1 Service Reports.** GRANTEE shall submit service delivery reports, programmatic performance reports and other reports to the extent requested by OAG, in a format and on a timely basis, as established by the OAG. GRANTEE will submit other reports as requested by the OAG.

**4.2.2 Written Explanation of Variance.** GRANTEE shall provide a written explanation to the OAG on a quarterly basis to the extent that the performance of the SAVNS system, the Certified Vendor, or the GRANTEE varies from the projected performance thereof as provided in the Maintenance Plan required by Section 3.2 hereunder. In addition to the written explanation, GRANTEE shall promptly answer any questions from the OAG, whether in writing or otherwise, in connection with the quarterly and annual reports presented to the OAG.

**4.2.3 Other Program Reports.** GRANTEE shall cooperate fully in any social studies, fiscal or programmatic monitoring, auditing, evaluating, and other reviews pertaining to services rendered by GRANTEE, which may be conducted by the OAG or its designees.

GRANTEE shall submit service delivery reports required by the contract or self-evaluations of performance and other reports requested by the OAG in appropriate format and on a timely basis and make available at reasonable times and for reasonable periods client records and other programmatic or financial records, books, reports, and supporting documents for reviewing and copying by the OAG or its designees.

**4.2.4 “Problem Log.”** GRANTEE shall establish a “Problem Log” that records all problems noted with the SAVNS system, including, but not limited to, system down time, system outages, and equipment failure. The Problem Log will provide when the problem was identified, to whom the problem was referred, steps taken to resolve the problem, and when the problem was resolved. GRANTEE shall provide OAG with any and all Problem Logs at OAG’s request.

### **4.3 Financial Matters**

**4.3.1 Annual Budgets.** With regard to the use of funds pursuant to this Grant Contract, GRANTEE will immediately review the budget for the fiscal year and the allowable expenditures, as shown on Exhibit A.

**4.3.2 Quarterly Requests for Reimbursement.** OAG grant funds will be paid on a cost-reimbursement basis no more frequently than quarterly pursuant to the process below. The OAG shall only reimburse actual and allowable allocable costs incurred and paid by GRANTEE during the term of this contract. The OAG is not obligated to reimburse expenses that were incurred prior to the commencement or after the termination or expiration of this contract. Any payments made by the OAG shall not exceed the actual and allowable allocable costs of GRANTEE to obtain services from the Certified Vendor for services within the “scope of services” of this contract. GRANTEE will submit to the OAG requests for reimbursement for the actual and allowable allocable costs incurred by GRANTEE to obtain services from the Certified Vendor for services within the “scope of services” of this Grant Contract. GRANTEE is responsible for submitting its invoices to the OAG in an accurate and timely manner. The requests for reimbursement must be accompanied by supporting documentation as required by the OAG. The OAG may from time to time require different or additional supporting documentation.

**a.** GRANTEE shall submit a request for reimbursement to the OAG for the prior quarter by the fifth (5th) of the next month following the end of each quarter. The four quarters for each fiscal year covered by the term of this Grant Contract end respectively on November 30, February 28, May 31, and August 31.

**b.** GRANTEE shall include a verification with its request for reimbursement stating that the GRANTEE received the services from the Certified Vendor during the preceding quarter and incurred the actual and allowable allocable costs for which GRANTEE seeks reimbursement.

**c.** If GRANTEE does not submit the required request for reimbursement and verification to the OAG within forty-five (45) days of the next month following the end of any quarter, the OAG will determine what steps will be taken next, including placing the grant contract on financial hold or terminating the grant contract. If an OAG grant contract is placed on financial hold or terminated, the GRANTEE remains responsible for any contractual obligation it has with Certified Vendor. The OAG will not be responsible for collection efforts on behalf of the Certified Vendor.

**4.3.3 Limited Pre-Reimbursement Funding to GRANTEE.** Notwithstanding Section 4.3.2 above, the OAG, may, at its sole discretion, provide limited pre-reimbursement funding for

reimbursable expenses to GRANTEE. This limited funding is not preferred and may be allowed upon submission of the following written documentation supporting the request:

- a. A fully executed Participating Entity Services Agreement with the Certified Vendor for the time period covered by this Grant Contract;
- b. An invoice from the Certified Vendor which includes the dates covered under this Grant Contract;
- c. A completed OAG form "Verification of Continuing Production Record" which shall be provided by the OAG upon request;
- d. An invoice to the OAG that complies with the requirements of the OAG; and
- e. A written justification, signed by the Authorized Official or the Authorized Official's designee, explaining the need for pre-reimbursement funding.

**4.3.3 Fiscal Year End Required Reports.** GRANTEE shall submit fiscal year-end required reports that shall be received by the OAG on or before October 15 of each year covered by the term of this Grant Contract. The year-end reports shall include the following:

- a. **Record of Reimbursement.** GRANTEE will submit a reconciled record of its expenses for the prior fiscal year.
- b. **Equipment Inventory Report.** GRANTEE will submit an Equipment Inventory Report which provides a record of the current inventory of items purchased, disposed of, replaced or transferred for any equipment that was purchased with grant funds.

**4.3.4 Annual Independent Financial Audit Report.** GRANTEE shall timely submit to the OAG a copy of its annual independent financial audit. The timely submission to the OAG is on or before nine (9) months after the end of GRANTEE's accounting year. GRANTEE will contract with an independent CPA firm to perform an annual financial audit engagement. If applicable, GRANTEE's independent CPA firm will determine the type of annual financial audit, which may include a compliance attestation in accordance with the requirements of 2 CFR Part 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and/or Texas Single Audit Circular (Single Audit or non-Single Audit financial audit). If applicable, GRANTEE will provide the OAG with any and all annual independent financial audits or audited financial statements, related management letters, and management responses of GRANTEE.

**4.3.5 Close Out Invoice** GRANTEE shall submit a final invoice not later than forty-five (45) days after the earlier of (1) the termination of this Grant Contract; or (2) the end of each state fiscal year covered by the term of this Grant Contract.

**4.3.6 Refunds and Deductions.** If the OAG determines that an overpayment of grant funds under this Grant Contract has occurred, such as payments made inadvertently, pre-reimbursement payments that were not expended, or payments made but later determined not to be actual and allowable allocable costs, the OAG may seek a refund from GRANTEE and/or the Certified Vendor. The OAG, in its sole discretion, may offset and deduct the amount of the overpayment

from any amount owed as a reimbursement under this Grant Contract, or may choose to require a payment directly from GRANTEE and/or the Certified Vendor rather than offset and deduct any amount. GRANTEE and/or the Certified Vendor shall promptly refund any overpayment to the OAG within thirty (30) calendar days of the receipt of the notice of the overpayment from the OAG unless an alternate payment plan is specified by the OAG.

**4.3.7 Purchase of Equipment; Maintenance and Repair; Title upon Termination.**

GRANTEE shall not give any security interest, lien or otherwise encumber any item of equipment purchased with contract funds. GRANTEE shall permanently identify all equipment purchased under this Grant Contract by appropriate tags or labels affixed to the equipment. GRANTEE shall maintain a current inventory of all equipment, which shall be available to the OAG at all times upon request; however, as between the OAG and GRANTEE title for equipment will remain with GRANTEE.

GRANTEE will maintain, repair, and protect all equipment purchased in whole or in part with grant funds under this Grant Contract so as to ensure the full availability and usefulness of such equipment. In the event GRANTEE is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to, the equipment purchased under this Grant Contract, it shall use the proceeds to repair or replace said equipment.

**4.3.8 Direct Deposit.** GRANTEE may make a written request to the OAG to be placed on Direct Deposit status by completing and submitting to the OAG the State Comptroller's Direct Deposit Authorization Form. After the direct deposit request is approved by the OAG and the setup is completed on the Texas Identification Number System by the State Comptroller's Office, payment will be remitted by direct deposit and the OAG will discontinue providing GRANTEE with copies of reimbursement vouchers.

**4.3.10 Debts and Delinquencies.** GRANTEE agrees that any payments due under the grant contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**SECTION 5. OBLIGATIONS OF OAG**

**5.1 Monitoring.** The OAG is responsible for monitoring GRANTEE to ensure the effective and efficient use of grant funds to accomplish the purposes of this Grant Contract.

**5.2 Maximum Liability of OAG.** The maximum liability of the OAG is contained in the attached Exhibit A. Any change to the maximum liability is void unless supported by a written amendment to this Grant Contract executed between OAG and GRANTEE.

**5.3 Payment of Authorized Costs.** In accordance with the terms of this Grant Contract, the OAG will pay costs as explicitly authorized pursuant to this Grant Contract. The OAG is not obligated to pay unauthorized costs.

**5.4 Contract Not Entitlement or Right.** Reimbursement with contract funds is not an entitlement or right. Reimbursement depends, among other things, upon strict compliance with all terms, conditions and provisions of this Grant Contract. The OAG and GRANTEE agree that any act, action or representation by either party, their agents or employees that purports to increase the maximum liability of the OAG is void, unless a written amendment to this Grant Contract is first executed. GRANTEE agrees that nothing in this Grant Contract will be interpreted to create an obligation or liability of the OAG in excess of the funds delineated in this Grant Contract.

**5.5 Funding Limitation.** GRANTEE agrees that funding for this Grant Contract is subject to the actual receipt by the OAG of grant funds (state and/or federal) appropriated to the OAG. GRANTEE agrees that the grant funds, if any, received from the OAG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of the OAG for the purpose of this Grant Contract. **GRANTEE agrees that notwithstanding any other provision of this Grant Contract, if the OAG is not appropriated the funds, or if the OAG does not receive the appropriated funds for this grant program, or if the funds appropriated to the OAG for this grant program are required to be reallocated to fund other state programs or purposes, the OAG is not liable to pay the GRANTEE any remaining balance on this Grant Contract.**

## **SECTION 6. TERMINATION**

**6.1 Termination for Convenience.** Either Party may, at its sole discretion, terminate this Grant Contract, without recourse, liability or penalty, upon providing written notice to the other Party thirty (30) calendar days before the effective date of such termination.

**6.2 Termination for Cause.** In the event that GRANTEE fails to perform or comply with an obligation of the terms, conditions and provisions of this Grant Contract, the OAG may, upon written notice of the breach to GRANTEE, immediately terminate all or any part of this Grant Contract.

**6.3 Termination Not Exclusive Remedy; Survival of Terms and Conditions.** Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this Grant Contract.

Termination of this Grant Contract for any reason or expiration of this Grant Contract shall not release the Parties from any liability or obligation set forth in this Grant Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination. The following terms and conditions, (in addition to any others that could reasonably be interpreted to survive but are not specifically identified), survive the termination or expiration of this Grant Contract: Sections 4, 5, 7, 11, and 12.

**6.4 Refunds to OAG by GRANTEE.** If the GRANTEE terminates for convenience under Section 6.1, or if the OAG terminates under Sections 6.1 or 6.2 before the purpose of this Grant

Contract is accomplished, then the OAG may require the GRANTEE and/or the Certified Vendor to refund all or some of the grant funds paid under this Grant Contract. Such funds include those funds representing the number of months of SAVNS services that were previously invoiced and paid by the OAG under this Grant Contract.

**6.5 Notices to Certified Vendor.** Any termination of this Grant Contract will also be forwarded by the terminating party to the Certified Vendor.

## **SECTION 7. AUDIT RIGHTS; RECORDS RETENTION**

**7.1 Duty to Maintain Records.** GRANTEE shall maintain adequate records that enable the OAG to verify all reporting measures and requests for reimbursements related to this Grant Contract. GRANTEE also shall maintain such records as are deemed necessary by the OAG, OAG's auditor, the State Auditor's Office or other auditors of the State of Texas, the federal government, or such other persons or entities designated by the OAG, to ensure proper accounting for all costs and performances related to this Grant Contract.

**7.2 Records Retention.** GRANTEE shall maintain and retain all records as are necessary to fully disclose the extent of services provided under this Grant Contract for a period of seven (7) years after the later of (a) the submission of the last expenditure report required under this Grant Contract, or (b) the full and final resolution of all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving this Grant Contract. The records include, but may not be limited to, the contract, any contract solicitation documents, any daily activity reports and time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

**7.3 Audit Trails.** GRANTEE shall maintain appropriate audit trails to provide accountability for all reporting measures and requests for reimbursement. Audit trails maintained by GRANTEE will, at a minimum, identify the supporting documentation prepared by GRANTEE to permit an audit of its systems. GRANTEE's automated systems, if any, must provide the means whereby authorized personnel have the ability to audit and verify contractually required performances and to establish individual accountability for any action that can potentially cause access to, generation of, or modification of confidential information.

**7.4 Access and Audit.** At the request of the OAG, GRANTEE shall grant access to and make available all paper and electronic records, books, documents, accounting procedures, practices, and any other items relevant to the performance of this Grant Contract, compliance with applicable state or federal laws and regulations, and the operation and management of GRANTEE to the OAG or its designees for the purposes of inspecting, auditing, or copying such items. GRANTEE will direct any other entity, person, or contractor receiving funds directly under this Grant Contract or through a subcontract under this Grant Contract to likewise permit access to, inspection of, and reproduction of all books, records, and other relevant information of the entity, person, or contractor(s) that pertain to this Grant Contract. All records, books, documents, accounting

procedures, practices, and any other items, in whatever form, relevant to the performance of this Grant Contract, shall be subject to examination or audit. Whenever practical as determined at the sole discretion of the OAG, the OAG shall provide GRANTEE with up to five (5) business days' notice of any such examination or audit.

**7.5 State Auditor.** In addition to and without limitation on the other audit provisions of this Grant Contract, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of GRANTEE or any other entity or person receiving funds from the State directly under this Grant Contract or indirectly through a subcontract under this Grant Contract. The acceptance of funds by GRANTEE or any other entity or person directly under this Grant Contract or indirectly through a subcontract under this Grant Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, GRANTEE or another entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. GRANTEE further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. GRANTEE shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through GRANTEE and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of GRANTEE related to this Grant Contract. GRANTEE also represents and warrants that it will comply with Section 321.022 of the Texas Government Code, which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

**7.6 Location.** Any audit of records shall be conducted at GRANTEE's principal place of business and/or the location(s) of GRANTEE's operations during GRANTEE's normal business hours. GRANTEE shall provide to OAG or its designees, on GRANTEE's premises (or if the audit is being performed of a subcontractor, the subcontractor's premises if necessary) private space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities, and office-related equipment and duplicating services as OAG or its designees may reasonably require to perform the audits described in this Grant Contract.

## **SECTION 8. SUBMISSION OF INFORMATION TO THE OAG**

The OAG will designate the proper methods for the delivery of information to the OAG by GRANTEE. The OAG generally requires submission of information via email or hard copy format. Some reporting requirements must occur via the internet and/or a web-based data collection method. Accordingly, all reports required under this contract including but not limited to semi-annual statistical reports, annual performance reports, financial status reports, requests for reimbursement, Annual Compiled Financial Statement Report, and any other reports, notices or information must be submitted in the manner directed by the OAG. The manner of delivery may

be subject to change during the term of the contract, in the sole discretion of the OAG.

## **SECTION 9. CORRECTIVE ACTION PLANS AND SANCTIONS**

The Parties agree to make a good faith effort to identify, communicate, and resolve problems found by either the OAG or GRANTEE.

**9.1 Corrective Action Plans.** If the OAG finds deficiencies in GRANTEE's performance under this Grant Contract, the OAG, at its sole discretion, may impose one or more of the following remedies as part of a corrective action plan: increase of monitoring visits; require additional or more detailed financial and/or programmatic reports be submitted; require prior approval for expenditures; require additional technical or management assistance and/or make modifications in business practices; reduce the contract amount; and/or terminate this Grant Contract. The foregoing are not exclusive remedies, and the OAG may impose other requirements that the OAG determines will be in the best interest of the State.

**9.2 Financial Hold.** Failure to comply with submission deadlines for required reports, invoices, or other requested information or otherwise failing to comply with the terms of this Grant Contract may result in the OAG, at its sole discretion, placing GRANTEE on immediate financial hold without further notice to GRANTEE and without first requiring a corrective action plan. No reimbursements will be processed until the requested information is submitted. If GRANTEE is placed on financial hold, the OAG, at its sole discretion, may deny reimbursement requests associated with expenses incurred during the time GRANTEE was placed on financial hold.

**9.3 Sanctions.** In addition to financial hold, the OAG, at its sole discretion, may impose other sanctions without first requiring a corrective action plan. The OAG, at its sole discretion, may impose sanctions, including, but not limited to, withholding or suspending funding, offsetting previous reimbursements, requiring repayment, disallowing claims for reimbursement, reducing funding, terminating this Grant Contract and/or any other appropriate sanction.

**9.4 No Waiver.** Notwithstanding the imposition of corrective actions, financial hold, and/or sanctions, GRANTEE remains responsible for complying with the contract terms and conditions. Corrective action plans, financial hold, and/or sanctions do not excuse or operate as a waiver of prior failure to comply with this Grant Contract.

## **SECTION 10. GENERAL TERMS AND CONDITIONS**

**10.1 Federal and State Laws, Rules and Regulations, Directives, Guidelines, Code of Federal Regulations (CFR) and Other Relevant Authorities.** GRANTEE agrees to comply with all applicable federal and state laws, rules and regulations, directives, guidelines, including 2 CFR Part 200, and any other authorities relevant to the performance of GRANTEE under this contract. In instances where multiple requirements apply to GRANTEE, the more restrictive requirement

applies.

**10.2 Uniform Grant Management Act, UGMS and Applicable Standard Federal and State Certifications and Assurances.** GRANTEE agrees to comply with applicable laws, executive orders, regulations and policies including Texas Government Code, Chapter 783, and the Uniform Grant Management Standards (UGMS), and any other applicable federal or state grant management standards or requirements. Further, GRANTEE agrees to comply with the applicable OAG Certifications and Assurances, which are incorporated herein by reference, including, but not limited to, the equal employment opportunity program certification, disclosure and certification regarding lobbying, non-procurement debarment certification, drug-free workplace certification, annual single audit certification, compliance with annual independent financial audit filing requirement, compliance with UGMS and the applicable 2 CFR Part 200, return of grant funds in the event of loss or misuse, and conflict of interest.

**10.3 Generally Accepted Accounting Principles or Other Recognized Accounting Principles.** GRANTEE shall adhere to Generally Accepted Accounting Principles promulgated by the American Institute of Certified Public Accountants, unless other recognized accounting principles are required by GRANTEE and agreed to by the OAG, in advance. GRANTEE shall follow OAG fiscal management policies and procedures in processing and submitting requests for reimbursement and maintaining financial records related to this Grant Contract.

**10.4 Conflicts of Interest; Disclosure of Conflicts.** GRANTEE has not given, or offered to give, nor does GRANTEE intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or employee of the OAG, at any time during the negotiation of this Grant Contract or in connection with this Grant Contract, except as allowed under relevant state or federal law. GRANTEE will establish safeguards to prohibit its employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest or personal gain. GRANTEE will operate with complete independence and objectivity without an actual, potential or apparent conflict of interest with respect to its performance under this Grant Contract. GRANTEE must disclose, in writing, within fifteen (15) calendar days of discovery, any existing or potential conflicts of interest relative to its performance under this Grant Contract.

**10.5 Does Not Boycott Israel.** To the extent required by Texas Government Code Section 2271.002, GRANTEE represents and warrants, that neither GRANTEE, nor any subcontractor, assignee, or sub-recipient of GRANTEE, currently boycotts Israel, or will boycott Israel during the term of this Grant Contract. GRANTEE agrees to take all necessary steps to ensure this certification remains true for any future subcontractor or assignee. For purposes of this provision, "Boycott Israel" shall have the meaning assigned by Texas Government Code, Sec. 808.001(1).

**10.6 Law Enforcement Funding.** To the extent applicable, GRANTEE acknowledges that, under article IX, section 4.01 of the General Appropriations Act for the term covered by this Grant Contract, funds may only be expended under this Grant Contract if GRANTEE is in compliance with all rules developed by the Commission on Law Enforcement or if the Commission on Law

Enforcement has certified that GRANTEE is in the process of achieving compliance.

**10.7 Restriction on Abortion Funding.** GRANTEE acknowledges that, under article IX, section 6.25 of the General Appropriations Act for the term covered by this Grant Contract, and except as provided by that Act, funds may not be distributed under this Grant Contract to any individual or entity that: (1) performs an abortion procedure that is not reimbursable under the State's Medicaid program; (2) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the State's Medicaid program; or (3) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the State's Medicaid program.

## **SECTION 11. SPECIAL TERMS AND CONDITIONS**

**11.1 Independent Contractor Status; Indemnity and Hold Harmless Agreement.** GRANTEE expressly agrees that it is an independent contractor. Under no circumstances shall any owner, incorporator, officer, director, employee, or volunteer of GRANTEE be considered a state employee, agent, servant, or partner of, or part of any joint venture or joint enterprise with, the OAG or the State of Texas. GRANTEE agrees to take such steps as may be necessary to ensure that each contractor of GRANTEE will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, or partner of, or part of any joint venture or joint enterprise with the OAG or the State of Texas.

All persons furnished, used, retained, or hired by or on behalf of GRANTEE or any of GRANTEE's contractors shall be considered to be solely the employees or agents of GRANTEE or GRANTEE's contractors. GRANTEE or GRANTEE's contractors shall be responsible for ensuring that any and all appropriate payments are made, such as unemployment, workers compensation, social security, any benefit available to a state employee as a state employee, and other payroll taxes for such persons, including any related assessments or contributions required by law.

**GRANTEE or contractors are responsible for all types of claims whatsoever due to actions or performance under this Grant Contract, including, but not limited to, the use of automobiles or other transportation by its owners, incorporators, officers, directors, employees, volunteers, or any third parties. GRANTEE shall defend, indemnify, and hold harmless OAG and the State of Texas, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys fees, and expenses arising out of, or resulting from any acts or omissions of GRANTEE or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract. In the event the State of Texas, the OAG, or any other State of Texas agency are named defendants in any lawsuit, the defense thereof shall be coordinated by GRANTEE with the OAG. GRANTEE may not agree to any settlement without first obtaining the concurrence from OAG. OAG and GRANTEE agree to furnish**

**timely written notice to each other of any such claim.**

**11.2 Publicity.** GRANTEE shall not use the OAG's name or refer to the OAG directly or indirectly in any media release, public service announcement, or public service disclosure relating to this Grant Contract or any acquisition pursuant hereto, including in any promotional or marketing materials, without first obtaining written consent from the OAG. This section is not intended to and does not limit GRANTEE's ability to comply with its obligations and duties under the Texas Open Meetings Act and/or the Texas Public Information Act.

**11.3 Intellectual Property.** GRANTEE understands and agrees that GRANTEE may copyright any original books, manuals, films, or other original material and intellectual property developed or produced out of funds obtained under this Grant Contract, subject to the royalty-free, non-exclusive, and irrevocable license which is hereby reserved by the OAG and granted by GRANTEE to the OAG or, where applicable, the State of Texas, or if federal funds are expended, the United States Government. Grantee hereby grants the OAG an unrestricted, royalty-free, non-exclusive, and irrevocable license to use, copy, modify, reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), at no additional cost to the OAG, in any manner the OAG deems appropriate in the exercise of its sole discretion, any component of such intellectual property.

GRANTEE shall obtain from subrecipients, contractors, and subcontractors (if any) all rights and data necessary to fulfill the GRANTEE's obligations to the OAG under this Grant Contract. If a proposed subrecipient, contractor, or subcontractor refuses to accept terms affording the OAG such rights, Grantee shall promptly bring such refusal to the attention of the OAG Program Manager for the contract and not proceed with the agreement in question without further authorization from the OAG.

**11.4 Program Income.** Gross income directly generated from the grant funds through a project or activity performed under this Grant Contract is considered program income. Unless otherwise required under the terms of this Grant Contract, any program income shall be used by GRANTEE to further the program objectives of the project or activity funded by this grant, and the program income shall be spent on the same project or activity in which it was generated. GRANTEE shall identify and report this income in accordance with the OAG's reporting instructions. GRANTEE shall expend program income during this Grant Contract term; program income not expended in this Grant Contract term shall be refunded to the OAG.

**11.5 No Supplanting.** GRANTEE shall not supplant or otherwise use funds from this Grant Contract to replace or substitute existing funding from other sources that also supports the activities that are the subject of this Grant Contract.

**11.6 No Solicitation or Receipt of Funds on Behalf of OAG.** It is expressly agreed that any solicitation for or receipt of funds of any type by GRANTEE is for the sole benefit of GRANTEE and is not a solicitation for or receipt of funds on behalf of the OAG or the Attorney General of the State of Texas.

**11.7 No Subcontracting, Assignment, or Delegation Without Prior Written Approval of OAG.** GRANTEE may not subcontract, assign any of its rights, or delegate any of its duties under this contract without the prior written approval of the OAG. OAG shall maintain the complete and sole discretion to approve or deny any request to subcontract, assign any right, or delegate any duty under this contract, and the OAG may withhold its approval for any reason or no reason. In the event OAG approves subcontracting, assignment, or delegation by GRANTEE, GRANTEE will ensure that its contracts with others shall require compliance with the provisions of this Contract. GRANTEE, in subcontracting for any performances specified herein, expressly understands and agrees that it is not relieved of its responsibilities for ensuring that all performance is in compliance with this contract and that the OAG shall not be liable in any manner to GRANTEE's subcontractor(s). GRANTEE represents and warrants that it will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

**11.8 No Grants to Certain Organizations.** GRANTEE confirms by executing this Grant Contract that it does not make contributions to campaigns for elective office or endorse candidates.

**11.9 No Waiver of Sovereign Immunity.** The Parties agree that no provision of this Grant Contract is in any way intended to constitute a waiver by the OAG or the State of Texas of any immunities from suit or from liability that the OAG or the State of Texas may have by operation of law.

**11.10 Governing Law; Venue.** This Grant Contract is made and entered into in the State of Texas. This Grant Contract and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Except where state law establishes mandatory venue, GRANTEE agrees that any action, suit, litigation or other proceeding (collectively "litigation") arising out of or in any way relating to this Grant Contract shall be commenced exclusively in the Travis County District Court or the United States District Court in the Western District, Austin Division, and to the extent allowed by law, hereby irrevocably and unconditionally consents to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation. GRANTEE hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that GRANTEE is not personally subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is improper.

**11.11 U.S. Department of Homeland Security's E-Verify System.** GRANTEE will ensure that it utilizes the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of any new employee hired after the effective date of this agreement who will be working on any matter covered by this agreement.

**11.12 No Use of Grant Money for Lobbying.** GRANTEE shall not use any grant funds provided by OAG to GRANTEE to influence the passage or defeat of any legislative measure or election of any candidate for public office.

**11.13 Texas Public Information Act.** Information, documentation, and other material in connection with this Grant Contract or the underlying grant may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, GRANTEE is required to make any information created or exchanged with OAG, the State of Texas, or any state agency pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to OAG, the State of Texas, or any state agency.

**11.14 Dispute Resolution Process.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used to resolve any dispute arising under this Contract including specifically any alleged breach of the Contract by OAG.

## **SECTION 12. CONSTRUCTION OF CONTRACT AND AMENDMENTS**

**12.1 Construction of Contract.** The provisions of Section 1 are intended to be a general introduction to this Grant Contract. To the extent the terms and conditions of this Grant Contract do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be construed consistent with the general objectives, expectations and purposes of this Grant Contract.

**12.2 Entire Agreement, including All Exhibits.** This Grant Contract, including all exhibits, reflects the entire agreement between the Parties with respect to the subject matter therein described, and there are no other representations (verbal or written), directives, guidance, assistance, understandings or agreements between the Parties related to such subject matter. By executing this Grant Contract, GRANTEE agrees to strictly comply with the requirements and obligations of this Grant Contract, including all exhibits.

**12.3 Amendment.** This Grant Contract shall not be modified or amended except in writing, signed by both parties. Any properly executed amendment of this Grant Contract shall be binding upon the Parties and presumed to be supported by adequate consideration.

**12.4 Partial Invalidity.** If any term or provision of this Grant Contract is found to be illegal or unenforceable, such construction shall not affect the legality or validity of any of its other provisions. The illegal or invalid provision shall be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions shall continue in full force and effect.

**12.5 Non-waiver.** The failure of any Party to insist upon strict performance of any of the terms

or conditions herein, irrespective of the length of time of such failure, shall not be a waiver of that party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Grant Contract shall constitute a consent or waiver to or of any breach or default in the performance of the same or any other obligation of this Grant Contract.

**12.6 Official Capacity.** The Parties stipulate and agree that the signatories hereto are signing, executing and performing this Grant Contract only in their official capacity.

**12.7 Signature Authority.** The undersigned Parties represent and warrant that the individuals submitting this document are authorized to sign such documents on behalf of the respective parties.

**IN WITNESS HEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS CONTRACT IN MULTIPLE COUNTERPARTS.**

**OFFICE OF THE ATTORNEY  
GENERAL**

Hays County

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Office of the Attorney General

\_\_\_\_\_  
Printed Name: Ruben Becerra  
Authorized Official

## SAVNS MAINTENANCE GRANT CONTRACT

OAG Contract No. 2111177

### EXHIBIT A

Population Size: Large

The total liability of the OAG for any type of liability directly or indirectly arising out of this Grant Contract and in consideration of GRANTEE'S full, satisfactory and timely performance of all its duties, responsibilities, obligations, liability, and for reimbursement by the OAG for expenses, if any, as set forth in this Grant Contract or arising out of any performance herein shall not exceed the following:

Annual Cost for Jail	Annual Cost for Courts	Annual E-Vine Upgrade Cost	MAXIMUM REIMBURSABLE COSTS
\$24,478.16	\$4,068.60	\$1,575.75	\$30,122.51

The annual costs listed above will be billed by the Vendor on a quarterly basis pursuant to the terms of Participating entity Service Agreement (Exhibit B). The OAG is not obligated to pay for services prior to the commencement or after the termination of this Grant Contract.

**Exhibit B**  
**FIRST CONTRACT RENEWAL**  
**PARTICIPATING ENTITY SERVICES AGREEMENT FOR THE**  
**STATEWIDE AUTOMATED VICTIM NOTIFICATION SERVICE (SAVNS)**

**Contract No.**

WHEREAS, the Office of the Attorney General (OAG) is the Texas State agency tasked with certifying a statewide vendor to provide a Statewide Automated Victim Notification Service (SAVNS) to a variety of political subdivisions of the State of Texas, including counties, county Sheriffs, clerks and attorneys, district attorneys, and courts ("Participating Entities");

WHEREAS OAG certified and contracted with **Appriss Inc. ("Vendor")** as the statewide vendor to provide SAVNS to each of the Participating Entities ("OAG Certification Agreement");

WHEREAS [NAMED ENTITY] as a Participating Entity and VENDOR executed a Participating Services Agreement identified as Contract No. [INSERT CONTRACT NUMBER] under which VENDOR would provide SAVNS to [NAMED ENTITY] (the "Contract");

WHEREAS SECTION 1 of the Contract permitted the [NAMED ENTITY] to, in its sole and absolute discretion, renew the Contract, for four (4) additional one (1) year renewal terms (each a "Renewal Term") to the extent the OAG Certification Agreement, remains in effect;

WHEREAS the OAG exercised its option to renew the OAG Certification Agreement, extending the term thereof to August 31, 2022;

NOW, THEREFORE, THIS **FIRST CONTRACT RENEWAL** is exercised by [NAMED ENTITY] as follows:

The Contract is set to terminate on August 31, 2020. The Contract is hereby renewed, with this First Contract Renewal Term ("First Renewal Term") to begin on September 1, 2020 and end of August 31, 2021. Pursuant to Section 1 of the Contract, this First Renewal Term and any subsequent renewals, shall be subject to all specifications and terms and conditions of the Contract, the OAG Certification Agreement, and the Incorporated Documents as defined in Section 2 therein.

**[NAMED ENTITY] by:**

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

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

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

**Acknowledged by Appriss, Inc.**

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

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

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

## Certificate Of Completion

Envelope Id: DE7C68413DFE4DDDA847B7DD4BD5848E  
 Subject: Please DocuSign: FY 2021 SAVNS Grant Contract  
 Template ID:  
 Source Envelope:  
 Document Pages: 22  
 Certificate Pages: 7  
 AutoNav: Enabled  
 Envelope Stamping: Disabled  
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
 Karly Watson  
 PO Box 12548  
 Austin, TX 78711-2548  
 Karly.Watson@oag.texas.gov  
 IP Address: 204.64.50.216

## Record Tracking

Status: Original  
 8/19/2020 5:20:16 PM

Holder: Karly Watson  
 Karly.Watson@oag.texas.gov

Location: DocuSign

## Signer Events

Ruben Becerra  
 judge.becerra@co.hays.tx.us  
 Hays County Judge  
 Hays County  
 Security Level: Email, Account Authentication  
 (None)

**Electronic Record and Signature Disclosure:**  
 Accepted: 8/21/2020 8:57:33 AM  
 ID: dcc33173-58c9-4f43-b64a-74a8193ec0f0

Melissa Foley  
 Melissa.Foley@oag.texas.gov  
 Security Level: Email, Account Authentication  
 (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Gene McCleskey  
 Gene.McCleskey@oag.texas.gov  
 Security Level: Email, Account Authentication  
 (None)

**Electronic Record and Signature Disclosure:**  
 Accepted: 1/14/2019 12:34:26 PM  
 ID: 6a746d16-8742-4c15-ace2-f36a64c991b6

Financial Litigation - FLD Attorney Review

Signing Group: Financial Litigation - FLD Attorney  
 Review  
 Security Level: Email, Account Authentication  
 (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Joshua Godbey

Signing Group: Joshua Godbey  
 Security Level: Email, Account Authentication  
 (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

## Timestamp

Sent: 8/19/2020 5:20:18 PM  
 Viewed: 8/21/2020 8:57:33 AM

Signer Events	Signature	Timestamp
Bruce Williamson Bruce.Williamson@oag.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Mark Penley Mark.Penley@oag.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Karly Watson karly.watson@oag.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
FLD Contracts FLDcontracts@oag.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Accounting - DocuSign Contracts ACC_DocuSign_Contracts@oag.texas.gov Signing Group: Accounting - DocuSign Contracts Inbox Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Joshua Alexander Joshua.Alexander@oag.texas.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/19/2020 5:20:18 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **CONSUMER DISCLOSURE**

From time to time, Office of the Attorney General (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Electronic signature**

An electronic signature is an electronic identifier, created by a computer, attached to or logically associated with an electronic record, executed or adopted by a person with the intent and with the actual authority to sign the record. Your electronic signature has the same legal force and effect as a manual signature. Your electronic signature constitutes your signature, acceptance, and agreement as if you signed in writing.

### **Security standards**

DocuSign provides security assurance with enterprise-wide ISO 27001:2013 certification, xDTM compliance, as well as SSAE 16, SOC 1 Type 2, SOC 2 Type 2 reports. DocuSign delivers data confidentiality with application level AES 256 bit encryption.

### **Sending information to and receiving information from us**

The Public Information Act, chapter 552 of the Texas Government Code, applies to all information we send and receive. The Public Information Act protects information from public disclosure if it is confidential by any law or rule. If we receive a written request for information, the Public Information Act requires us to publicly disclose requested information that is not confidential by law or rule or otherwise excepted from public disclosure. If you receive any information from us in error, you are not authorized to read, print, retain, copy, or disseminate the information. Any information you receive in error may be confidential information that cannot be disclosed without violating the criminal provisions of the Public Information Act or Texas Penal Code section 39.06. If you receive information in error, please immediately send an e-mail to [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) to notify us of the error and delete all copies of the information you received.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record we provided or made available electronically to you through the DocuSign system. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign ‘Withdraw Consent’ form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

**All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Office of the Attorney General**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov)

**To advise Office of the Attorney General of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address.

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from Office of the Attorney General**

To request delivery from us of paper copies of the notices and disclosures we previously provided to you electronically, you must send us an e-mail to [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Office of the Attorney General**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [servicedesk@oag.texas.gov](mailto:servicedesk@oag.texas.gov) and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take longer time to process.

#### **Required hardware and software**

Supported Browsers:	DocuSign supports the latest stable release (except where noted) of the following browsers: Chrome, Firefox, Safari, Internet Explorer 11+, Windows Edge
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	1024 x 768 minimum (for desktops and laptops)
Enabled Security Settings:	Allow per session cookies. Users accessing the Internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection. Firewall settings must allow access to the following server: <a href="https://docucdn-a.akamaihd.net">https://docucdn-a.akamaihd.net</a> . DocuSign leverages Akamai as a content delivery service to enhance our application's performance.

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

#### **Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Office of the Attorney General as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made

available to me by Office of the Attorney General during the course of my relationship with you.

## 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 Recycling and Solid Waste Department to purchase two new Self- Dumping Forklift Hoppers that will be used at both the Wimberley and Driftwood locations and amend the budget accordingly.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	\$1,966

#### LINE ITEM NUMBER

001-716-00.5719\_400

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
T. CRUMLEY	SHELL	SMITH

#### SUMMARY

The Recycling and Solid Waste Department would like to purchase two new self-dumping forklift hoppers. There will be one hopper used at the Wimberley location and one hopper at the Driftwood location. These hoppers are used to move and dump contents into the large roll-off containers. The Recycling Department would like to purchase these from Global Industrial who is a member of the BuyBoard Co-Op.

Attachment: Global Industrial Quote  
BuyBoard Contract #577-18

##### Budget Amendment:

Decrease: 001-716-00.5452 Trash Hauling (\$1,966)

Increase: 001-716-00.5719\_400 Misc Equip Operating \$1,966



2505 MILL CENTER PARKWAY SUITE 100  
BUFORD, GA 30518

## Sales Quote

Account #:503644	Quote #:5691876	Quote Issued:08/05/2020
HAYS COUNTY	BILLY.GEPHART@CO.HAYS.TX.US	*Pricing valid for 14 days from quote issue date
BILLY GEPHART	Phone: (512) 964-2960	
20290 FM 150	Fax:	
DRIFTWOOD, Texas 78619		
<a href="#">CLICK HERE TO LOGIN AND PLACE THIS ORDER ONLINE.</a>		

Part#	Description	Shipping	Quantity	Price	Extended
238418GY	Wright™ 20055 2 Cu Yd Gray Medium Duty Self Dumping Forklift Hopper Country Of Origin: UNITED STATES	TRUCK	2	\$809.10	\$1,618.20
Item Total:					\$1,618.20
Shipping and Handling:					\$347.00
PLEASE BE SURE TO REVIEW OUR TERMS AND CONDITIONS				*Total:	\$1,965.20

<b>Notes</b> BUYBOARD 577-18	<p>Thank you for the opportunity to help with your needs. To place your order or for further assistance please contact me.</p> <p><b>Name:</b> DANIEL HIMELICK <b>Email:</b> DHIMELICK@GLOBALINDUSTRIAL.COM <b>Phone:</b> (678) 969-6676 x123631 <b>Fax:</b> (888) 820-4562</p>
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\*Applicable taxes and shipping charges will be added to invoice.

11 Harbor Park Drive, Port Washington, N.Y. 11050  
Copyright © 2020 by Global Industrial. All Rights Reserved.

## 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

Accept the delivery of the Fiscal Year 2019 Internal Examination Report for the Hays County Sheriff's Jail Commissary Account.

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Marisol Villarreal-Alonzo

#### SPONSOR

Click to Select  
Sponsor.

#### CO-SPONSOR

N/A

#### SUMMARY

The Internal Examination Report is attached.



**OFFICE OF THE COUNTY AUDITOR**

712 South Stagecoach Trail, Ste.1071

San Marcos, Texas 78666

**Marisol Villarreal-Alonzo, CPA**

512-393-2283

**County Auditor**

Fax: 512-393-2248

[marisol.alonzo@co.hays.tx.us](mailto:marisol.alonzo@co.hays.tx.us)

[www.hayscountytexas.com](http://www.hayscountytexas.com)

**Vickie Dorsett**

**Assistant County Auditor**

[vickie.dorsett@co.hays.tx.us](mailto:vickie.dorsett@co.hays.tx.us)

August 21, 2020

The Honorable Gary Cutler  
Hays County Sheriff  
1307 Old Uhland Road  
San Marcos, Texas 78666

Dear Sheriff Cutler:

In accordance with subsections 112.001, 115.002 and 351.0415 of the Texas Local Government Code, the Auditor's office performed an internal examination on the records of the Hays County Sheriff's Jail Commissary for the period of October 1, 2018 to September 30, 2019. The internal examination consisted of reviewing deposits, disbursements, and other supporting documentation.

Based on the internal examination, receipts and disbursements appear to be adequately accounted for and the related records and supporting documentation appear to be accurately maintained in accordance with statutory requirements under subsection 112.001, 115.002, and 351.0415 of the Texas Local Government Code.

We appreciate the cooperation and assistance provided to the Auditor's Office during the examination.

Sincerely,

Marisol Alonzo-Villarreal, CPA  
Hays County Auditor

## 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 ratify an Equipment Transfer Memorandum of Agreement with the Capital Area Council of Governments (CAPCOG) for Pass-Through Grant Funded Emergency Equipment valued at \$11,153.09 and amend the budget accordingly.

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

001-656-99-140]

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Alex Villalobos

#### SPONSOR

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY

CAPCOG has received equipment through a federal pass-through grant and has selected Hays County as a sub-recipient to receive a portion of the emergency equipment that is available. The transferred equipment includes a Hub2s (interactive white board), Battery & Cart. This equipment will be used during emergencies and allow for communication across the region.

Attachment: CAPCOG MOA

Budget Amendment:

Increase Intergovernmental Revenue - \$11,154

Increase Misc. Equipment\_Capital - \$9,817

Increase Misc. Equipment\_Ops - \$1,337

**Equipment Transfer Memorandum of Agreement Between**  
**Capital Area Council of Governments**  
**Sub-Recipient**  
**and**  
**Hay County Office of Homeland Security and Emergency Management**  
**Receiving Jurisdiction/Agency**

**Purpose**

This Memorandum of Understanding (MOU) sets forth the terms, conditions and understanding between the Capital Area Council of Governments (CAPCOG) and the Hays County Office of Homeland Security and Emergency Management (COUNTY) in regard to transferring and receiving equipment purchased with State and/or Federal grant funds.

**Duration**

This MOU shall become effective upon signature by the authorized officials from each party and may be modified, and/or terminated, upon mutual consent of both authorized officials.

**Certification**

This is to certify that the equipment being transferred was acquired by the expenditure of grant funds awarded to the Sub-recipient.

COUNTY certifies that they have received a copy of the Grantee Conditions and Responsibilities Memo (Attachment A) and have knowledge of, and are in compliance with the laws, rules and regulations of the grant, including compliance with all state and federal grant eligibility requirements.

COUNTY further certifies that they have received a copy of CAPCOG's Grant Award (Attachment B) and agrees to be bound by all the contract covenants and exhibits to the award and any modifications or amendments to that award. CAPCOG certifies that all Grant Award documents and amendments are included in Attachment B.

CAPCOG and COUNTY further certify that they are duly authorized and empowered by their governing body to enter into this agreement.

**Equipment being transferred:**

Item Description	Hub2S	Battery	Cart
Inventory Number	007857	007858	N/A
Serial Number/VIN	000600100262	9I2021E07736	N/A
Model Number	5537187	5553477	5537204
Acquisition Date	8/7/2020	8/7/2020	8/7/2020
Unit Cost/Fair Market Value	\$8,279.99	\$1,536.50	\$1,336.60
% of Cost Federally Funded	100%	100%	100%
Grant Year/Program	2019	2019	2019
FAIN	EMW-2019-SS-00034-S01	EMW-2019-SS-00034-S01	EMW-2019-SS-00034-S01
eGrants Grant Number	2956804	2956804	N/A

**CAPCOG agrees to:**

- Notify receiving COUNTY of any known modifications to applicable award requirements within 15 business days of receipt.
- Provide periodic exercises

**COUNTY agrees to:**

- Treat any applicable award modifications from the Office of the Governor to be automatically part of this agreement.
- Maintain compliance with the requirements of federal and state granting agencies;
- Maintain all aspects of the asset including property records, physical inventory, control system, maintenance procedures, records retention, disposition, and comply with all grant requirements;
- Make available to federal and state granting agencies or the Texas State Auditor's Office, or designees of these agencies, any equipment items and related records upon request;
- Ensure that the Director of Homeland Security for CAPCOG is notified in writing before pass-through equipment disposed of by COUNTY in accordance with 2 CFR 200.313 (e) and the Uniform Grant Management System (UGMS), Subpart C, Section .32 (e) Disposition;
- Ensure the equipment is maintained in good working order;
- Ensure a physical inventory is conducted every 2 years;
- Ensure the equipment is used only as allowable under the grant; and
- Ensure any deployable equipment will be made available during an event requiring a regional, statewide, or national response.

**The following attachments are incorporated into this MOU:**

**ATTACHMENT A** – Grantee Conditions and Responsibilities Memo

**ATTACHMENT B** – Statement of Grant Award

When signed this document shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and all other State of Texas agencies and any other agencies, departments, divisions, governmental entities, public corporations, and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties hereto.

**Certified & Agreed by:**

Capital Area Council of Governments

\_\_\_\_\_  
Name of Sub-Recipient

0

6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744

\_\_\_\_\_  
Street/Mailing Address, City, County, Zip

Betty Voights, Executive Director

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Certified & Agreed by:**

Hays County

\_\_\_\_\_  
Name of Receiving Jurisdiction/Agency

111 E. San Antonio Street Suite 300, San Marcos, TX 78666

\_\_\_\_\_  
Street/Mailing Address, City, County, Zip

Ruben Becerra, Hays County Judge

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

\_\_\_\_\_  
Signature

08/04/2020

\_\_\_\_\_  
Date

**Date of Transfer:** 08/07/2020

\_\_\_\_\_  
Sub-Recipient Signature

\_\_\_\_\_  
Receiving Jurisdiction Signature

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

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

## **ATTACHMENT A**

### **GRANTEE CONDITIONS AND RESPONSIBILITIES MEMO**

Due to the COVID-19 pandemic CAPCOG's planned training and workshops had to be canceled due to social distancing policies. These events seriously impacted CAPCOG's ability to train and prepare, and left unspent grant funds dedicated for these purposes.

After consultation with the Office of the Governor (OOG) a redirection of the funds to purchase video communications equipment to facilitate remote training was determined to be an effective option. The funds used to purchase these tools were allocated to CAPCOG via the Homeland Security Grant Program, specifically through the Planning, Training and Exercise and Recovery and Resiliency grants. These new tools will allow for a consistent training environment and double as Regional EOC Video Conferencing System.

1. The video communication equipment purchased and transferred to County must be used specifically for the designated purpose(s) of the sustainment and continued development of training and exercises to enhance the proficiency of regional Teams, Incident Management Teams and special training related to preventing, preparing for, protecting against, or responding to acts of terrorism in accordance with the grant source, the Homeland Security Grant Program.
2. County also agrees to use these tools as a method of communication between regional emergency operation centers to assist in meeting, planning, training, exercising and mutual aid among all the jurisdictions within the region.
3. County agrees to remain compliant with the National Incident Management System, have an emergency management plan on file with the Texas Department of Emergency Management and must make available to the OOG, or any of its designees, any equipment items and related records upon request.
4. County is responsible for all aspects of the asset including property records, physical inventory, control system, maintenance procedures, disposition, and complying with all grant requirements as noted in the MOU.
5. County agrees to the equipment management requirements listed in the 2 CFR 200.313(d) which include:
  - a) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN/SAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  - b) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - c) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

- d) Adequate maintenance procedures must be developed to keep the property in good condition.
  - e) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- 6. In addition, County agrees to abide by the Statement of Grant Award and all terms, conditions, provisions and obligations set forth in that document.

Attachment A to MOU XYX

## Statement of Grant Award (SOGA)

The Statement of Grant Award is the official notice of award from the Office of the Governor (OOG). This Grant Agreement and all terms, conditions, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and all other State of Texas agencies and any other agencies, departments, divisions, governmental entities, public corporations, and other entities which shall be successors to each of the Parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the Parties hereto.

The approved project narrative and budget for this award are reflected in eGrants on the 'Narrative' and 'Budget/Details' tabs. By accepting the Grant Award in eGrants, the Grantee agrees to strictly comply with the requirements and obligations of this Grant Agreement including any and all applicable federal and state statutes, regulations, policies, guidelines and requirements. In instances where conflicting requirements apply to a Grantee, the more restrictive requirement applies.

The Grant Agreement includes the Statement of Grant Award; the OOG Grantee Conditions and Responsibilities; the Grant Application in eGrants; and the other identified documents in the Grant Application and Grant Award, including but not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Chapter 783 of the Texas Government Code, Title 34, Part 1, Chapter 20, Subchapter E, Division 4 of the Texas Administrative Code, and the Uniform Grant Management Standards (UGMS) developed by the Comptroller of Public Accounts; the state Funding Announcement or Solicitation under which the grant application was made, and for federal funding, the Funding Announcement or Solicitation under which the OOG was awarded funds; and any applicable documents referenced in the documents listed above. For grants awarded from the U.S. Department of Justice, the current applicable version of the Department of Justice Grants Financial Guide and any applicable provisions in Title 28 of the CFR apply. For grants awarded from the Federal Emergency Management Agency (FEMA), all Information Bulletins and Policies published by the FEMA Grants Program Directorate apply. The OOG reserves the right to add additional responsibilities and requirements, with or without advance notice to the Grantee.

By clicking on the 'Accept' button within the 'Accept Award' tab, the Grantee accepts the responsibility for the grant project, agrees and certifies compliance with the requirements outlined in the Grant Agreement, including all provisions incorporated herein, and agrees with the following conditions of grant funding. The grantee's funds will not be released until the grantee has satisfied the requirements of the following Condition(s) of Funding and Other Fund-Specific Requirement(s), if any, cited below:

<b>Grant Number:</b>	2956804	<b>Award Amount:</b>	\$85,000.00
<b>Date Awarded:</b>	10/10/2019	<b>Grantee Cash Match:</b>	\$0.00
<b>Grant Period:</b>	01/01/2020 - 08/31/2020	<b>Grantee In Kind Match:</b>	\$0.00
<b>Liquidation Date:</b>	11/29/2020	<b>Total Project Cost:</b>	\$85,000.00
<b>Program Fund:</b>	HS-Homeland Security Grant Program (HSGP)		
<b>Grantee Name:</b>	Capital Area Council of Governments		
<b>Project Title:</b>	CAPCOG - Training and Exercises		
<b>Grant Manager:</b>	Noah Gilliam		
<b>DUNS Number:</b>	091784053		

<b>CFDA:</b>	97.067 - Homeland Security Grant Program (HSGP)
<b>Federal Awarding Agency:</b>	U.S. Department of Homeland Security, Federal Emergency Management Agency
<b>Federal Award Date:</b>	8/28/2019
<b>Federal/State Award ID Number:</b>	EMW-2019-SS-00034-S01
<b>Total Federal Award/State Funds Appropriated:</b>	\$98,436,639.00
<b>Pass Thru Entity Name:</b>	Texas Office of the Governor – Homeland Security Grants Division (HSGD)
<b>Is the Award R&amp;D:</b>	No
<b>Federal/State Award Description:</b>	The purpose of the HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides

funding to implement investments that build, sustain, and deliver the 31 core capabilities essential to achieving the National Preparedness Goal (the Goal) of a secure and resilient Nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community.

## 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 an additional contract extension of IFB 2017-B06 AC & Heating Services with SI Mechanical for a period not to exceed 30 days (September 30, 2020).

#### ITEM TYPE

CONSENT

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: MARISOL VILLARREAL-ALONZO

#### REQUESTED BY

Tammy Crumley

#### SPONSOR

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY

The contract extension for AC & Heating Services is scheduled to expire on August 31, 2020. The Countywide Operations' Department has requested that this contract be extended for a period not to exceed 30 days (September 30, 2020) while a new contract is secured.

## OFFICE OF THE COUNTY AUDITOR

Hays County Purchasing  
712 S. Stagecoach Trail, Ste. 1071  
San Marcos, Texas 78666  
512-393-2273

Marisol Villarreal-Alonzo, CPA  
*County Auditor*  
[marisol.alonzo@co.hays.tx.us](mailto:marisol.alonzo@co.hays.tx.us)

Vickie G. Dorsett  
*Assistant County Auditor*  
[vickie.dorsett@co.hays.tx.us](mailto:vickie.dorsett@co.hays.tx.us)

August 21, 2020

SI Mechanical  
PO Box 1617  
Manchaca, Texas 78652

RE: Contract Extension

The Contract Extension for AC & Heating Services, IFB 2017-B06 is scheduled to expire on August 31, 2020. Hays County would like to temporarily extend the current contract for a period not to exceed 30 days while a new contract is secured. This contract extension will not provide for any price increase or alterations to the current terms and conditions. This extension will expire upon the execution of a new contract pursuant to solicitation number RFP 2020-P01 or on September 30, 2020, whichever comes first.

If you are in agreement with the terms of this contract extension, please acknowledge below and email a signed copy to [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us) and return original to the address listed above. Upon approval by the Hays County Commissioners Court, a fully executed copy will be returned to you for your files.

Sincerely,

Marisol Villarreal-Alonzo, CPA  
Hays County Auditor



Signature

Riley Sullivan

Printed Name

SI Mechanical LLC

Company

August 21, 2020

Date

Approved by the Hays County  
Commissioners Court on: \_\_\_\_\_

Ruben Becerra  
Hays County Judge

## 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 renewal contract for \$21,608.40 with West Thompson Reuters for online legal research services in the Hays County Criminal District Attorney's office with funds budgeted for FY2021.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 18, 2020	\$21,608.40

#### LINE ITEM NUMBER

001-607-00.5448

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Mau	INGALSBE	N/A

#### SUMMARY

The Criminal District Attorney's legal staff currently utilizes Westlaw for legal research and requests the Court to consider the terms of the renewal contract. The new contract terms reduce the content plan to access only national primary law. The contract term is three years with a 3% yearly increase. The subscription cost includes access for 35 attorneys and their assistants. The current contract expires on September 30, 2020. Funds to cover the subscription cost were budgeted for FY21.

Attachment: Westlaw Order Form - Quote  
State Contract: TX CALIR MSA-WEST DIR-LGL-CALIR-02 (TXMS)  
001-607-00.5448: Contract Services \$21,608.40



## Order Form

Order ID: Q-00860560

Contact your representative [william.lavelle@thomsonreuters.com](mailto:william.lavelle@thomsonreuters.com) with any questions. Thank you.

### Account Address

Account #: 1000623393  
HAYS COUNTY  
HAYS COUNTY CRIMINAL DISTRICT  
ATTY  
712 S STAGECOACH TRL STE 2057  
SAN MARCOS TX 78666-6254 US

### Shipping Address

Account #: 1000623393  
HAYS COUNTY  
HAYS COUNTY CRIMINAL DISTRICT  
ATTY  
712 S STAGECOACH TRL STE 2057  
SAN MARCOS TX 78666-6254 US

### Billing Address

Account #: 1000623393  
HAYS COUNTY  
HAYS COUNTY CRIMINAL DISTRICT  
ATTY  
712 S STAGECOACH TRL STE 2057  
SAN MARCOS, TX 78666-6254 US

This Order Form is a legal document between West Publishing Corporation and Subscriber. West Publishing Corporation also means "West", "we" or "our" and Subscriber means "you", or "I". Subscription terms, if any, follow the ordering grids below.

### ProFlex Products See Attachment for details

Service Material	Product	Monthly Charges	Minimum Term (Months)	Year Over Year Increase During Minimum Term
40757482	WEST PROFLEX	\$1,800.70	36	3%

### Minimum Terms

**Online/ Practice Solution/Software/ProFlex Products :** Monthly Charges begin on the date we process your order and will be prorated for the number of days remaining in that calendar month, if any. Your Monthly Charges will continue for the number of complete calendar months listed in the Minimum Term column above. The percent increases for multi-year orders appear in the Term Increases column above. Subscriber ("you" or "I") is also responsible for all Excluded Charges. Excluded Charges are for accessing Westlaw data or a Practice Solutions service that is not included in your subscription. Excluded Charges may change after at least 30 days written or online notice.

**For Window Products:** Monthly Charges begin on the date we process your order and will continue for the number of complete calendar months in the Minimum Term column above. The percent increases for multi-year orders appear in the Term Increases column above. Monthly Charges are due regardless of the level of your usage. Transactional usage charges that exceed the Monthly Charges are waived up to the Monthly Window amount stated above. In addition to the Monthly Charges you are responsible for transactional usage charges in excess of the Monthly Window. Transactional charges are calculated based upon our then-current Schedule A rates. You are also responsible for all Excluded Charges. Excluded Charges are charges for accessing a service that is not included in your subscription. Excluded Charges may change after at least 30 days written or online notice.

To apply Window charges to a specific month, the request must be submitted at least five (5) business days prior to the end of the month.

### Post Minimum Terms

**For Online/Practice Solutions/Software /ProFlex Products:** At the end of the Minimum Term your Monthly Charges will increase by 7%. Thereafter, the Monthly Charges will increase every 12 months unless we notify you of a different rate at least 90 days before the annual increase. You are also responsible for all Excluded Charges. Excluded Charges may change after at least 30 days written or online notice. Either of us may cancel the Post-Minimum Term subscription by sending at least 60 days written notice. Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan, MN 55123-1803.

**Automatic Renewal Term for Window Products.** At the end of the Minimum Term your Monthly Charges will be billed at up to our then-current rate. Thereafter, we may modify the Monthly Charges if we notify you of a different rate with at least 90 days notice. The Monthly Window will remain unchanged. You are also responsible for all Excluded Charges. Excluded Charges may change after 30 days written or online notice. Either of us may cancel the Post-Minimum Term subscription by sending at least 60 days written notice. Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan MN 55123-1803.

To apply Window charges to a specific month, the request must be submitted at least five (5) business days prior to the end of the month.

**Federal Government Subscribers Optional Minimum Term.** Federal government subscribers that chose a multi-year Minimum Term, those additional months will be implemented at your option pursuant to federal law.

### Miscellaneous

**Charges, Payments & Taxes.** You agree to pay all charges in full within 30 days of the date of invoice. You are responsible for any applicable sales, use, value added tax (VAT), etc. unless you are tax exempt. If you are a non-government subscriber and fail to pay your invoiced charges, you are responsible for collection costs including attorneys' fees.

**Settling a Disputed Balance.** Payments marked "paid in full", or with any other restrictive language, will not operate as an accord and satisfaction without our prior written approval. We reserve our right to collect any remaining amount due to us on your account. Partial payments intended to settle an outstanding balance in full must be sent to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan, MN 55123-1803.

55123-1803, along with a written explanation of the disagreement or dispute. This address is different from the address you use to make account payments.

**eBilling Contact.** All invoices for this account will be emailed to your e-Billing Contact(s) unless you have notified us that you would like to be exempt from e-Billing.

**Credit Verification.** If you are applying for credit as an individual, we may request a consumer credit report to determine your creditworthiness. If we obtain a consumer credit report, you may request the name, address and telephone number of the agency that supplied the credit report. If you are applying for credit on behalf of a business, we may request a current business financial statement from you to consider your request.

**Returns and Refunds.** You may return a print product to us within 45 days of the original shipment date if you are not completely satisfied. Assured Print Pricing, Library Savings Plan, West Complete, Library Maintenance Agreements, ePack, WestPack, Westlaw, CLEAR, Monitor Suite, ProView eBook, Software, West LegalEdcenter, Practice Solutions, TREWS, Peer Monitor and Data Privacy Advisor charges are not refundable. Please see <http://static.legalsolutions.thomsonreuters.com/static/returns-refunds.pdf> or contact Customer Service at 1-800-328-4880 for additional details regarding our policies on returns and refunds.

**Applicable Law.** If you are a state or local governmental entity, your state's law will apply and any claim may be brought in the state or federal courts located in your state. This Order Form will be interpreted under Minnesota state law and any claim by one of us may be brought in the state or federal courts in Minnesota. If you are a United States Federal Government subscriber, United States federal law will apply and any claim may be brought in any federal court.

**Banded Product Subscriptions** You certify the total number of attorneys (partners, shareholders, associates, contract or staff attorneys, of counsel, and the like), corporate users, personnel or full-time-equivalent students is indicated in the applicable Quantity column. Our pricing for banded products is made in reliance upon your certification. If we learn that the actual number is greater or increases at any time during the Term, we reserve the right to increase your charges as applicable

**Excluded Charges.** If you access services that are not included in your subscription you will be charged our then-current rate ("Excluded Charges"). Excluded Charges will be invoiced and due with your next payment. For your reference, the current Excluded Charges schedules are located at the links below. Excluded Charges may change after at least 30 days written or online notice.

<http://static.legalsolutions.thomsonreuters.com/static/agreement/plan-2-pro-govt-agencies.pdf>

<https://static.legalsolutions.thomsonreuters.com/static/agreement/schedule-a-concourse-firm-central-caseologistix.pdf>

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**Product Specific Terms.** The following products have specific terms which are incorporated by reference and made part of this Order Form if they apply to your order. They can be found at <https://static.legalsolutions.thomsonreuters.com/static/ThomsonReuters-General-Terms-Conditions-PST.pdf>. If the product is not part of your order, the product specific terms do not apply. If there is a conflict between product specific terms and the Order Form, the product specific terms control.

- Campus Research
- Contract Express
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- Time and Billing
- West km Software
- West LegalEdcenter
- Westlaw
- Westlaw Doc & Form Builder
- Westlaw Paralegal
- Westlaw Patron Access
- Westlaw Public Records

**Acknowledgement: Order ID: Q-00860560**

\_\_\_\_\_  
Signature of Authorized Representative for order

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

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This Order Form will expire and will not be accepted after 9/28/2020.



THOMSON REUTERS™

**Attachment****Order ID: Q-00860560**

Contact your representative [william.lavelle@thomsonreuters.com](mailto:william.lavelle@thomsonreuters.com) with any questions.  
Thank you.

**Payment, Shipping, and Contact Information****Payment Method:**

Payment Method: Bill to Account

Account Number: 1000623393

SA ID: TX CALIR MSA-WEST DIR-LGL-CALIR-02 (TXMS)

**Order Confirmation Contact (#28)**

Contact Name: Sierra, Emily

Email: [emily\\_sierra@co.hays.tx.us](mailto:emily_sierra@co.hays.tx.us)**Shipping Information:**

Shipping Method: Ground Shipping - U.S. Only

**ProFlex Multiple Location Details**

Account Number	Account Name	Account Address	Action
1000623393	HAYS COUNTY	712 S STAGECOACH TRL STE 2057 SAN MARCOS TX 78666-6254 US	New

**ProFlex Product Details**

Quantity	Unit	Service Material #	Description
35	Attorneys	42077751	Gvt - National Primary Core

**Account Contacts**

Account Contact First Name	Account Contact Last Name	Account Contact Email Address	Account Contact Customer Type Description
Angie	Roberts	<a href="mailto:angie.roberts@co.hays.tx.us">angie.roberts@co.hays.tx.us</a>	EML PSWD CONTACT

**Lapsed Products**

Sub Material	Active Subscription to be Lapsed
41985644	Gvt - Trial Court Documents For Government (Westlaw PRO™)
42076680	Gvt - National Primary Core
40757481	West Proflex

## 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 First Amendment to Consulting Services Agreement to an agreement between Hays County and Water PR, LLC regarding an Information Program related to the upcoming November 3, 2020 Parks and Open Space Bond Proposition, finding for an exemption pursuant to Texas Local Government Code 262.024(a)(4).

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	August 25, 2020	TBD

#### LINE ITEM NUMBER

--

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
	INGALSBE	N/A

#### SUMMARY

This amendment will allow for Water PR, LLC to educate the public on the upcoming Open Space Bond Proposition through various sources including a website, public meetings and direct mailings.

**FIRST AMENDMENT TO**  
**CONSULTING SERVICES AGREEMENT**

This 1<sup>st</sup> Amendment to Professional Services Agreement attached as Exhibit “B-1” (“Original Agreement”) and executed on or about January 28, 2020 is made this 25<sup>th</sup> day of August, 2020, by and between Hays County, a political subdivision of the State of Texas (hereinafter referred to as “County”), and Water PR, LLC, (hereinafter referred to as “Contractor”). The above-cited parties are collectively referred to as “the parties to this Agreement” or “the parties.”

**Section 2 and Exhibit “A”** of the Original Agreement shall be amended to reflect the additional Work Authorization described in Exhibit “A-1”, which consists of an Information Program related to the upcoming November 3, 2020 Parks and Open Space Bond Proposition.

**Section 5** of the Original Agreement shall be modified to move the total not to exceed amount from forty-eight thousand, five hundred dollars (\$48,500.00 USD) to sixty-four thousand dollars (\$64,000.00 USD), with an option to pay an additional fifteen thousand, eight hundred dollars (\$15,800.00 USD) if the County determines that a postcard mailing program is needed to complete the Information Program.

EXCEPT FOR THE ABOVE MODIFICATIONS, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN UNCHANGED, UNLESS PROPERLY MODIFIED BY SUBSEQUENT AMENDMENT UNDER THE TERMS OF THE AGREEMENT.

**This 1<sup>ST</sup> Amendment to Professional Services Agreement is hereby executed this the 25<sup>th</sup> day of August, 2020, as is evidenced by the authorized signatures of the Parties, below.**

**CONTRACTOR**

**COUNTY**

\_\_\_\_\_  
**KAREN FORD**

\_\_\_\_\_  
**HAYS COUNTY, TEXAS**  
**RUBEN BECERRA**  
**HAYS COUNTY JUDGE**

**ATTEST:** \_\_\_\_\_  
**ELAINE CARDENAS, MBA, PhD**  
**HAYS COUNTY CLERK**

**EXHIBIT “A-1”**  
ADDITIONAL WORK

**PROPOSAL: Hays County Parks/Open Space Bond Education Program  
082020-klf**

**General Strategies/Recommendation for Public Education on Parks and Open Space Bond**

1. Parks and Open Space PROFILE Document (limited printing, primarily digital delivery)
  - Define and refine contract with the voters leading up to early voting and election day
  - Describe projects to be considered for funding as recommended by the POSAC
  - Inclusion of disclaimers and caveats
  - Use facts, figures maps and charts
  - Include some history of POS bonds in Hays County
2. Website as delivery vehicle
  - Vanity URL: HaysCountyParksOpenSpace2020.com (or HaysCountyBond2020.com)
  - Profile document content will provide content for website
  - Disclaimer on every page
3. Social media drivers to website
4. Direct Mail
  - simply 4x6 postcard to most likely voters (50-70K) driving them to website
5. Public meetings
  - Z-webinar
  - More lead time to drive attendance of Hays County voters/taxpayers

**TIMELINE**

- August 26 start
- Sept 21: Digital materials/website up
- Oct 5: Direct Mail, postcard
- Oct Oct 5, 12, 19 Public meetings, Z-webinar

**COST PROPOSAL**

WaterPR staffing & creative services	\$ 12,500
Subconsultants, as needed, including Spanish language translation services	2,500
Printing & Mailshop (50K cards)	2,800
Postage, bulk mail, 50K cards	13,000
Travel, supplies & misc hard costs	500

<b>WaterPR Staffing &amp; Services</b>	<b>Hourly Fee</b>
Project Director & Senior Writer	\$ 125/hour
Graphic designer/art director	125/hour
Web development/programming	125/hour
Project Coordinator/Digital media	75/hour
Administrative Assistant	55/hour
Photographer/Videographer	1,000/day

**EXHIBIT “B-1”**

ORIGINAL  
AGREEMENT

**CONSULTING 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 **Water PR, LLC** (hereinafter "Contractor"), whose primary mailing address is located at P.O. Box 1409, San Marcos, Texas 78666, hereby enter into this Consulting Services Agreement (hereinafter "Agreement") effective the 27<sup>th</sup> day of January, 2020 (hereinafter "Effective Date"). The County and Contractor (collectively "the parties to this Agreement" or "the parties") agree as follows:

**1. OVERVIEW**

Contractor is being retained to organize, manage, and guide the citizen process to develop a list of prospective parks, recreation, and open space projects for Hays County. The citizen process will include a number of meetings of the Parks and Open Space Advisory Board, in addition to other public meetings.

**2. SERVICES**

Contractor agrees to perform services for the County in accordance with the County's instructions and, in particular, the instructions of Tammy Crumley 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**

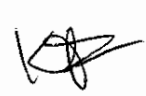
Additional Terms and Obligations of the parties to this Agreement, if any, are stated in Exhibit "C", attached hereto.

**4. DURATION**

The parties agree that the Work will be completed one (1) year after commencement date. (hereinafter the "Completion Date"). In the event that the Parties decide that additional time is needed, they shall negotiate an extension of the Completion Date in writing prior to the Completion Date.

**5. COMPENSATION**

Contractor will be compensated for the Work on an hourly-charge basis, the terms of which are cited in Contractor's rate schedule, which is attached hereto as Exhibit "B." Despite any reference to Contractor's 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-eight thousand, five hundred dollars (\$48,500.00 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: Countywide Operation, 712 S. Stagecoach Trail, Suite 1204 San Marcos, Texas 78666; <tammy.crumley@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.***

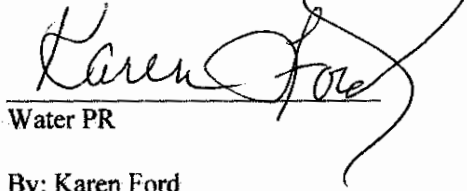
A handwritten signature or set of initials, possibly "OR", located in the bottom right corner of the page.

IN WITNESS WHEREOF, on this the 28<sup>th</sup> day of January, 2020, 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.



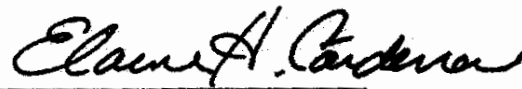
Hays County, Texas

By: Ruben Becerra  
Hays County Judge



Water PR

By: Karen Ford  
Principal

Attest: 

Dr. Elaine Cardenas  
Hays County Clerk

## PROPOSAL I Hays County Parks/Open Space Bond Proposal

### PROJECT DESCRIPTION & ASSUMPTIONS

Hays County Commissioner Court desires to have citizen input on the potential and develop of a county bond measure to fund parks, recreation, open space and natural areas. The last Hays County Parks bond was successfully passed in 2007 for \$30 million. Most of those bond funds have been leveraged and spent on a variety of projects that are recapped in a Park Bond Status Report from July 2016.

Hays County seeks support In organizing, managing and guiding the citizen process to develop a project wish list and make recommendations to the Commissioners Court after a process of education on past projects, analysis of current and future needs, input from various stakeholder groups, collaboration as a citizen group representing County Interests, and making recommendations to County leadership for a bond initiative on the November 2020 ballot.

WaterPR is uniquely positioned to fill the role of managing the citizen process having been Intimately involved with the 2007 bond and the POSAB process as a member of the Commissioners Court at that time. Since leaving office at the end of 2010, principal Karen Ford was engaged to follow and support a campaign for a Travis County Parks/Open Space bond In 2012. As a public relations and marketing firm with a focus on water issues in the State of Texas and along the border, we are very aware of the role that land stewardship and conservation plays in determining water quantity and quality for the future. Further, we firmly believe in the value of getting people outside to enjoy and recreate on public lands and In natural spaces-for good health In body, mind and spirit.

We are delighted to offer consulting and support services to the Hays County Commissioners Court to organize and manage the citizen advisory board process from January through August 2020 and/or the call for election. To this end we have provided a draft outline of ideas for the process and our services and a draft timeline leading up to election day.

## EXHIBIT "B"

### COST PROPOSAL

**Total Project Fee** **\$ 48,500**

This fee is based on some assumptions of our time, materials and the need to engage other professionals to support our work in a way that delivers an excellent, transparent, public process and delivers best project outcomes. Below is a breakdown of cost areas and statement of assumptions.

Staff time: Jan-Aug; 8-10 POSAB meetings + CC meetings	\$40,000	n
Professional facilitation and support: Assume 2-3 meetings with POSAB	4,500	
Materials and supplies	1,500	
Travel & meeting expenses	2,500	

WaterPR Staffing & Services	Hourly Fee
Project Director & Senior Writer	\$ 125/hour
Graphic designer/art director	125/hour
Web development/programming	125/hour
Project Coordinator/Digital media	75/hour
Administrative Assistant	55/hour
Photographer/Videographer	1,000/day



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Watkins Insurance Group-Austin 3834 Spicewood Springs Rd, Ste. 100 Austin TX 78759	<b>CONTACT NAME:</b> Stefani ODonald <b>PHONE (A/C, No, Ext):</b> 512-452-8877 <b>E-MAIL ADDRESS:</b> SODonald@watkinsinsurancegroup.com <b>FAX (A/C, No):</b> 512-452-0999
<b>INSURED</b> Water PR, LLC 500 Browne Terrace San Marcos TX 78666	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Continental Casualty Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>
	<b>NAIC #</b> 20443

**COVERAGES****CERTIFICATE NUMBER:** 352791566**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			5094817793	11/15/2019	11/15/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			5094817793	11/15/2019	11/15/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Business Personal Property (RC)			5094817793	11/15/2019	11/15/2020	Limit/Deductible \$30,600/\$1000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Hays County  
712 S. Stagecoach Trail  
San Marcos TX 78666

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## 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 sign a Professional Services Agreement between Hays County and BGE, Inc. for design services related PS&E for the Hillside Terrace bond project.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	August 25, 2020	\$1,000,000

#### LINE ITEM NUMBER

020-710-00-648.5621\_700

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

Reviewed by Assistant County Auditor

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry H. Borcharding	JONES	N/A

#### SUMMARY

Schematic design has been completed under the 2016 Bond program. Continuing the project will require that funds for PS&E be allocated through the Transportation Department budget. Reserve funds due to overall operational savings are available for this PSA and will be rolled to the FY21 budget.

# **HAYS COUNTY**

## **CONTRACT FOR ENGINEERING SERVICES**

**FIRM:** BGE, Inc.  
**ADDRESS:** 1701 Directors Blvd, Suite 1000, Austin, Texas 78744  
**PROJECT:** Hillside Terrace (IH 35 NBFR to FM 2001)

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

**THIS CONTRACT FOR ENGINEERING SERVICES** (“Contract”) is made and entered into, effective as the date of the last party’s execution hereinbelow, by and between Hays County, Texas, a political subdivision of the State of Texas, whose offices are located at 111 E. San Antonio Street, Suite 300, San Marcos, Texas, 78666 (hereinafter referred to as “County”), and Engineer, and such Contract is for the purpose of contracting for professional engineering services.

### **RECITALS:**

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled “Professional Services Procurement Act” provides for the procurement by counties of services of professional engineers; and

WHEREAS, County and Engineer desire to contract for such professional engineering services; and

WHEREAS, County and Engineer wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

**ARTICLE 1**  
**CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS**

**A. Contract Documents.** The Contract Documents consist of this Contract, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract), any fully executed Work Authorizations; any fully executed Supplemental Work Authorizations and all fully executed Contract Amendments (as defined herein in Article 14) which are subsequently issued. These form the entire contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

**B. Project Documents.** In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

- A. TxDOT 2011 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions
- B. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2014 (English units)
- C. National Environmental Policy Act (NEPA)
- D. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions
- E. Americans with Disabilities Act (ADA) Regulations
- F. U.S. Army Corps Regulations
- G. International Building Code, current edition as updated
- H. Hays County Design Criteria & Project Development Manual, latest edition
- I. Hays County Multi-Corridor Transportation Plan Project Level Environmental Review and Compliance Protocol, latest edition
- J. Hays County Protocol for Sustainable Roadsides, latest edition
- K. TxDOT Bridge Design Manual - LRFD, latest edition
- L. TxDOT Geotechnical Manual, latest edition

**ARTICLE 2**  
**NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST**  
**PROHIBITED**

**A. Non-collusion.** Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**B. Debarment Certification.** Engineer must sign the Debarment Certification enclosed herewith as **Exhibit A**.

**C. Financial Interest Prohibited.** Engineer covenants and represents that Engineer, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

### **ARTICLE 3** **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in **Exhibit B** entitled “Engineering Services.”

County will prepare and issue Work Authorizations, in substantially the same form identified and attached hereto as **Exhibit C** and entitled “Work Authorization No. \_\_\_\_\_”, to authorize the Engineer to perform one or more tasks of the Engineering Services. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, definite review times by County and Engineer of all Engineering Services and a fee amount agreed upon by the County and Engineer. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the Engineer’s responsibilities and obligations established in this Contract. The executed Work Authorizations shall become part of this Contract.

All work must be completed on or before the date specified in the Work Authorization. The Engineer shall promptly notify the County of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Engineer from costs or liabilities resulting from delays in completion of the Work Authorization. Should the review times or Engineering Services take longer than shown on the Work Authorization, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the County. Any changes in a Work Authorization shall be enacted by a written Supplemental Work Authorization before additional costs may be incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization.

### **ARTICLE 4** **CONTRACT TERM**

**A. Term.** The Engineer is expected to complete the Engineering Services described herein in accordance with the above described Work Authorizations or any Supplemental Work Authorization related thereto. If Engineer does not perform the Engineering Services in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall have the right to terminate this Contract as set forth below in Article 20. So long as the County elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering Services are completed in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto. Any Engineering Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall

notify County in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with an applicable Work Authorization or any Supplemental Work Authorization related thereto.

**B. Work Authorizations.** Engineer acknowledges that each Work Authorization is of critical importance, and agrees to undertake all reasonably necessary efforts to expedite the performance of Engineering Services required herein so that construction of the Project will be commenced and completed as scheduled. In this regard, and subject to adjustments in a particular Work Authorization, as provided in Article 3 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

**C. Commencement of Engineering Services.** After execution of this Contract, Engineer shall not proceed with Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing by the County to proceed, as provided in Article 8.

## **ARTICLE 5**

### **COMPENSATION AND EXPENSES**

County shall pay and Engineer agrees to accept up to the amount shown below as full compensation for the Engineering Services performed and to be performed under this Contract. The basis of compensation for the services of principals and employees engaged in the performance of the Engineering Services shall be based on the Rate Schedule set forth in the attached **Exhibit D**.

The maximum amount payable under this Contract, without modification, is **one million dollars (\$1,000,000.00)** (the "Compensation Cap"), provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. The Compensation Cap shall be revised equitably only by written Contract Amendments executed by both parties in the event of a change the overall scope of the Engineering Services set forth in **Exhibit B**, as authorized by County.

The Compensation Cap is based upon all labor and non-labor costs estimated to be required in the performance of the Engineering Services provided for under this Contract. Should the actual costs of all labor and non-labor costs rendered under this Contract be less than the above stated Compensation Cap, then Engineer shall receive compensation for only actual fees and costs of the Engineering Services actually rendered and incurred, which may be less than the above stated Compensation Cap.

The Compensation Cap herein referenced may be adjusted for Additional Engineering Services requested and performed only if approved by a written Contract Amendment signed by both parties.

Engineer shall prepare and submit to County monthly progress reports in sufficient detail to support the progress of the Engineering Services and to support invoices requesting monthly payment. The format for such monthly progress reports and invoices must be in a format acceptable to County. Satisfactory progress of Engineering Services shall be an absolute condition of payment.

Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Contract at the Engineer's invoice cost. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice. The copies of the provider's invoice must evidence the actual costs billed to Engineer without mark-up.

## **ARTICLE 6**

### **METHOD OF PAYMENT**

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to County's Road Bond Program Manager, not more frequently than once per month, a progress report as referenced in Article 5 above. Such progress report shall state the percentage of completion of Engineering Services accomplished for an applicable Work Authorization or any Supplemental Work Authorization related thereto during that billing period and to date. This submittal shall also include a progress assessment report in a form acceptable to the County Auditor.

Simultaneous with submission of such progress report, Engineer shall prepare and submit one (1) original of a certified invoice to the County Auditor in a form acceptable to the County Auditor. All invoices submitted to County must, at a minimum, be accompanied by an original complete packet of supporting documentation and time sheets detailing hours worked by staff persons with a description of the work performed by such persons. For Additional Engineering Services performed pursuant to this Contract, a separate invoice or itemization of the Additional Engineering Services must be presented with the same aforementioned requirements.

Payments shall be made by County based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, County shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of the County Auditor's receipt. County reserves the right to reasonably withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to County, adequate and sufficient in its determination, that tasks of an applicable Work Authorization or any Supplemental Work Authorization related thereto were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

Upon submittal of the initial invoice, Engineer shall provide the County Auditor with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

## **ARTICLE 7**

### **PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which the County Auditor receives a correct invoice for services, whichever is later.

Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between County and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent County from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer and a subcontractor/subconsultant or between a subcontractor/subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D. The invoice is not mailed to the County Auditor in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

The County Auditor shall document to Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

## **ARTICLE 8**

### **COMMENCEMENT OF ENGINEERING SERVICES**

The Engineer shall not proceed with any task of the Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and instructed, in writing by the County, to proceed with the applicable Engineering Services. The County shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties. Engineer shall not be required to perform any work for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

**ARTICLE 9**  
**PROJECT TEAM**

County's Designated Representative for purposes of this Contract is as follows:

County's Road Bond Program Manager  
Attn: Michael Weaver  
HNTB Corporation  
701 Brazos, Suite 450  
Austin, Texas 78701

County shall have the right, from time to time, to change the County's Designated Representative by giving Engineer written notice thereof. With respect to any action, decision or determination which is to be taken or made by County under this Contract, the County's Designated Representative may take such action or make such decision or determination or shall notify Engineer in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the County's Designated Representative shall be binding on County; *provided, however*, the County's Designated Representative shall not have any right to modify, amend or terminate this Contract, an Executed Work Authorization, an executed Supplemental Work Authorization or executed Contract Amendment. County's Designated Representative shall not have any authority to execute a Contract Amendment, Work Authorization or any Supplemental Work Authorization unless otherwise granted such authority by the Hays County Commissioners Court.

Engineer's Designated Representative for purposes of this Contract is as follows:

**Erin Gonzales, PE**  
**BGE, Inc.**  
**1701 Directors Blvd, Suite 1000**  
**Austin**, **Texas** **78744**

Engineer shall have the right, from time to time, to change the Engineer's Designated Representative by giving County written notice thereof. With respect to any action, decision or determination which is to be taken or made by Engineer under this Contract, the Engineer's Designated Representative may take such action or make such decision or determination or shall notify County in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the Engineer's Designated Representative on behalf of Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the Engineer's Designated Representative shall be in accordance with such

express standards or parameters. Any consent, approval, decision or determination hereunder by the Engineer's Designated Representative shall be binding on Engineer. Engineer's Designated Representative shall have the right to modify, amend and execute Work Authorizations, Supplemental Work Authorizations and Contract Amendments on behalf of Engineer.

## **ARTICLE 10**

### **PROGRESS EVALUATION**

Engineer shall, from time to time during the progress of the Engineering Services, confer with County at County's election. Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Engineering Services. At the request of County or Engineer, conferences shall be provided at Engineer's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Engineering Services. County may, from time to time, require Engineer to appear and provide information to the Hays County Commissioners Court.

Should County determine that the progress in Engineering Services does not satisfy an applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall review same with Engineer to determine corrective action required.

Engineer shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Engineering Services, including but not limited to the following:

- A.** Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of an applicable Work Authorization or any Supplemental Work Authorization related thereto, or preclude the attainment of Project Engineering Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and
- B.** Favorable developments or events which enable meeting goals sooner than anticipated in relation to an applicable Work Authorization's or any Supplemental Work Authorization related thereto.

## **ARTICLE 11**

### **SUSPENSION**

Should County desire to suspend the Engineering Services, but not to terminate this Contract, then such suspension may be effected by County giving Engineer thirty (30) calendar days' verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from County to resume the Engineering Services. Such sixty-day (60) notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract and, in the event, Engineer shall be compensated for all Engineering Services performed and reimbursable expenses incurred, provided such Engineering Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

If County suspends the Engineering Services, the contract period as determined in Article 4, and the Work Authorization or any Supplemental Work Authorization related thereto, shall be extended for a time period equal to the suspension period.

County assumes no liability for Engineering Services performed or costs incurred prior to the date authorized by County for Engineer to begin Engineering Services, and/or during periods when Engineering Services is suspended, and/or subsequent to the completion date.

## **ARTICLE 12**

### **ADDITIONAL ENGINEERING SERVICES**

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the overall scope of this Contract, as set forth in **Exhibit B**, and as such constitutes extra work ("Additional Engineering Services"), he/she/it shall promptly notify County in writing. In the event County finds that such work does constitute Additional Engineering Services, County shall so advise Engineer and a written Contract Amendment will be executed between the parties as provided in Article 14. Any increase to the Compensation Cap due to Additional Engineering Services must be set forth in such Contract Amendment. Engineer shall not perform any proposed Additional Engineering Services nor incur any additional costs prior to the execution, by both parties, of a written Contract Amendment. Following the execution of a Contract Amendment that provides for Additional Engineering Services, a written Work Authorization, which sets forth the Additional Engineering Services to be performed, must be executed by the parties. County shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to Additional Engineering Services not directly associated with the performance of the Engineering Services authorized in this Contract, by a fully executed Work Authorization or a fully executed Contract Amendment thereto.

## **ARTICLE 13**

### **CHANGES IN COMPLETED ENGINEERING SERVICES**

If County deems it necessary to request changes to previously satisfactorily completed

Engineering Services or parts thereof which involve changes to the original Engineering Services or character of Engineering Services under this Contract, then Engineer shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Engineering Services and paid for as specified under Article 12.

Engineer shall make revisions to Engineering Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Engineering Services.

#### **ARTICLE 14**

#### **CONTRACT AMENDMENTS**

The terms set out in this Contract may be modified by a written fully executed Contract Amendment. Changes and modifications to a fully executed Work Authorization shall be made in the form of a Supplemental Work Authorization. To the extent that such changes or modifications to a Work Authorization do not also require modifications to the terms of this Contract (i.e. changes to the overall scope of Engineering Services set forth in **Exhibit B**, modification of the Compensation Cap, etc.) a Contract Amendment will not be required.

#### **ARTICLE 15**

#### **USE OF DOCUMENTS**

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Engineering Work Products") prepared by Engineer and its subcontractors/subconsultants are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to Engineer.

By execution of this Contract and in confirmation of the fee for services to be paid under this Contract, Engineer hereby conveys, transfers and assigns to County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and work product developed under this Contract. Copies may be retained by Engineer. Engineer shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer, including agents, employees, Engineers or subcontractors/subconsultants. All documents so lost or damaged shall be replaced or restored by Engineer without cost to County.

Upon execution of this Contract, Engineer grants to County permission to reproduce Engineer's work and documents for purposes of constructing, using and maintaining the Project, provided that County shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer's

subcontractors/subconsultants consistent with this Contract. If and upon the date Engineer is adjudged in default of this Contract, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

County shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written consent of Engineer. However, County shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Engineering Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Engineering Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Engineering Work Products shall be at County's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to County any Engineering Work Products in electronic form or County providing to Engineer any electronic data for incorporation into the Engineering Work Products, County and Engineer shall by separate written contract set forth the specific conditions governing the format of such Engineering Work Products or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer for the convenience of County, and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer shall be relied upon.

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

## **ARTICLE 16**

### **PERSONNEL, EQUIPMENT AND MATERIAL**

Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Engineering Services, and adequate and sufficient personnel and equipment to perform the Engineering Services as required. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Engineering Services shall immediately be removed from association with the Project when so instructed by County. Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering Services required under this Contract, or will obtain such personnel from sources other than County. Engineer may not change the Project Manager without prior written consent of County.

## **ARTICLE 17**

### **SUBCONTRACTING**

Engineer shall not assign, subcontract or transfer any portion of the Engineering Services under this Contract without prior written approval from County. All subcontracts shall include the provisions required in this Contract. No subcontract shall relieve Engineer of any responsibilities under this Contract.

## **ARTICLE 18**

### **REVIEW OF ENGINEERING SERVICES**

Engineer's Engineering Services will be reviewed by County under its applicable technical requirements and procedures.

**A. Completion.** Reports, plans, specifications, and supporting documents shall be submitted by Engineer on or before the dates specified in the applicable Work Authorization or Supplemental Work Authorization related thereto. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in the applicable Work Authorization, have been included in compliance with the requirements of this Contract. The completeness of any Engineering Services submitted to County shall be determined by County within thirty (30) days of such submittal and County shall notify Engineer in writing within such thirty (30) day period if such Engineering Services have been found to be incomplete. If the submission is Complete, County shall notify Engineer and County's technical review process will begin.

If the submission is not Complete, County shall notify Engineer, who shall perform such professional services as are required to complete the Engineering Services and resubmit it to County. This process shall be repeated until a submission is Complete.

**B. Acceptance.** County shall review the completed Engineering Services for compliance with this Contract. If necessary, the completed Engineering Services shall be returned to Engineer, who shall perform any required Engineering Services and resubmit it to County. This process shall be repeated until the Engineering Services are Accepted. "Acceptance" or "Accepted" shall mean that in the County's reasonable opinion, substantial compliance with the requirements of this Contract has been achieved.

**C. Final Approval.** After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by the County. "Final Approval" in this sense shall mean formal recognition that the Engineering Services have been fully carried out.

**D. Errors and Omissions.** After Final Approval, Engineer shall, without additional compensation, perform any work required as a result of Engineer's development of the work which is found to be in error or omission due to Engineer's negligence. However, any work required or

occasioned for the convenience of County after Final Approval shall be paid for as Additional Engineering Services.

**E. Disputes Over Classifications.** In the event of any dispute over the classification of Engineer's Engineering Services as Complete, Accepted, or having attained Final Approved under this Contract, the decision of the County shall be final and binding on Engineer, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

**F. County's Reliance on Engineer.** ENGINEER'S DUTIES AS SET FORTH HEREIN SHALL AT NO TIME BE IN ANY WAY DIMINISHED BY REASON OF ANY REVIEW, EVALUATION OR APPROVAL BY THE COUNTY NOR SHALL THE ENGINEER BE RELEASED FROM ANY LIABILITY BY REASON OF SUCH REVIEW, EVALUATION OR APPROVAL BY THE COUNTY, IT BEING UNDERSTOOD THAT THE COUNTY AT ALL TIMES IS ULTIMATELY RELYING UPON THE ENGINEER'S SKILL, ABILITY AND KNOWLEDGE IN PERFORMING THE ENGINEERING SERVICES REQUIRED HEREUNDER.

## **ARTICLE 19**

### **VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT**

Violation of contract terms or breach of contract by Engineer shall be grounds for termination of this Contract, and any increased costs arising from Engineer's default, breach of contract, or violation of contract terms shall be paid by Engineer.

## **ARTICLE 20**

### **TERMINATION**

This Contract may be terminated as set forth below.

- A.** By mutual agreement and consent, in writing, of both parties.
- B.** By County, by notice in writing to Engineer, as a consequence of failure by Engineer to perform the Engineering Services set forth herein in a satisfactory manner.
- C.** By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- D.** By County, for reasons of its own and not subject to the mutual consent of Engineer, upon not less than thirty (30) days' written notice to Engineer.
- E.** By satisfactory completion of all Engineering Services and obligations described herein.

Should County terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, County shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering Services completed at that time. Should County terminate this Contract under Subsection (D) immediately above, then the amount

charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Engineer defaults in the performance of this Contract or if County terminates this Contract for fault on the part of Engineer, then County shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of the Engineering Services which are usable to County, the cost to County of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to County of the Engineering Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Contract. If the termination of this Contract is due to the failure of Engineer to fulfill his/her/its contractual obligations, then County may take over the Project and prosecute the Engineering Services to completion. In such case, Engineer shall be liable to County for any additional and reasonable costs incurred by County.

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

## **ARTICLE 21**

### **COMPLIANCE WITH LAWS**

**A. Compliance.** Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish County with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses required in the performance of the Engineering Services contracted for herein.

**B. Taxes.** Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering Services performed hereunder. County is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

## **ARTICLE 22**

### **INDEMNIFICATION**

ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED

TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY ENGINEER, ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH ENGINEER INCLUDING, WITHOUT LIMITATION, ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL.

ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM ENGINEER'S FAILURE TO PAY ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER.

ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM ENGINEER IS NOT LEGALLY LIABLE, ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN ENGINEER IN ANY SUCH PROCEEDINGS AT THE COUNTY'S COST. ENGINEER SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

## **ARTICLE 23**

### **ENGINEER'S RESPONSIBILITIES**

Engineer shall be responsible for the accuracy of his/her/its Engineering Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of Article 33. Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

## **ARTICLE 24**

### **ENGINEER'S SEAL**

The responsible engineer shall sign, seal and date all appropriate engineering submissions to County in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

## **ARTICLE 25**

### **INSURANCE**

Engineer must comply with the following insurance requirements at all times during this Contract:

**A. Coverage Limits.** Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect the following insurance:

1. Worker's Compensation in accordance with statutory requirements.
2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
4. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

**B. Additional Insureds; Waiver of Subrogation.** County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.

**C. Premiums and Deductible.** Engineer shall be responsible for payment of premiums for all of the insurance coverages required under this section. Engineer further agrees

that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Engineer is responsible hereunder, Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in the Engineer's insurance must be declared and approved in writing by County in advance.

**D. Commencement of Work.** Engineer shall not commence any field work under this Contract until he/she/it has obtained all required insurance and such insurance has been approved by County. As further set out below, Engineer shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Engineer hereunder.

**E. Insurance Company Rating.** The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A-rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

**F. Certification of Coverage.** Engineer shall furnish County with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Engineer shall also notify County, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**

**G. No Arbitration.** It is the intention of the County and agreed to and hereby acknowledged by the Engineer, that no provision of this Contract shall be construed to require the County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Contract.

**H. Subcontractor/Subconsultant's Insurance.** Without limiting any of the other obligations or liabilities of Engineer, Engineer shall require each subcontractor/subconsultant performing work under this Contract (to the extent a subcontractor/subconsultant is allowed by County) to maintain during the term of this Contract, at the subcontractor/subconsultant's own expense, the same stipulated minimum insurance required in this Article above, including the required provisions and additional policy conditions as shown below in this Article.

Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements. Engineer must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

**I. Insurance Policy Endorsements.** Each insurance policy shall include the following conditions by endorsement to the policy:

1. County shall be notified thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

Hays County Auditor  
c/o: Vickie G. Dorsett  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

With copy to: HNTB Corporation  
Attn: Michael Weaver  
701 Brazos, Suite 450  
Austin, Texas 78701

2. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

**J. Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such Certificates of Insurance are evidenced as **Exhibit F** herein entitled "Certificates of Insurance."

## **ARTICLE 26** **COPYRIGHTS**

County shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer for governmental purposes.

## **ARTICLE 27** **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

**ARTICLE 28**  
**SEVERABILITY**

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

**ARTICLE 29**  
**PRIOR AGREEMENTS SUPERSEDED**

This Contract constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

**ARTICLE 30**  
**ENGINEER'S ACCOUNTING RECORDS**

Engineer agrees to maintain, for a period of three (3) years after final payment under this Contract, detailed records identifying each individual performing the Engineering Services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for verification purposes. Engineer agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer further agrees that County shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Engineer reasonable advance notice of intended audits.

**ARTICLE 31**  
**NOTICES**

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

**County:**       Hays County Judge  
                  111 E. San Antonio Street, Suite 300  
                  San Marcos, Texas 78666

With copy to: HNTB Corporation  
701 Brazos, Suite 450  
Austin, Texas 78701  
Attn: Michael Weaver

and to: Office of General Counsel  
Hays County  
111 E. San Antonio Street, Room 202  
San Marcos, Texas 78666

Engineer: Erin Gonzales, PE  
BGE, Inc.  
1701 Directors Blvd, Suite 1000  
Austin, Texas 78744

## **ARTICLE 32**

### **GENERAL PROVISIONS**

**A. Time is of the Essence.** Subject to Article 3 hereof, Engineer understands and agrees that time is of the essence and that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed work schedule set out in the applicable Work Authorization may constitute a material breach of this Contract. Engineer shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer's standard of performance as defined herein. Where damage is caused to County due to Engineer's negligent failure to perform County may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of County's additional legal rights or remedies.

**B. Force Majeure.** Neither County nor Engineer shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**C. Enforcement and Venue.** This Contract shall be enforceable in San Marcos, Hays County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Hays County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

**D. Standard of Performance.** The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing

under the same or similar circumstances at the same time and in the same locality.

**E. Opinion of Probable Cost.** Any opinions of probable Project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Engineer prepares.

**F. Opinions and Determinations.** Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

**G. Reports of Accidents.** Within 24 hours after Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Contract, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Contract.

**H. Gender, Number and Headings.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Contract.

**I. Construction.** Each party hereto acknowledges that it and its counsel have reviewed this Contract and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Contract.

**J. Independent Contractor Relationship.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**K. No Waiver of Immunities.** Nothing in this Contract shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of

any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**L. Texas Public Information Act.** To the extent, if any, that any provision in this Contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**M. Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms and conditions set forth in this Contract or any Contract Amendment and the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract, the terms and conditions set forth in this Contract or any Contract Amendment shall control over the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract.

**N. Meaning of Day.** For purposes of this Contract, all references to a "day" or "days" shall mean a calendar day or calendar days.

**O. Appropriation of Funds by County.** County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Engineer understands and agrees that County's payment of amounts under this Contract is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

### **ARTICLE 33** **DISPUTE RESOLUTION**

Except as otherwise specifically set forth herein, County and Engineer shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Contract, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Contract, shall be selected by agreement of the parties and serve as the mediator.

Any mediation under this Contract shall be conducted in Hays County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of the Contract.

## **ARTICLE 34**

### **EQUAL OPPORTUNITY IN EMPLOYMENT**

During the performance of this Contract and to the extent the Project is a federally funded project, Engineer, for itself, its assignees and successors in interest agrees as follows:

**A. Compliance with Regulations.** The Engineer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

**B. Nondiscrimination.** The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. Information and Reports.** The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County (referred to in this Article as the "Recipient") or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Engineer shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract

sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
2. cancellation, termination or suspension of the Contract, in whole or in part.

**F. Incorporation of Provisions.** The Engineer shall include the provisions of Subsections (A) through (F) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor/subconsultant or supplier as a result of such direction, the Engineer may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

#### **SIGNATORY WARRANTY**

The undersigned signatory for Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Contract.

**IN WITNESS WHEREOF**, County has caused this Contract to be signed in its name by its duly authorized County Judge, as has Engineer, signing by and through its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof, to be effective as of the date of the last party's execution below. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE HAYS COUNTY COMMISSIONERS COURT.

#### **COUNTY**

HAYS COUNTY, TEXAS

By: \_\_\_\_\_  
Ruben Becerra, County Judge

Date: \_\_\_\_\_, 20\_\_\_\_

**ENGINEER**

**BGE, Inc.**

By Erin N. Gonzales

Printed Name: **Erin Gonzales, PE**

Title: **Director**

Date: August 18, 2020

### **LIST OF EXHIBITS ATTACHED**

- |                      |                           |
|----------------------|---------------------------|
| (1) <b>Exhibit A</b> | Debarment Certification   |
| (2) <b>Exhibit B</b> | Engineering Services      |
| (3) <b>Exhibit C</b> | Work Authorization        |
| (4) <b>Exhibit D</b> | Rate Schedule             |
| (5) <b>Exhibit E</b> | Certificates of Insurance |

**EXHIBIT A**  
**DEBARMENT CERTIFICATION**

**STATE OF TEXAS**

§

**COUNTY OF HAYS**

§

§

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

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency:

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public\* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity\* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions\* terminated for cause or default; and

(e) Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

**BGE, Inc.**

Name of Firm

Signature of Certifying Official

**Charles R. Harris**

Printed Name of Certifying Official

**Sr Vice President**

Title of Certifying Official

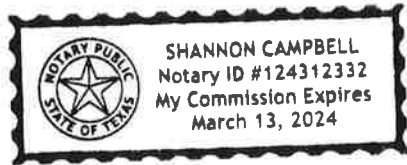
**7-22**, **2020**

Date

(2) Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

\* federal, state, or local

SUBSCRIBED and sworn to before me the undersigned authority by Charles R Harris the Senior Vice President of BGE, Inc., on behalf of said firm.



Shannon Campbell  
Notary Public in and for the  
State of Texas

My commission expires: March 13, 2024

**EXHIBIT B**

**ENGINEERING SERVICES**

**EXHIBIT B**  
**SERVICES TO BE PROVIDED BY THE ENGINEER**  
**FOR HILLSIDE TERRACE**

**1. PROJECT DESCRIPTION**

Existing Facility

Hillside Terrace is currently a 2-lane, east-west rural roadway.

Proposed Facility

Proposed 3-lanes with shoulders from IH-35 to Old Goforth, 2-lanes with shoulders from Old Goforth to FM 2001 and 0.30 miles of Old Goforth from Hillside Terrace to the north.

Design Criteria

The ENGINEER will perform all work and prepare all deliverables in accordance with the applicable/current requirements of the TxDOT 2011 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions, the American Association of State Highway and Transportation Officials (AASHTO) Policy on the Geometric Design of Highways and Streets, 6<sup>th</sup> Edition, 2011 and the TxDOT roadway Design Manual July 2020.

1. DESIGN PHASE SERVICES:

- a. This phase of the project generally consists of preparing construction plans, specifications, estimates, and contract documents. Services may include, but are not limited to:
- Environmental Evaluation
  - Right of Way Data
  - Roadway Design Controls
  - Drainage
  - Signing, Pavement Marking, and Signalization
  - Miscellaneous
  - Project Management

2. BIDDING AND CONSTRUCTION PHASE SERVICES:

- a. This phase of the project generally consists of assisting with the bidding and contract award process and providing support during construction. Services may include, but are not limited to:
- Supporting the Pre-Bid Meeting, Bid Opening, and Preparing Award Recommendation
  - Pre-Construction Conference
  - Responding to RFIs, Change Orders, and Reviewing Submittals, and Preparing Construction Plan Revisions

## EXHIBIT C

### WORK AUTHORIZATION

(To Be Completed and Executed After Contract Execution)

**WORK AUTHORIZATION NO.** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

This Work Authorization is made pursuant to the terms and conditions of the Hays County Contract for Engineering Services, being dated \_\_\_\_\_, 20\_\_\_\_ and entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (the "County") and \_\_\_\_\_ (the "Engineer").

Part 1. The Engineer will provide the following Engineering Services set forth in Attachment "B" of this Work Authorization.

Part 2. The maximum amount payable for services under this Work Authorization without modification is \_\_\_\_\_.

Part 3. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with the Contract.

Part 4. This Work Authorization shall become effective on the date of final acceptance and full execution of the parties hereto and shall terminate on \_\_\_\_\_, 20\_\_\_\_. The Engineering Services set forth in Attachment "B" of this Work Authorization shall be fully completed on or before said date unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Contract.

Part 6. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Authorization. Engineer understands and agrees that County's payment of amounts under this Work Authorization is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

Part 7. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ENGINEER:

COUNTY:

[Insert Company Name HERE]

Hays County, Texas

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

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

Signature

Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

#### LIST OF ATTACHMENTS

Attachment A - Services to be Provided by County

Attachment B - Services to be Provided by Engineer

Attachment C - Work Schedule

Attachment D - Fee Schedule

**EXHIBIT D**

**Fee/Rate Schedule**

**FEE SCHEDULE SHALL BE INSERTED AT THE  
TIME OF AGREEMENT/CONTRACT EXECUTION**

**EXHIBIT E**

**CERTIFICATES OF INSURANCE**

**ATTACHED BEHIND THIS PAGE**

**ACORD**<sup>TM</sup>**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

7/13/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>USI Southwest</b> <b>9811 Katy Freeway, Suite 500</b> <b>Houston, TX 77024</b> <b>713 490-4600</b>		<b>CONTACT NAME:</b> Shelly Brandman/Michelle Weweh <b>PHONE (A/C, No, Ext):</b> 713 490-4600 <b>E-MAIL ADDRESS:</b> shelly.brandman@usi.com <b>FAX (A/C, No):</b>															
<b>INSURED</b> <b>Brown and Gay Engineers, Inc.</b> <b>DBA BGE, Inc.</b> <b>10777 Westheimer, Suite 400</b> <b>Houston, TX 77042</b>		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : National Fire Insurance Co. of Hartford</td> <td>20478</td> </tr> <tr> <td>INSURER B : Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER C : Valley Forge Insurance Company</td> <td>20508</td> </tr> <tr> <td>INSURER D : Berkley Insurance Company</td> <td>32603</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : National Fire Insurance Co. of Hartford	20478	INSURER B : Continental Insurance Company	35289	INSURER C : Valley Forge Insurance Company	20508	INSURER D : Berkley Insurance Company	32603	INSURER E :		INSURER F :	
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**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6075541416	12/31/2019	12/31/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			6075541433	12/31/2019	12/31/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$10000			6075541464	12/31/2019	12/31/2020	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	6075541447	12/31/2019	12/31/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability			903549200	12/31/2019	12/31/2020	\$5,000,000 per claim \$10,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Blanket Additional Insured (all policies except Workers Compensation and Professional Liability) is provided if required by written contract executed prior to a loss, but limited to the operations of the Named Insured per policy forms CNA75079XX 10/16, including completed operations (GL); CA2048 10/13 (Auto).

Coverage provided on the General and Auto Liability is primary and non-contributory if required by written (See Attached Descriptions)

**CERTIFICATE HOLDER****CANCELLATION**

Hays County Auditor  
 c/o Vickie G. Dorsett  
 712 S. Stagecoach Trail, Suite 1071  
 San Marcos, TX 78666-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Shelly Brandman*

## DESCRIPTIONS (Continued from Page 1)

contract executed prior to a loss.

Blanket Waiver of Subrogation is provided on all policies as required by written contract executed prior to a loss, except as prohibited by law, per policy form CNA75079XX 10/16 (GL); CA0444 10/13 (Auto); WC420304B 06/14 (WC); CNA75504XX 03/15 (UL).

The Umbrella Follows Form (CNA88301XX 08/17) to the underlying General, Auto and Employers Liability policies.

All policies include an endorsement providing that 30 days notice of cancellation, except 10 days notice for non-payment of premium, will endeavor to be given if required by written contract.

RE: Project: RM 967 (UDRR to IH 35).

The General and Auto Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to County, its directors, officers and employees only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured. Coverage provided on the General and Auto Liability is primary and non-contributory if required by written contract executed prior to a loss.

## 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 sign a Professional Services Agreement between Hays County and Bowman Engineering, Inc. for design services related to PS&E for reconstruction of Cotton Gin Road.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	August 25, 2020	\$332,661.00

#### LINE ITEM NUMBER

5448\_008

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry H. Borcharding	JONES	N/A

#### SUMMARY

Schematic design has been completed. Continuing the project will require that funds for PS&E be allocated through the Transportation Department FY2020 budget.



**ARTICLE 1**  
**CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS**

**A. Contract Documents.** The Contract Documents consist of this Contract, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract), any fully executed Work Authorizations; any fully executed Supplemental Work Authorizations and all fully executed Contract Amendments (as defined herein in Article 14) which are subsequently issued. These form the entire contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

**B. Project Documents.** In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

- A. TxDOT 2011 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions
- B. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2014 (English units)
- C. National Environmental Policy Act (NEPA)
- D. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions
- E. Americans with Disabilities Act (ADA) Regulations
- F. U.S. Army Corps Regulations
- G. International Building Code, current edition as updated
- H. Hays County Design Criteria & Project Development Manual, latest edition
- I. Hays County Multi-Corridor Transportation Plan Project Level Environmental Review and Compliance Protocol, latest edition
- J. Hays County Protocol for Sustainable Roadsides, latest edition
- K. TxDOT Bridge Design Manual - LRFD, latest edition
- L. TxDOT Geotechnical Manual, latest edition

**ARTICLE 2**  
**NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST**  
**PROHIBITED**

**A. Non-collusion.** Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**B. Debarment Certification.** Engineer must sign the Debarment Certification enclosed herewith as **Exhibit A**.

**C. Financial Interest Prohibited.** Engineer covenants and represents that Engineer, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

### **ARTICLE 3** **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in **Exhibit B** entitled “Engineering Services.”

County will prepare and issue Work Authorizations, in substantially the same form identified and attached hereto as **Exhibit C** and entitled “Work Authorization No. 1”, to authorize the Engineer to perform one or more tasks of the Engineering Services. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, definite review times by County and Engineer of all Engineering Services and a fee amount agreed upon by the County and Engineer. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the Engineer’s responsibilities and obligations established in this Contract. The executed Work Authorizations shall become part of this Contract.

All work must be completed on or before the date specified in the Work Authorization. The Engineer shall promptly notify the County of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Engineer from costs or liabilities resulting from delays in completion of the Work Authorization. Should the review times or Engineering Services take longer than shown on the Work Authorization, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the County. Any changes in a Work Authorization shall be enacted by a written Supplemental Work Authorization before additional costs may be incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization.

### **ARTICLE 4** **CONTRACT TERM**

**A. Term.** The Engineer is expected to complete the Engineering Services described herein in accordance with the above described Work Authorizations or any Supplemental Work Authorization related thereto. If Engineer does not perform the Engineering Services in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall have the right to terminate this Contract as set forth below in Article 20. So long as the County elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering Services are completed in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto. Any Engineering Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall

notify County in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with an applicable Work Authorization or any Supplemental Work Authorization related thereto.

**B. Work Authorizations.** Engineer acknowledges that each Work Authorization is of critical importance, and agrees to undertake all reasonably necessary efforts to expedite the performance of Engineering Services required herein so that construction of the Project will be commenced and completed as scheduled. In this regard, and subject to adjustments in a particular Work Authorization, as provided in Article 3 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

**C. Commencement of Engineering Services.** After execution of this Contract, Engineer shall not proceed with Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing by the County to proceed, as provided in Article 8.

## **ARTICLE 5**

### **COMPENSATION AND EXPENSES**

County shall pay and Engineer agrees to accept up to the amount shown below as full compensation for the Engineering Services performed and to be performed under this Contract. The basis of compensation for the services of principals and employees engaged in the performance of the Engineering Services shall be based on the Rate Schedule set forth in the attached **Exhibit D**.

The maximum amount payable under this Contract, without modification, is **three hundred thirty-two thousand, six hundred sixty-one Dollars (\$332,661.00)** (the "Compensation Cap"), provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. The Compensation Cap shall be revised equitably only by written Contract Amendments executed by both parties in the event of a change the overall scope of the Engineering Services set forth in **Exhibit B**, as authorized by County.

The Compensation Cap is based upon all labor and non-labor costs estimated to be required in the performance of the Engineering Services provided for under this Contract. Should the actual costs of all labor and non-labor costs rendered under this Contract be less than the above stated Compensation Cap, then Engineer shall receive compensation for only actual fees and costs of the Engineering Services actually rendered and incurred, which may be less than the above stated Compensation Cap.

The Compensation Cap herein referenced may be adjusted for Additional Engineering Services requested and performed only if approved by a written Contract Amendment signed by both parties.

Engineer shall prepare and submit to County monthly progress reports in sufficient detail to support the progress of the Engineering Services and to support invoices requesting monthly payment. The format for such monthly progress reports and invoices must be in a format acceptable to County. Satisfactory progress of Engineering Services shall be an absolute condition of payment.

Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Contract at the Engineer's invoice cost. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice. The copies of the provider's invoice must evidence the actual costs billed to Engineer without mark-up.

## **ARTICLE 6**

### **METHOD OF PAYMENT**

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to County's Road Bond Program Manager, not more frequently than once per month, a progress report as referenced in Article 5 above. Such progress report shall state the percentage of completion of Engineering Services accomplished for an applicable Work Authorization or any Supplemental Work Authorization related thereto during that billing period and to date. This submittal shall also include a progress assessment report in a form acceptable to the County Auditor.

Simultaneous with submission of such progress report, Engineer shall prepare and submit one (1) original of a certified invoice to the County Auditor in a form acceptable to the County Auditor. All invoices submitted to County must, at a minimum, be accompanied by an original complete packet of supporting documentation and time sheets detailing hours worked by staff persons with a description of the work performed by such persons. For Additional Engineering Services performed pursuant to this Contract, a separate invoice or itemization of the Additional Engineering Services must be presented with the same aforementioned requirements.

Payments shall be made by County based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, County shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of the County Auditor's receipt. County reserves the right to reasonably withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to County, adequate and sufficient in its determination, that tasks of an applicable Work Authorization or any Supplemental Work Authorization related thereto were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

Upon submittal of the initial invoice, Engineer shall provide the County Auditor with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

## **ARTICLE 7**

### **PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which the County Auditor receives a correct invoice for services, whichever is later.

Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between County and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent County from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer and a subcontractor/subconsultant or between a subcontractor/subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D. The invoice is not mailed to the County Auditor in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

The County Auditor shall document to Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

## **ARTICLE 8**

### **COMMENCEMENT OF ENGINEERING SERVICES**

The Engineer shall not proceed with any task of the Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and instructed, in writing by the County, to proceed with the applicable Engineering Services. The County shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties. Engineer shall not be required to perform any work for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

**ARTICLE 9**  
**PROJECT TEAM**

County's Designated Representative for purposes of this Contract is as follows:

Attn: Jerry Borcharding, P.E.  
Transportation Director  
Hays County Transportation Department  
2171 Yarrington Road  
Kyle, Texas 78640

County shall have the right, from time to time, to change the County's Designated Representative by giving Engineer written notice thereof. With respect to any action, decision or determination which is to be taken or made by County under this Contract, the County's Designated Representative may take such action or make such decision or determination or shall notify Engineer in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the County's Designated Representative shall be binding on County; *provided, however*, the County's Designated Representative shall not have any right to modify, amend or terminate this Contract, an Executed Work Authorization, an executed Supplemental Work Authorization or executed Contract Amendment. County's Designated Representative shall not have any authority to execute a Contract Amendment, Work Authorization or any Supplemental Work Authorization unless otherwise granted such authority by the Hays County Commissioners Court.

Engineer's Designated Representative for purposes of this Contract is as follows:

Attn: Nicholas Kehl  
Bowman Consulting Group, Ltd.  
1120 South Capital of Texas Hwy  
Building 3, Suite 220  
Austin, Texas 78746

Engineer shall have the right, from time to time, to change the Engineer's Designated Representative by giving County written notice thereof. With respect to any action, decision or determination which is to be taken or made by Engineer under this Contract, the Engineer's Designated Representative may take such action or make such decision or determination or shall notify County in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the Engineer's Designated Representative on behalf of Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which

case, actions taken by the Engineer's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the Engineer's Designated Representative shall be binding on Engineer. Engineer's Designated Representative shall have the right to modify, amend and execute Work Authorizations, Supplemental Work Authorizations and Contract Amendments on behalf of Engineer.

## **ARTICLE 10**

### **PROGRESS EVALUATION**

Engineer shall, from time to time during the progress of the Engineering Services, confer with County at County's election. Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Engineering Services. At the request of County or Engineer, conferences shall be provided at Engineer's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Engineering Services. County may, from time to time, require Engineer to appear and provide information to the Hays County Commissioners Court.

Should County determine that the progress in Engineering Services does not satisfy an applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall review same with Engineer to determine corrective action required.

Engineer shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Engineering Services, including but not limited to the following:

- A. Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of an applicable Work Authorization or any Supplemental Work Authorization related thereto, or preclude the attainment of Project Engineering Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and
- B. Favorable developments or events which enable meeting goals sooner than anticipated in relation to an applicable Work Authorization's or any Supplemental Work Authorization related thereto.

## **ARTICLE 11**

### **SUSPENSION**

Should County desire to suspend the Engineering Services, but not to terminate this Contract, then such suspension may be effected by County giving Engineer thirty (30) calendar days' verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from County to resume the Engineering Services. Such sixty-day (60) notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract and, in the event, Engineer shall be compensated for all Engineering Services performed and reimbursable expenses incurred, provided such Engineering Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

If County suspends the Engineering Services, the contract period as determined in Article 4, and the Work Authorization or any Supplemental Work Authorization related thereto, shall be extended for a time period equal to the suspension period.

County assumes no liability for Engineering Services performed or costs incurred prior to the date authorized by County for Engineer to begin Engineering Services, and/or during periods when Engineering Services is suspended, and/or subsequent to the completion date.

## **ARTICLE 12**

### **ADDITIONAL ENGINEERING SERVICES**

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the overall scope of this Contract, as set forth in **Exhibit B**, and as such constitutes extra work ("Additional Engineering Services"), he/she/it shall promptly notify County in writing. In the event County finds that such work does constitute Additional Engineering Services, County shall so advise Engineer and a written Contract Amendment will be executed between the parties as provided in Article 14. Any increase to the Compensation Cap due to Additional Engineering Services must be set forth in such Contract Amendment. Engineer shall not perform any proposed Additional Engineering Services nor incur any additional costs prior to the execution, by both parties, of a written Contract Amendment. Following the execution of a Contract Amendment that provides for Additional Engineering Services, a written Work Authorization, which sets forth the Additional Engineering Services to be performed, must be executed by the parties. County shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to Additional Engineering Services not directly associated with the performance of the Engineering Services authorized in this Contract, by a fully executed Work Authorization or a fully executed Contract Amendment thereto.

## **ARTICLE 13**

### **CHANGES IN COMPLETED ENGINEERING SERVICES**

If County deems it necessary to request changes to previously satisfactorily completed

Engineering Services or parts thereof which involve changes to the original Engineering Services or character of Engineering Services under this Contract, then Engineer shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Engineering Services and paid for as specified under Article 12.

Engineer shall make revisions to Engineering Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Engineering Services.

#### **ARTICLE 14**

#### **CONTRACT AMENDMENTS**

The terms set out in this Contract may be modified by a written fully executed Contract Amendment. Changes and modifications to a fully executed Work Authorization shall be made in the form of a Supplemental Work Authorization. To the extent that such changes or modifications to a Work Authorization do not also require modifications to the terms of this Contract (i.e. changes to the overall scope of Engineering Services set forth in **Exhibit B**, modification of the Compensation Cap, etc.) a Contract Amendment will not be required.

#### **ARTICLE 15**

#### **USE OF DOCUMENTS**

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Engineering Work Products") prepared by Engineer and its subcontractors/subconsultants are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to Engineer.

By execution of this Contract and in confirmation of the fee for services to be paid under this Contract, Engineer hereby conveys, transfers and assigns to County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and work product developed under this Contract. Copies may be retained by Engineer. Engineer shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer, including agents, employees, Engineers or subcontractors/subconsultants. All documents so lost or damaged shall be replaced or restored by Engineer without cost to County.

Upon execution of this Contract, Engineer grants to County permission to reproduce Engineer's work and documents for purposes of constructing, using and maintaining the Project, provided that County shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer's

subcontractors/subconsultants consistent with this Contract. If and upon the date Engineer is adjudged in default of this Contract, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

County shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written consent of Engineer. However, County shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Engineering Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Engineering Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Engineering Work Products shall be at County's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to County any Engineering Work Products in electronic form or County providing to Engineer any electronic data for incorporation into the Engineering Work Products, County and Engineer shall by separate written contract set forth the specific conditions governing the format of such Engineering Work Products or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer for the convenience of County, and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer shall be relied upon.

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

## **ARTICLE 16**

### **PERSONNEL, EQUIPMENT AND MATERIAL**

Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Engineering Services, and adequate and sufficient personnel and equipment to perform the Engineering Services as required. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Engineering Services shall immediately be removed from association with the Project when so instructed by County. Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering Services required under this Contract, or will obtain such personnel from sources other than County. Engineer may not change the Project Manager without prior written consent of County.

## **ARTICLE 17**

### **SUBCONTRACTING**

Engineer shall not assign, subcontract or transfer any portion of the Engineering Services under this Contract without prior written approval from County. All subcontracts shall include the provisions required in this Contract. No subcontract shall relieve Engineer of any responsibilities under this Contract.

## **ARTICLE 18**

### **REVIEW OF ENGINEERING SERVICES**

Engineer's Engineering Services will be reviewed by County under its applicable technical requirements and procedures.

**A. Completion.** Reports, plans, specifications, and supporting documents shall be submitted by Engineer on or before the dates specified in the applicable Work Authorization or Supplemental Work Authorization related thereto. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in the applicable Work Authorization, have been included in compliance with the requirements of this Contract. The completeness of any Engineering Services submitted to County shall be determined by County within thirty (30) days of such submittal and County shall notify Engineer in writing within such thirty (30) day period if such Engineering Services have been found to be incomplete. If the submission is Complete, County shall notify Engineer and County's technical review process will begin.

If the submission is not Complete, County shall notify Engineer, who shall perform such professional services as are required to complete the Engineering Services and resubmit it to County. This process shall be repeated until a submission is Complete.

**B. Acceptance.** County shall review the completed Engineering Services for compliance with this Contract. If necessary, the completed Engineering Services shall be returned to Engineer, who shall perform any required Engineering Services and resubmit it to County. This process shall be repeated until the Engineering Services are Accepted. "Acceptance" or "Accepted" shall mean that in the County's reasonable opinion, substantial compliance with the requirements of this Contract has been achieved.

**C. Final Approval.** After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by the County. "Final Approval" in this sense shall mean formal recognition that the Engineering Services have been fully carried out.

**D. Errors and Omissions.** After Final Approval, Engineer shall, without additional compensation, perform any work required as a result of Engineer's development of the work which is found to be in error or omission due to Engineer's negligence. However, any work required or

occasioned for the convenience of County after Final Approval shall be paid for as Additional Engineering Services.

**E. Disputes Over Classifications.** In the event of any dispute over the classification of Engineer's Engineering Services as Complete, Accepted, or having attained Final Approved under this Contract, the decision of the County shall be final and binding on Engineer, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

**F. County's Reliance on Engineer.** ENGINEER'S DUTIES AS SET FORTH HEREIN SHALL AT NO TIME BE IN ANY WAY DIMINISHED BY REASON OF ANY REVIEW, EVALUATION OR APPROVAL BY THE COUNTY NOR SHALL THE ENGINEER BE RELEASED FROM ANY LIABILITY BY REASON OF SUCH REVIEW, EVALUATION OR APPROVAL BY THE COUNTY, IT BEING UNDERSTOOD THAT THE COUNTY AT ALL TIMES IS ULTIMATELY RELYING UPON THE ENGINEER'S SKILL, ABILITY AND KNOWLEDGE IN PERFORMING THE ENGINEERING SERVICES REQUIRED HEREUNDER.

## **ARTICLE 19**

### **VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT**

Violation of contract terms or breach of contract by Engineer shall be grounds for termination of this Contract, and any increased costs arising from Engineer's default, breach of contract, or violation of contract terms shall be paid by Engineer.

## **ARTICLE 20**

### **TERMINATION**

This Contract may be terminated as set forth below.

- A.** By mutual agreement and consent, in writing, of both parties.
- B.** By County, by notice in writing to Engineer, as a consequence of failure by Engineer to perform the Engineering Services set forth herein in a satisfactory manner.
- C.** By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- D.** By County, for reasons of its own and not subject to the mutual consent of Engineer, upon not less than thirty (30) days' written notice to Engineer.
- E.** By satisfactory completion of all Engineering Services and obligations described herein.

Should County terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, County shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering Services completed at that time. Should County terminate this Contract under Subsection (D) immediately above, then the amount

charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Engineer defaults in the performance of this Contract or if County terminates this Contract for fault on the part of Engineer, then County shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of the Engineering Services which are usable to County, the cost to County of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to County of the Engineering Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Contract. If the termination of this Contract is due to the failure of Engineer to fulfill his/her/its contractual obligations, then County may take over the Project and prosecute the Engineering Services to completion. In such case, Engineer shall be liable to County for any additional and reasonable costs incurred by County.

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

## **ARTICLE 21**

### **COMPLIANCE WITH LAWS**

**A. Compliance.** Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish County with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses required in the performance of the Engineering Services contracted for herein.

**B. Taxes.** Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering Services performed hereunder. County is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

## **ARTICLE 22**

### **INDEMNIFICATION**

ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED

TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY ENGINEER, ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH ENGINEER INCLUDING, WITHOUT LIMITATION, ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL.

ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM ENGINEER'S FAILURE TO PAY ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER.

ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM ENGINEER IS NOT LEGALLY LIABLE, ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN ENGINEER IN ANY SUCH PROCEEDINGS AT THE COUNTY'S COST. ENGINEER SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

**ARTICLE 23**  
**ENGINEER'S RESPONSIBILITIES**

Engineer shall be responsible for the accuracy of his/her/its Engineering Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of Article 33. Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

**ARTICLE 24**  
**ENGINEER'S SEAL**

The responsible engineer shall sign, seal and date all appropriate engineering submissions to County in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

**ARTICLE 25**  
**INSURANCE**

Engineer must comply with the following insurance requirements at all times during this Contract:

**A. Coverage Limits.** Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect the following insurance:

1. Worker's Compensation in accordance with statutory requirements.
2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
4. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

**B. Additional Insureds; Waiver of Subrogation.** County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.

**C. Premiums and Deductible.** Engineer shall be responsible for payment of premiums for all of the insurance coverages required under this section. Engineer further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all

matters for which the Engineer is responsible hereunder, Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in the Engineer's insurance must be declared and approved in writing by County in advance.

**D. Commencement of Work.** Engineer shall not commence any field work under this Contract until he/she/it has obtained all required insurance and such insurance has been approved by County. As further set out below, Engineer shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Engineer hereunder.

**E. Insurance Company Rating.** The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A-rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

**F. Certification of Coverage.** Engineer shall furnish County with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Engineer shall also notify County, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**

**G. No Arbitration.** It is the intention of the County and agreed to and hereby acknowledged by the Engineer, that no provision of this Contract shall be construed to require the County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Contract.

**H. Subcontractor/Subconsultant's Insurance.** Without limiting any of the other obligations or liabilities of Engineer, Engineer shall require each subcontractor/subconsultant performing work under this Contract (to the extent a subcontractor/subconsultant is allowed by County) to maintain during the term of this Contract, at the subcontractor/subconsultant's own expense, the same stipulated minimum insurance required in this Article above, including the required provisions and additional policy conditions as shown below in this Article.

Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements. Engineer must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

**I. Insurance Policy Endorsements.** Each insurance policy shall include the following conditions by endorsement to the policy:

1. County shall be notified thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

Hays County Auditor  
c/o: Vickie G. Dorsett  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

2. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

**J. Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such Certificates of Insurance are evidenced as **Exhibit F** herein entitled "Certificates of Insurance."

## **ARTICLE 26** **COPYRIGHTS**

County shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer for governmental purposes.

## **ARTICLE 27** **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

## **ARTICLE 28** **SEVERABILITY**

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

## **ARTICLE 29** **PRIOR AGREEMENTS SUPERSEDED**

This Contract constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

### **ARTICLE 30** **ENGINEER'S ACCOUNTING RECORDS**

Engineer agrees to maintain, for a period of three (3) years after final payment under this Contract, detailed records identifying each individual performing the Engineering Services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for verification purposes. Engineer agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer further agrees that County shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Engineer reasonable advance notice of intended audits.

### **ARTICLE 31** **NOTICES**

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

**County:** Hays County Judge  
111 E. San Antonio Street, Suite 300  
San Marcos, Texas 78666

and to: Office of General Counsel  
Hays County  
111 E. San Antonio Street, Room 202  
San Marcos, Texas 78666

**Engineer:** Nicholas Kehl  
Bowman Consulting Group, Ltd.  
1120 South Capital of Texas Hwy  
Building 3, Suite 220  
Austin, Texas 78746

## **ARTICLE 32**

### **GENERAL PROVISIONS**

**A. Time is of the Essence.** Subject to Article 3 hereof, Engineer understands and agrees that time is of the essence and that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed work schedule set out in the applicable Work Authorization may constitute a material breach of this Contract. Engineer shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer's standard of performance as defined herein. Where damage is caused to County due to Engineer's negligent failure to perform County may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of County's additional legal rights or remedies.

**B. Force Majeure.** Neither County nor Engineer shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**C. Enforcement and Venue.** This Contract shall be enforceable in San Marcos, Hays County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Hays County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

**D. Standard of Performance.** The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under the same or similar circumstances at the same time and in the same locality.

**E. Opinion of Probable Cost.** Any opinions of probable Project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Engineer prepares.

**F. Opinions and Determinations.** Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

**G. Reports of Accidents.** Within 24 hours after Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person

or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Contract, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Contract.

**H. Gender, Number and Headings.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Contract.

**I. Construction.** Each party hereto acknowledges that it and its counsel have reviewed this Contract and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Contract.

**J. Independent Contractor Relationship.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**K. No Waiver of Immunities.** Nothing in this Contract shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**L. Texas Public Information Act.** To the extent, if any, that any provision in this Contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**M. Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms and conditions set forth in this Contract or any Contract Amendment and the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work

Authorization to this Contract, the terms and conditions set forth in this Contract or any Contract Amendment shall control over the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract.

**N. Meaning of Day.** For purposes of this Contract, all references to a “day” or “days” shall mean a calendar day or calendar days.

**O. Appropriation of Funds by County.** County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Engineer understands and agrees that County’s payment of amounts under this Contract is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County’s budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

### **ARTICLE 33** **DISPUTE RESOLUTION**

Except as otherwise specifically set forth herein, County and Engineer shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Contract, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Contract, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Contract shall be conducted in Hays County, Texas. The mediator’s fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of the Contract.

### **ARTICLE 34** **EQUAL OPPORTUNITY IN EMPLOYMENT**

During the performance of this Contract and to the extent the Project is a federally funded project, Engineer, for itself, its assignees and successors in interest agrees as follows:

**A. Compliance with Regulations.** The Engineer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

**B. Nondiscrimination.** The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. Information and Reports.** The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County (referred to in this Article as the "Recipient") or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Engineer shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
2. cancellation, termination or suspension of the Contract, in whole or in part.

**F. Incorporation of Provisions.** The Engineer shall include the provisions of Subsections (A) through (F) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor/subconsultant or supplier as a result of such direction, the Engineer may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

## **SIGNATORY WARRANTY**

The undersigned signatory for Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Contract.

**IN WITNESS WHEREOF**, County has caused this Contract to be signed in its name by its duly authorized County Judge, as has Engineer, signing by and through its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof, to be effective as of the date of the last party's execution below. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE HAYS COUNTY COMMISSIONERS COURT.

### **COUNTY**

HAYS COUNTY, TEXAS

By: \_\_\_\_\_  
Ruben Becerra, County Judge

Date: \_\_\_\_\_, 20\_\_\_\_

### **ENGINEER**

Bowman Consulting Group, Ltd.

By 

Printed Name: Nicholas G. Kehl

Title: Principal – Branch Manager

Date: July 9, 2020

### **LIST OF EXHIBITS ATTACHED**

- |                      |                           |
|----------------------|---------------------------|
| (1) <b>Exhibit A</b> | Debarment Certification   |
| (2) <b>Exhibit B</b> | Engineering Services      |
| (3) <b>Exhibit C</b> | Work Authorization        |
| (4) <b>Exhibit D</b> | Rate Schedule             |
| (5) <b>Exhibit E</b> | Certificates of Insurance |

**EXHIBIT A**  
**DEBARMENT CERTIFICATION**

**STATE OF TEXAS**

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**COUNTY OF HAYS**

§

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

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency:

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public\* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity\* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions\* terminated for cause or default; and

(e) Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Bowman Consulting Group, Ltd.

Name of Firm



Signature of Certifying Official

Nicholas G. Kehl

Printed Name of Certifying Official

Principal – Branch Manager

Title of Certifying Official

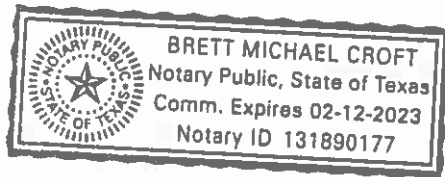
July 6, 2020

Date

(2) Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

\* federal, state, or local

SUBSCRIBED and sworn to before me the undersigned authority by Bowman Consulting  
group the principle Branch Mgr of Vinobas Kehl, on behalf of  
said firm.



Brett Croft

Notary Public in and for the  
State of Texas

My commission expires: 02-12-23

## **EXHIBIT B**

### **ENGINEERING SERVICES**

#### **PROJECT UNDERSTANDING**

The Project includes reconstruction of Cotton Gin Road, also known as County Road 129 in Hays County, Texas. Beginning at Goforth Road and extending to State Highway 21 to the southeast, the project includes approximately 21,500 linear feet, or 4 miles of roadway reconstruction.

The project has been split into two phases; Phase 1 to be funded by the GLO, and Phase 2 to be funded by Hays County. This will require the production of two sets of Construction Plans, Specifications, Cost Estimates, additional Utility Coordination, Utility Easement Acquisition, Bid and Construction Phase services for each phase of the project.

Previously authorized scope of work includes 100% design for Phase 1, as well as bid and construction phase services for Phase 1. Additionally, BCG delivered 60% design for Phase 2 of the project within the previously authorized scope of work.

BCG is proposing to provide the following Scope of Services for the Project:

- Utility Easement Survey Field Notes
- Phase 2 Project Management
- Phase 2 Final Engineering (90% & 100% Design)
- Phase 2 Construction Cost Estimate
- Phase 2 Bid Phase Support
- Phase 2 Utility Coordination
- Phase 2 Construction Administration

## EXHIBIT C

### WORK AUTHORIZATION

(To Be Completed and Executed After Contract Execution)

**PROJECT: Cotton Gin Road – Phase 2**

This Work Authorization is made pursuant to the terms and conditions of the Hays County Contract for Engineering Services, being dated \_\_\_\_\_, **2020** and entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (the "County") and **Bowman Consulting Group, Ltd.** (the "Engineer").

Part 1. The Engineer will provide the following Engineering Services set forth in **Attachment “B”** of this Work Authorization.

Part 2. The maximum amount payable for services under this Work Authorization without modification is \_\_\_\_\_.

Part 3. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with the Contract.

Part 4. This Work Authorization shall become effective on the date of final acceptance and full execution of the parties hereto and shall terminate on \_\_\_\_\_, **2020**. The Engineering Services set forth in **Attachment “B”** of this Work Authorization shall be fully completed on or before said date unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties’ responsibilities and obligations provided under the Contract.

Part 6. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Authorization. Engineer understands and agrees that County’s payment of amounts under this Work Authorization is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County’s budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

Part 7. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

ENGINEER:

Bowman Consulting Group, Ltd.

COUNTY:

Hays County, Texas

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

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

\_\_\_\_\_  
Title

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

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

\_\_\_\_\_  
Title

#### LIST OF ATTACHMENTS

Attachment A - Services to be Provided by County (Not Applicable)

Attachment B – Engineering Services

Attachment C - Work Schedule

Attachment D - Fee Schedule

**EXHIBIT D**

**Fee/Rate Schedule**

**FEE SCHEDULE SHALL BE INSERTED AT THE  
TIME OF AGREEMENT/CONTRACT EXECUTION**

**EXHIBIT E**

**CERTIFICATES OF INSURANCE**

**ATTACHED BEHIND THIS PAGE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/26/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Klein Agency, LLC P.O. Box 219  Timonium MD 21094	<b>CONTACT NAME:</b> Certificates <b>PHONE (A/C, No, Ext):</b> (410) 832-7600 <b>FAX (A/C, No):</b> (410) 832-1849 <b>E-MAIL ADDRESS:</b> certs@kleinagencyllc.com
<b>INSURED</b> Bowman Consulting Group, Ltd. 12355 Sunrise Valley Drive Suite 520 Reston VA 20191	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Charter Oak Fire Insurance Co <b>INSURER B:</b> Travelers Property Casualty Co. of America <b>INSURER C:</b> Travelers Indemnity Co. of Am <b>INSURER D:</b> RLI Insurance Company <b>INSURER E:</b> <b>INSURER F:</b>
	<b>NAIC #</b> 25615 25674 25666 13056

**COVERAGES****CERTIFICATE NUMBER:** 19-20 All**REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6306J047645	08/31/2019	08/31/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			8103N454030	08/31/2019	08/31/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			CUP6J395074	08/31/2019	08/31/2020	EACH OCCURRENCE \$ 18,000,000 AGGREGATE \$ 18,000,000
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input checked="" type="checkbox"/> N	N / A	UB6J317115	08/31/2019	08/31/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional & Pollution Liability			RDP0037319	08/31/2019	08/31/2020	Each Claim \$5,000,000 Aggregate \$10,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

If required by an insured written contract, executed prior to any loss, the certificate holder is an Additional Insured on a primary and non-contributory basis under the General and Auto Liability Policies. If required by an insured written contract, executed prior to any loss, Waiver of Subrogation is provided for General, Auto, and Workers Compensation Policies. Umbrella Policy follows form over General, Auto, and Employer's Liability Policies. 30 day notice of cancellation, 10 day for non-payment.

**CERTIFICATE HOLDER****CANCELLATION**

* For Proposal Purposes 1234 Main Street  Anytown 12345	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> 
--	--

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## 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 maintenance bond rider extension #1060751 for two months for Sunfield subd., Phase 2, Section 11.

#### ITEM TYPE

ACTION-ROADS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Jerry Borcharding

#### SPONSOR

JONES

#### CO-SPONSOR

N/A

#### SUMMARY

The completion of construction of the roads and drainage improvements within the County ROW for Sunfield subd., Phase 2, Section 11 has been delayed and the contractor is requesting more time to complete. This bond extends the life of the maintenance bond for an additional 2 months.



The Hanover Insurance Company | 440 Lincoln Street, Worcester, MA 01653  
Citizens Insurance Company of America | 808 North Highlander Way, Howell, MI 48843  
Massachusetts Bay Insurance Company | 440 Lincoln Street, Worcester, MA 01653

## Bond Rider

Hays County, Texas  
712 S. Stagecoach Trail  
San Marcos, TX 78666

To be attached to and form part of **Bond Number** 1060751

DNT Construction, LLC

issued to \_\_\_\_\_

Hays County, Texas

in favor of \_\_\_\_\_

described as Sunfield Phase Two Section Eleven (2-11) Streets and Drainage

Effective date of Rider 8/10/2020

The Principal and Surety hereby consent to changing the referenced bond as described below:

☐ Address changed to

☒ Bond term changed to

☐ Name changed to


☐ Bond penalty changed to

☐ Other change

Warranty extended for 60 additional days from the contract' originally obligated 25 months

Said bond shall be subject to all its terms, conditions and limitations, except as herein modified.

In witness whereof, The Hanover Insurance Company has caused this instrument  
to be signed by its duly authorized Attorney-in-Fact this 10th day of August, 2020.

By:   
Jeremy Farque, Attorney In Fact

### Distribution copy to:

DNT Construction, LLC  
2300 Picadilly Drive  
Round Rock, TX 78664

Whorton Insurance Services  
11200 Jollyville Rd.  
Austin, TX 78759

**THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA**

**POWER OF ATTORNEY**

**THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

**Tom Mulanax, David Whorton, Michael Whorton, Jim Whorton, Noe Moreno, Rachel Martinez,  
Pollyanna Lengel and/or Jeremy Farque**

Of **Whorton Insurance Services of Austin, Texas** each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

**Any such obligations in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance**

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 31<sup>st</sup> day of May, 2017.

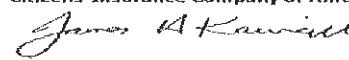
The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America



John C. Roche, EVP and President



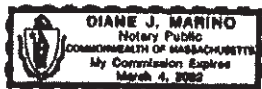
The Hanover Insurance Company  
Massachusetts Bay Insurance Company  
Citizens Insurance Company of America



James H. Kawiecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 31<sup>st</sup> day of May, 2017 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.




  
Diane J. Marino, Notary Public  
My Commission Expires March 4, 2022

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 10th day of August, 2020

**CERTIFIED COPY**

  
Theodore G. Martinez, Vice President

## 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 execute an Advance Funding Agreement for the Metropolitan Area Corridor Project On-System (RM 3237 Intersection Improvements) as part of the 2016 Road Bond Program.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	August 25, 2020	\$8,496,650

#### LINE ITEM NUMBER

034-803-96-767]

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

**PURCHASING GUIDELINES FOLLOWED:** N/A      **AUDITOR REVIEW:** MARISOL VILLARREAL-ALONZO

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry Borcharding	SHELL	N/A

#### SUMMARY

The RM 3237 Intersection Improvements project for improvements between RM 12 and RM 150, including a new intersection roundabout at RM 150, is an element of the Hays County 2016 Road Bond Program that would improve safety and mobility for local traffic conditions within the project limits. The County has moved forward with project development of the RM 3237 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 \$475,565.00, which includes direct and indirect State costs. Hays County would contribute a total of \$8,496,650.00, which includes environmental clearance, utility relocation, construction engineering, and construction funding. Hays County will let and manage construction, which is estimated to begin in 2021.

A Resolution of the Hays County Commissioners Court  
Approving an Advance Funding Agreement For Metropolitan Area Corridor Project  
On-System (RM 3237 Intersection Improvements) and Authorizing the County Judge  
to Execute the Agreement on behalf of Hays County

STATE OF TEXAS           §  
                                      §  
COUNTY OF HAYS       §

**WHEREAS**, the RM 3237 Intersection Improvements project at various intersection locations between RM 12 and RM 150, including a new intersection roundabout at RM 150, is an element of the Hays County 2016 Road Bond Program that would improve safety and mobility for local traffic conditions within the project limits; and

**WHEREAS**, Hays County has moved forward with project development of the RM 3237 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 the Advance Funding Agreement for Metropolitan Area Corridor Project On-System (RM 3237 Intersection Improvements) and authorizes the County Judge to execute the Agreement on behalf of Hays County.

RESOLVED, ORDERED, AND DECLARED this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

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

20200824RM3237SafetyRoundaboutAFA\_resolution.docx

TxDOT:		Federal Highway Administration:	
CSJ #	0805-04-033 and 0805-04-034	CFDA No.	20.205
District #	14	CFDA Title	Highway Planning and Construction
Code Chart 64 #	50106		
Project Name	RM 3237 intersection improvements	AFA Not Used For Research & Development	

STATE OF TEXAS       §

COUNTY OF TRAVIS   §

**ADVANCE FUNDING AGREEMENT  
For  
Metropolitan Area Corridor 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**, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

**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 Texas Transportation Commission passed Minute Order Number **115292** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **design and construct left and right turn lanes on RM 3237 at various intersections, shoulder enhancements, and new intersection roundabout on RM 3237 at RM 150**. 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 (Attachment A). A map showing the Project location appears in Attachment

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0805-04-033 and 0805-04-034</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>14</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>50106</b>		
<b>Project Name</b>	<b>RM 3237 intersection improvements</b>	<b>AFA Not Used For Research &amp; Development</b>	

B, Location Map Showing Project (Attachment B), which is attached to and made a part of this Agreement.

**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>Local Government</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 11
4.	<b>Local Government</b>	Construction Responsibilities	Article 12
5.	<b>Local Government</b>	Right of Way and Real Property	Article 14

### **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 the Project consists of

- a. CSJ#0805-04-033 design and construct left and right turn lanes on RM 3237 from RM 150 to RM 12 at various intersections, shoulder enhancements
- b. CSJ#0805-04-034 construct new intersection roundabout on RM 3237 at RM 150 in Hays County, Texas.

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

The total estimated cost of the Project is shown in Attachment C, Project Budget 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. If federal funds are being used, the training must be completed before federal spending authority is obligated. 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

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0805-04-033 and 0805-04-034</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>14</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>50106</b>		
<b>Project Name</b>	<b>RM 3237 intersection improvements</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

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 continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the federal government, 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. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- 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 federal and 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-federal or 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 and federal 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, and 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.

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- 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.
- 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 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 and if federal funding is reduced as a result, the State shall have no responsibility 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, the State, or the federal government 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.

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- 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;
- B. The Agreement is terminated by one party because of a breach, in which case any costs 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 a 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) consecutive months or longer and no expenditures have been charged against federal 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 federal or 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,

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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 the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- 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 the 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. **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 federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. 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 services

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contracts must be reviewed and approved by the State prior to execution by the Local Government.

## 12. 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. In order to ensure federal funding eligibility, 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. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

## 13. 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.

## 14. 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

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- 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 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

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- 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.
- 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.

## 15. 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.

## 16. 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 County Judge 111 East San Antonio, 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

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written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

**17. 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.

**18. 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.

**19. 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, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government. .

**20. Compliance with Laws**

The parties to this Agreement 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.

**21. 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.

**22. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

**23. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

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#### 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, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA 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. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such

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contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
  2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

## 26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, 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.
- 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, subrecipients 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. §§

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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.).

## 27. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to

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carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor 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 Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

## 28. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

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.

## 29. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative

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agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 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.

### 30. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top five executives to the State if:
    - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
    - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

### 31. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov).
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as

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follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."

- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

### 32. 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

#### THE LOCAL GOVERNMENT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Kenneth Stewart

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Director of Contract Services

\_\_\_\_\_  
Typed or Printed Title

\_\_\_\_\_  
Typed or Printed Title

\_\_\_\_\_  
Date

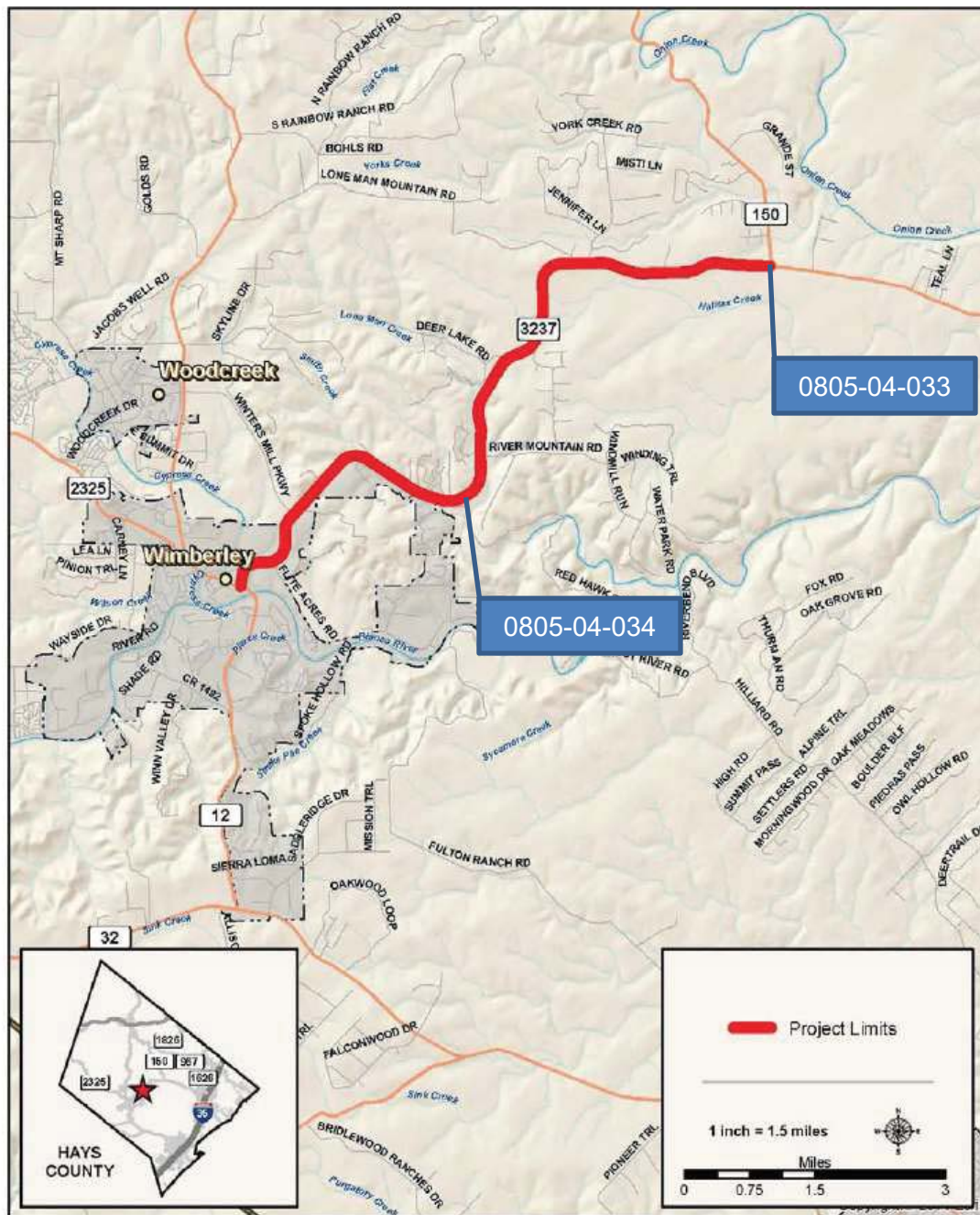
\_\_\_\_\_  
Date

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**ATTACHMENT A**  
**RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER**

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## ATTACHMENT B LOCATION MAP SHOWING PROJECT



 **RM 3237**

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## ATTACHMENT C PROJECT BUDGET

Costs will be allocated based on 100% Local Government funding, the Local Government will then be responsible for the costs overruns.

Description	Total Estimated Cost	State Participation		Local Participation	
		%	Cost	%	Cost
Engineering (by Local Government)	\$866,000	0%	\$0	100%	\$866,000
Environmental (by Local Government)	\$103,400	0%	\$0	100%	\$103,400
Utilities (by Local Government)	\$400,000	0%	\$0	100%	\$400,000
Construction 0805-04-034 (by Local Government)	\$1,500,000	0%	\$0	100%	\$1,500,000
Construction 0805-04-033 (by Local Government)	\$5,130,000	0%	\$0	100%	\$5,130,000
Subtotal	\$7,999,400		\$0		\$7,999,400
Environmental Direct State Costs	\$37,998	100%	\$37,998	0%	\$0
Right of Way Direct State Costs	\$9,499	100%	\$9,499	0%	\$0
Engineering Direct State Costs	\$56,996	100%	\$56,996	0%	\$0
Utility Direct State Costs	\$9,499	100%	\$9,499	0%	\$0
Construction Direct State Costs	\$497,250	0%	\$0	100%	\$497,250
Indirect State Costs (4.52%)	\$361,573	100%	\$361,573	0%	\$0
TOTAL	\$8,972,215		\$475,565		\$8,496,650

Initial payment by the Local Government to the State: \$0.

Payment by the Local Government to the State before construction: \$497,250.

Estimated total payment by the Local Government to the State \$497,250.

This is an estimate. The final amount of Local Government participation will be based on actual costs.

## 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

Discuss and possible action to authorize the County Judge to execute a Professional Services Agreement (PSA)/contract between Hays County and Cobb, Fendley & Associates, Inc. to provide engineering design and ROW acquisition services on the Winters Mill Intersection Improvements at RM 12 and RM 3237 project in Precinct 3 as part of the 2016 Road Bond Project.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	August 25, 2020	\$350,000.00

#### LINE ITEM NUMBER

Road Bonds

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry Borcharding, Transportation Director	SHELL	N/A

#### SUMMARY

New PSA is for updating traffic signal warrant study and 60% drainage design to address Atlas 14, as well as cross sections and ROW acquisition services for safety improvements at the intersections of Winters Mill with RM 12 and RM 3237 and design modifications to split the plan into two separate construction sets. This new PSA/contract is in addition to the current contract executed 6/4/2019. This new contract will be paid for with Road Bond budget [19-769-034].

# **HAYS COUNTY**

## **CONTRACT FOR ENGINEERING SERVICES**

**FIRM:** Cobb Fendley & Associates, Inc. (“Engineer”)  
**ADDRESS:** 505 E Huntland Drive, Suite 100, Austin, TX 78752  
**PROJECT:** Winters Mill Pkwy at RM 3237 and RM 12 Safety Improvements Additional Work (“Project”)

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

**THIS CONTRACT FOR ENGINEERING SERVICES** (“Contract”) is made and entered into, effective as the date of the last party’s execution hereinbelow, by and between Hays County, Texas, a political subdivision of the State of Texas, whose offices are located at 111 E. San Antonio Street, Suite 300, San Marcos, Texas, 78666 (hereinafter referred to as “County”), and Engineer, and such Contract is for the purpose of contracting for professional engineering services.

### **RECITALS:**

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled “Professional Services Procurement Act” provides for the procurement by counties of services of professional engineers; and

WHEREAS, County and Engineer desire to contract for such professional engineering services; and

WHEREAS, County and Engineer wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

**ARTICLE 1**  
**CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS**

**A. Contract Documents.** The Contract Documents consist of this Contract, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract), any fully executed Work Authorizations; any fully executed Supplemental Work Authorizations and all fully executed Contract Amendments (as defined herein in Article 14) which are subsequently issued. These form the entire Contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

**B. Project Documents.** In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

- A. TxDOT 2011 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions
- B. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2014 (English units)
- C. National Environmental Policy Act (NEPA)
- D. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions
- E. Americans with Disabilities Act (ADA) Regulations
- F. U.S. Army Corps Regulations
- G. International Building Code, current edition as updated
- H. Hays County Design Criteria & Project Development Manual, latest edition
- I. Hays County Multi-Corridor Transportation Plan Project Level Environmental Review and Compliance Protocol, latest edition
- J. Hays County Protocol for Sustainable Roadsides, latest edition
- K. TxDOT Bridge Design Manual - LRFD, latest edition
- L. TxDOT Geotechnical Manual, latest edition

**ARTICLE 2**  
**NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST**  
**PROHIBITED**

**A. Non-collusion.** Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**B. Debarment Certification.** Engineer must sign the Debarment Certification

enclosed herewith as **Exhibit A**.

**C. Financial Interest Prohibited.** Engineer covenants and represents that Engineer, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

### **ARTICLE 3** **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in **Exhibit B** entitled “Engineering Services.”

County will prepare and issue Work Authorizations, in substantially the same form identified and attached hereto as **Exhibit C** and entitled “Work Authorization No. \_\_\_\_”, to authorize the Engineer to perform one or more tasks of the Engineering Services. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, definite review times by County and Engineer of all Engineering Services and a fee amount agreed upon by the County and Engineer. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the Engineer’s responsibilities and obligations established in this Contract. The executed Work Authorizations shall become part of this Contract.

All work must be completed on or before the date specified in the Work Authorization. The Engineer shall promptly notify the County of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Engineer from costs or liabilities resulting from delays in completion of the Work Authorization. Should the review times or Engineering Services take longer than shown on the Work Authorization, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the County. Any changes in a Work Authorization shall be enacted by a written Supplemental Work Authorization before additional costs may be incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization.

### **ARTICLE 4** **CONTRACT TERM**

**A. Term.** The Engineer is expected to complete the Engineering Services described herein in accordance with the above described Work Authorizations or any Supplemental Work Authorization related thereto. If Engineer does not perform the Engineering Services in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall have the right to terminate this Contract as set forth below in Article 20. So long as the County elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering Services are completed in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto. Any Engineering Services performed, or

costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall notify County in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with an applicable Work Authorization or any Supplemental Work Authorization related thereto.

**B. Work Authorizations.** Engineer acknowledges that each Work Authorization is of critical importance, and agrees to undertake all reasonably necessary efforts to expedite the performance of Engineering Services required herein so that construction of the Project will be commenced and completed as scheduled. In this regard, and subject to adjustments in a particular Work Authorization, as provided in Article 3 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

**C. Commencement of Engineering Services.** After execution of this Contract, Engineer shall not proceed with Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing by the County to proceed, as provided in Article 8.

## **ARTICLE 5**

### **COMPENSATION AND EXPENSES**

County shall pay and Engineer agrees to accept up to the amount shown below as full compensation for the Engineering Services performed and to be performed under this Contract. The basis of compensation for the services of principals and employees engaged in the performance of the Engineering Services shall be based on the Rate Schedule set forth in the attached **Exhibit D**.

The maximum amount payable under this Contract, without modification, is **three-hundred fifty thousand Dollars (\$350,000.00)** (the “Compensation Cap”), provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. The Compensation Cap shall be revised equitably only by written Contract Amendments executed by both parties in the event of a change the overall scope of the Engineering Services set forth in **Exhibit B**, as authorized by County.

The Compensation Cap is based upon all labor and non-labor costs estimated to be required in the performance of the Engineering Services provided for under this Contract. Should the actual costs of all labor and non-labor costs rendered under this Contract be less than the above stated Compensation Cap, then Engineer shall receive compensation for only actual fees and costs of the Engineering Services actually rendered and incurred, which may be less than the above stated Compensation Cap.

The Compensation Cap herein referenced may be adjusted for Additional Engineering Services requested and performed only if approved by a written Contract Amendment signed by both parties.

Engineer shall prepare and submit to County monthly progress reports in sufficient detail to support the progress of the Engineering Services and to support invoices requesting monthly payment. The format for such monthly progress reports and invoices must be in a format acceptable to County. Satisfactory progress of Engineering Services shall be an absolute condition of payment.

Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Contract at the Engineer's invoice cost. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice. The copies of the provider's invoice must evidence the actual costs billed to Engineer without mark-up.

## **ARTICLE 6**

### **METHOD OF PAYMENT**

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to County's Road Bond Program Manager, not more frequently than once per month, a progress report as referenced in Article 5 above. Such progress report shall state the percentage of completion of Engineering Services accomplished for an applicable Work Authorization or any Supplemental Work Authorization related thereto during that billing period and to date. This submittal shall also include a progress assessment report in a form acceptable to the County Auditor.

Simultaneous with submission of such progress report, Engineer shall prepare and submit one (1) original of a certified invoice to the County Auditor in a form acceptable to the County Auditor. All invoices submitted to County must, at a minimum, be accompanied by an original complete packet of supporting documentation and time sheets detailing hours worked by staff persons with a description of the work performed by such persons. For Additional Engineering Services performed pursuant to this Contract, a separate invoice or itemization of the Additional Engineering Services must be presented with the same aforementioned requirements.

Payments shall be made by County based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, County shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of the County Auditor's receipt. County reserves the right to reasonably withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to County, adequate and sufficient in its determination, that tasks of an applicable Work Authorization or any Supplemental Work Authorization related thereto were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

Upon submittal of the initial invoice, Engineer shall provide the County Auditor with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

## **ARTICLE 7**

### **PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which the County Auditor receives a correct invoice for services, whichever is later.

Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between County and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent County from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer and a subcontractor/subconsultant or between a subcontractor/subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D. The invoice is not mailed to the County Auditor in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

The County Auditor shall document to Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

## **ARTICLE 8**

### **COMMENCEMENT OF ENGINEERING SERVICES**

The Engineer shall not proceed with any task of the Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and instructed, in writing by the County, to proceed with the applicable Engineering Services. The County shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties. Engineer shall not be required to perform any work for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

**ARTICLE 9**  
**PROJECT TEAM**

County's Designated Representative for purposes of this Contract is as follows:

County's Road Bond Program Manager  
Attn: Michael Weaver  
HNTB Corporation  
701 Brazos, Suite 450  
Austin, Texas 78701

County shall have the right, from time to time, to change the County's Designated Representative by giving Engineer written notice thereof. With respect to any action, decision or determination which is to be taken or made by County under this Contract, the County's Designated Representative may take such action or make such decision or determination or shall notify Engineer in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the County's Designated Representative shall be binding on County; *provided, however*, the County's Designated Representative shall not have any right to modify, amend or terminate this Contract, an Executed Work Authorization, an executed Supplemental Work Authorization or executed Contract Amendment. County's Designated Representative shall not have any authority to execute a Contract Amendment, Work Authorization or any Supplemental Work Authorization unless otherwise granted such authority by the Hays County Commissioners Court.

Engineer's Designated Representative for purposes of this Contract is as follows:

CobbFendley & Associates, Inc.  
Attn: Julie Hastings, PE  
505 E Huntland Drive, Suite 100  
Austin, Texas 78752

Engineer shall have the right, from time to time, to change the Engineer's Designated Representative by giving County written notice thereof. With respect to any action, decision or determination which is to be taken or made by Engineer under this Contract, the Engineer's Designated Representative may take such action or make such decision or determination or shall notify County in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the Engineer's Designated Representative on behalf of Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the Engineer's Designated Representative shall be in accordance with such

express standards or parameters. Any consent, approval, decision or determination hereunder by the Engineer's Designated Representative shall be binding on Engineer. Engineer's Designated Representative shall have the right to modify, amend and execute Work Authorizations, Supplemental Work Authorizations and Contract Amendments on behalf of Engineer.

## **ARTICLE 10**

### **PROGRESS EVALUATION**

Engineer shall, from time to time during the progress of the Engineering Services, confer with County at County's election. Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Engineering Services. At the request of County or Engineer, conferences shall be provided at Engineer's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Engineering Services. County may, from time to time, require Engineer to appear and provide information to the Hays County Commissioners Court.

Should County determine that the progress in Engineering Services does not satisfy an applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall review same with Engineer to determine corrective action required.

Engineer shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Engineering Services, including but not limited to the following:

- A.** Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of an applicable Work Authorization or any Supplemental Work Authorization related thereto, or preclude the attainment of Project Engineering Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and
- B.** Favorable developments or events which enable meeting goals sooner than anticipated in relation to an applicable Work Authorization's or any Supplemental Work Authorization related thereto.

## **ARTICLE 11**

### **SUSPENSION**

Should County desire to suspend the Engineering Services, but not to terminate this Contract, then such suspension may be effected by County giving Engineer thirty (30) calendar days' verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from County to resume the Engineering Services. Such sixty-day (60) notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract and, in the event, Engineer shall be compensated for all Engineering Services performed and reimbursable expenses incurred, provided such Engineering Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

If County suspends the Engineering Services, the Contract period as determined in Article 4, and the Work Authorization or any Supplemental Work Authorization related thereto, shall be extended for a time period equal to the suspension period.

County assumes no liability for Engineering Services performed or costs incurred prior to the date authorized by County for Engineer to begin Engineering Services, and/or during periods when Engineering Services is suspended, and/or subsequent to the completion date.

## **ARTICLE 12**

### **ADDITIONAL ENGINEERING SERVICES**

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the overall scope of this Contract, as set forth in **Exhibit B**, and as such constitutes extra work ("Additional Engineering Services"), he/she/it shall promptly notify County in writing. In the event County finds that such work does constitute Additional Engineering Services, County shall so advise Engineer and a written Contract Amendment will be executed between the parties as provided in Article 14. Any increase to the Compensation Cap due to Additional Engineering Services must be set forth in such Contract Amendment. Engineer shall not perform any proposed Additional Engineering Services nor incur any additional costs prior to the execution, by both parties, of a written Contract Amendment. Following the execution of a Contract Amendment that provides for Additional Engineering Services, a written Work Authorization, which sets forth the Additional Engineering Services to be performed, must be executed by the parties. County shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to Additional Engineering Services not directly associated with the performance of the Engineering Services authorized in this Contract, by a fully executed Work Authorization or a fully executed Contract Amendment thereto.

## **ARTICLE 13**

### **CHANGES IN COMPLETED ENGINEERING SERVICES**

If County deems it necessary to request changes to previously satisfactorily completed

Engineering Services or parts thereof which involve changes to the original Engineering Services or character of Engineering Services under this Contract, then Engineer shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Engineering Services and paid for as specified under Article 12.

Engineer shall make revisions to Engineering Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Engineering Services.

#### **ARTICLE 14**

#### **CONTRACT AMENDMENTS**

The terms set out in this Contract may be modified by a written fully executed Contract Amendment. Changes and modifications to a fully executed Work Authorization shall be made in the form of a Supplemental Work Authorization. To the extent that such changes or modifications to a Work Authorization do not also require modifications to the terms of this Contract (i.e. changes to the overall scope of Engineering Services set forth in **Exhibit B**, modification of the Compensation Cap, etc.) a Contract Amendment will not be required.

#### **ARTICLE 15**

#### **USE OF DOCUMENTS**

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Engineering Work Products") prepared by Engineer and its subcontractors/subconsultants are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to Engineer.

By execution of this Contract and in confirmation of the fee for services to be paid under this Contract, Engineer hereby conveys, transfers and assigns to County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and work product developed under this Contract. Copies may be retained by Engineer. Engineer shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer, including agents, employees, Engineers or subcontractors/subconsultants. All documents so lost or damaged shall be replaced or restored by Engineer without cost to County.

Upon execution of this Contract, Engineer grants to County permission to reproduce Engineer's work and documents for purposes of constructing, using and maintaining the Project, provided that County shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer's

subcontractors/subconsultants consistent with this Contract. If and upon the date Engineer is adjudged in default of this Contract, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

County shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written consent of Engineer. However, County shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Engineering Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Engineering Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Engineering Work Products shall be at County's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to County any Engineering Work Products in electronic form or County providing to Engineer any electronic data for incorporation into the Engineering Work Products, County and Engineer shall by separate written contract set forth the specific conditions governing the format of such Engineering Work Products or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer for the convenience of County, and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer shall be relied upon.

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

## **ARTICLE 16**

### **PERSONNEL, EQUIPMENT AND MATERIAL**

Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Engineering Services, and adequate and sufficient personnel and equipment to perform the Engineering Services as required. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Engineering Services shall immediately be removed from association with the Project when so instructed by County. Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering Services required under this Contract, or will obtain such personnel from sources other than County. Engineer may not change the Project Manager without prior written consent of County.

## **ARTICLE 17**

### **SUBCONTRACTING**

Engineer shall not assign, subcontract or transfer any portion of the Engineering Services under this Contract without prior written approval from County. All subcontracts shall include the provisions required in this Contract. No subcontract shall relieve Engineer of any responsibilities under this Contract.

## **ARTICLE 18**

### **REVIEW OF ENGINEERING SERVICES**

Engineer's Engineering Services will be reviewed by County under its applicable technical requirements and procedures.

**A. Completion.** Reports, plans, specifications, and supporting documents shall be submitted by Engineer on or before the dates specified in the applicable Work Authorization or Supplemental Work Authorization related thereto. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in the applicable Work Authorization, have been included in compliance with the requirements of this Contract. The completeness of any Engineering Services submitted to County shall be determined by County within thirty (30) days of such submittal and County shall notify Engineer in writing within such thirty (30) day period if such Engineering Services have been found to be incomplete. If the submission is Complete, County shall notify Engineer and County's technical review process will begin.

If the submission is not Complete, County shall notify Engineer, who shall perform such professional services as are required to complete the Engineering Services and resubmit it to County. This process shall be repeated until a submission is Complete.

**B. Acceptance.** County shall review the completed Engineering Services for compliance with this Contract. If necessary, the completed Engineering Services shall be returned to Engineer, who shall perform any required Engineering Services and resubmit it to County. This process shall be repeated until the Engineering Services are Accepted. "Acceptance" or "Accepted" shall mean that in the County's reasonable opinion, substantial compliance with the requirements of this Contract has been achieved.

**C. Final Approval.** After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by the County. "Final Approval" in this sense shall mean formal recognition that the Engineering Services have been fully carried out.

**D. Errors and Omissions.** After Final Approval, Engineer shall, without additional compensation, perform any work required as a result of Engineer's development of the work which is found to be in error or omission due to Engineer's negligence. However, any work required or

occasioned for the convenience of County after Final Approval shall be paid for as Additional Engineering Services.

**E. Disputes Over Classifications.** In the event of any dispute over the classification of Engineer's Engineering Services as Complete, Accepted, or having attained Final Approved under this Contract, the decision of the County shall be final and binding on Engineer, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

**F. County's Reliance on Engineer.** ENGINEER'S DUTIES AS SET FORTH HEREIN SHALL AT NO TIME BE IN ANY WAY DIMINISHED BY REASON OF ANY REVIEW, EVALUATION OR APPROVAL BY THE COUNTY NOR SHALL THE ENGINEER BE RELEASED FROM ANY LIABILITY BY REASON OF SUCH REVIEW, EVALUATION OR APPROVAL BY THE COUNTY, IT BEING UNDERSTOOD THAT THE COUNTY AT ALL TIMES IS ULTIMATELY RELYING UPON THE ENGINEER'S SKILL, ABILITY AND KNOWLEDGE IN PERFORMING THE ENGINEERING SERVICES REQUIRED HEREUNDER.

## **ARTICLE 19**

### **VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT**

Violation of contract terms or breach of contract by Engineer shall be grounds for termination of this Contract, and any increased costs arising from Engineer's default, breach of contract, or violation of contract terms shall be paid by Engineer.

## **ARTICLE 20**

### **TERMINATION**

This Contract may be terminated as set forth below.

- A.** By mutual agreement and consent, in writing, of both parties.
- B.** By County, by notice in writing to Engineer, as a consequence of failure by Engineer to perform the Engineering Services set forth herein in a satisfactory manner.
- C.** By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- D.** By County, for reasons of its own and not subject to the mutual consent of Engineer, upon not less than thirty (30) days' written notice to Engineer.
- E.** By satisfactory completion of all Engineering Services and obligations described herein.

Should County terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, County shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering Services completed at that time. Should County terminate this Contract under Subsection (D) immediately above, then the amount

charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Engineer defaults in the performance of this Contract or if County terminates this Contract for fault on the part of Engineer, then County shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of the Engineering Services which are usable to County, the cost to County of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to County of the Engineering Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Contract. If the termination of this Contract is due to the failure of Engineer to fulfill his/her/its contractual obligations, then County may take over the Project and prosecute the Engineering Services to completion. In such case, Engineer shall be liable to County for any additional and reasonable costs incurred by County.

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

## **ARTICLE 21**

### **COMPLIANCE WITH LAWS**

**A. Compliance.** Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish County with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses required in the performance of the Engineering Services contracted for herein.

**B. Taxes.** Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering Services performed hereunder. County is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

## **ARTICLE 22**

### **INDEMNIFICATION**

ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED

TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY ENGINEER, ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH ENGINEER INCLUDING, WITHOUT LIMITATION, ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL.

ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM ENGINEER'S FAILURE TO PAY ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER.

ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM ENGINEER IS NOT LEGALLY LIABLE, ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN ENGINEER IN ANY SUCH PROCEEDINGS AT THE COUNTY'S COST. ENGINEER SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

**ARTICLE 23**  
**ENGINEER'S RESPONSIBILITIES**

Engineer shall be responsible for the accuracy of his/her/its Engineering Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of Article 33. Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

**ARTICLE 24**  
**ENGINEER'S SEAL**

The responsible engineer shall sign, seal and date all appropriate engineering submissions to County in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

**ARTICLE 25**  
**INSURANCE**

Engineer must comply with the following insurance requirements at all times during this Contract:

**A. Coverage Limits.** Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect the following insurance:

1. Worker's Compensation in accordance with statutory requirements.
2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
4. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

**B. Additional Insureds; Waiver of Subrogation.** County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.

**C. Premiums and Deductible.** Engineer shall be responsible for payment of premiums for all of the insurance coverages required under this section. Engineer further agrees

that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Engineer is responsible hereunder, Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in the Engineer's insurance must be declared and approved in writing by County in advance.

**D. Commencement of Work.** Engineer shall not commence any field work under this Contract until he/she/it has obtained all required insurance and such insurance has been approved by County. As further set out below, Engineer shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Engineer hereunder.

**E. Insurance Company Rating.** The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A- rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

**F. Certification of Coverage.** Engineer shall furnish County with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Engineer shall also notify County, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**

**G. No Arbitration.** It is the intention of the County and agreed to and hereby acknowledged by the Engineer, that no provision of this Contract shall be construed to require the County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Contract.

**H. Subcontractor/Subconsultant's Insurance.** Without limiting any of the other obligations or liabilities of Engineer, Engineer shall require each subcontractor/subconsultant performing work under this Contract (to the extent a subcontractor/subconsultant is allowed by County) to maintain during the term of this Contract, at the subcontractor/subconsultant's own expense, the same stipulated minimum insurance required in this Article above, including the required provisions and additional policy conditions as shown below in this Article.

Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements. Engineer must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

**I. Insurance Policy Endorsements.** Each insurance policy shall include the following conditions by endorsement to the policy:

1. County shall be notified thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

Hays County Auditor  
c/o: Vickie G. Dorsett  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

With copy to: HNTB Corporation  
Attn: Michael Weaver  
701 Brazos, Suite 450  
Austin, Texas 78701

2. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

**J. Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such Certificates of Insurance are evidenced as **Exhibit F** herein entitled "Certificates of Insurance."

## **ARTICLE 26**

### **COPYRIGHTS**

County shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer for governmental purposes.

## **ARTICLE 27**

### **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

**ARTICLE 28**  
**SEVERABILITY**

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

**ARTICLE 29**  
**PRIOR AGREEMENTS SUPERSEDED**

This Contract constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

**ARTICLE 30**  
**ENGINEER'S ACCOUNTING RECORDS**

Engineer agrees to maintain, for a period of three (3) years after final payment under this Contract, detailed records identifying each individual performing the Engineering Services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for verification purposes. Engineer agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer further agrees that County shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Engineer reasonable advance notice of intended audits.

**ARTICLE 31**  
**NOTICES**

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

**County:**       Hays County Judge  
                  111 E. San Antonio Street, Suite 300  
                  San Marcos, Texas 78666

With copy to:

HNTB Corporation  
701 Brazos, Suite 450  
Austin, Texas 78701  
Attn: Michael Weaver

and to:

Office of General Counsel  
Hays County  
111 E. San Antonio Street, Room 202  
San Marcos, Texas 78666

**Engineer:** CobbFendley & Associates, Inc.  
Attn: Julie Hastings, PE  
505 E Huntland Drive, Suite 100  
Austin, Texas 78752

## **ARTICLE 32**

### **GENERAL PROVISIONS**

**A. Time is of the Essence.** Subject to Article 3 hereof, Engineer understands and agrees that time is of the essence and that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed work schedule set out in the applicable Work Authorization may constitute a material breach of this Contract. Engineer shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer's standard of performance as defined herein. Where damage is caused to County due to Engineer's negligent failure to perform County may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of County's additional legal rights or remedies.

**B. Force Majeure.** Neither County nor Engineer shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**C. Enforcement and Venue.** This Contract shall be enforceable in San Marcos, Hays County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Hays County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

**D. Standard of Performance.** The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing under the same or similar circumstances at the same time and in the same locality.

**E. Opinion of Probable Cost.** Any opinions of probable Project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Engineer prepares.

**F. Opinions and Determinations.** Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

**G. Reports of Accidents.** Within 24 hours after Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Contract, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Contract.

**H. Gender, Number and Headings.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Contract.

**I. Construction.** Each party hereto acknowledges that it and its counsel have reviewed this Contract and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Contract.

**J. Independent Contractor Relationship.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**K. No Waiver of Immunities.** Nothing in this Contract shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**L. Texas Public Information Act.** To the extent, if any, that any provision in this Contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**M. Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms and conditions set forth in this Contract or any Contract Amendment and the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract, the terms and conditions set forth in this Contract or any Contract Amendment shall control over the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract.

**N. Meaning of Day.** For purposes of this Contract, all references to a "day" or "days" shall mean a calendar day or calendar days.

**O. Appropriation of Funds by County.** County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Engineer understands and agrees that County's payment of amounts under this Contract is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

### **ARTICLE 33**

#### **DISPUTE RESOLUTION**

Except as otherwise specifically set forth herein, County and Engineer shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Contract, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Contract, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Contract shall be conducted in Hays County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not

preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of the Contract.

#### **ARTICLE 34**

#### **EQUAL OPPORTUNITY IN EMPLOYMENT**

During the performance of this Contract and to the extent the Project is a federally funded project, Engineer, for itself, its assignees and successors in interest agrees as follows:

**A. Compliance with Regulations.** The Engineer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

**B. Nondiscrimination.** The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. Information and Reports.** The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County (referred to in this Article as the "Recipient") or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Engineer shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
2. cancellation, termination or suspension of the Contract, in whole or in part.

**F. Incorporation of Provisions.** The Engineer shall include the provisions of Subsections (A) through (F) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor/subconsultant or supplier as a result of such direction, the Engineer may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

### **SIGNATORY WARRANTY**

The undersigned signatory for Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Contract.

**IN WITNESS WHEREOF**, County has caused this Contract to be signed in its name by its duly authorized County Judge, as has Engineer, signing by and through its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof, to be effective as of the date of the last party's execution below. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE HAYS COUNTY COMMISSIONERS COURT.

**COUNTY**

HAYS COUNTY, TEXAS

By: \_\_\_\_\_  
Ruben Becerra, County Judge

Date: \_\_\_\_\_, 20\_\_\_\_

**ENGINEER**

CobbFendley & Associates, Inc. \_\_\_\_\_

By DCWARTH

Printed Name: DAN WARTH

Title: EXECUTIVE VICE PRESIDENT

Date: July 14, 2020

### **LIST OF EXHIBITS ATTACHED**

- |                      |                           |
|----------------------|---------------------------|
| (1) <b>Exhibit A</b> | Debarment Certification   |
| (2) <b>Exhibit B</b> | Engineering Services      |
| (3) <b>Exhibit C</b> | Work Authorization        |
| (4) <b>Exhibit D</b> | Rate Schedule             |
| (5) <b>Exhibit E</b> | Certificates of Insurance |

**EXHIBIT A**  
**DEBARMENT CERTIFICATION**

**STATE OF TEXAS**

§

§

**COUNTY OF HAYS**

§

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

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency:

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public\* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity\* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions\* terminated for cause or default; and

(e) Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Cobb Fendley & Associates, Inc

Name of Firm

DC WARTH

Signature of Certifying Official

DAW WARTH

Printed Name of Certifying Official

EXECUTIVE VICE PRESIDENT

Title of Certifying Official

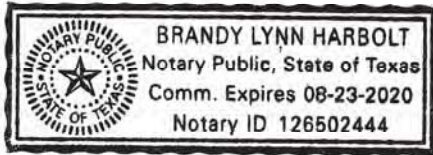
July 14, 2020

Date

(2) Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

\* federal, state, or local

SUBSCRIBED and sworn to before me the undersigned authority by DAN WARTH  
the 14th of July, 2020, on behalf of  
said firm.



Brandy Harbolt  
Notary Public in and for the  
State of Texas

My commission expires: 8/23/20

## **EXHIBIT B**

### **ENGINEERING SERVICES**

The Engineer will complete design and preparation of plans, specifications, and estimate (PS&E), and limited bid and construction phase services, for the Project. The Project generally includes Project Coordination with Hays County and TxDOT, traffic analysis, design, bid, and construction for safety improvements at the intersections of Winters Mill at RM 12 and RM 3237. Anticipated improvements could include:

- Traffic Studies,
- Intersection improvements at Winters Mill and RM 12,
- Traffic Signal relocation at Winters Mill and RM 12,
- Intersection improvements including addition of acceleration / deceleration lanes at Winters Mill and RM 3237,
- Traffic Signal at Winters Mill and RM 3237
- Related improvements at each intersection to include storm sewer design, sidewalk modifications, SWPPP, and signing and pavement markings,
- ROW Acquisition including appraisal services,
- TxDOT Coordination,
- Environmental coordination including coordination with TxDOT, TCEQ, Hays County, and other environmental reviewers as required; and preparation of the associated plans and documentaion required to obtain environmental approval for the project.
- Any other services required to support the design, bid, and construction of the intersection improvements.

The Engineer will develop the Project in coordination with TxDOT following applicable TxDOT procedures and project development manuals current at the time of this Contract. The Engineer will design the Project to meet TxDOT Roadway Design Manual guidelines and will submit all deliverables to TxDOT and the County for review and approval, including LGPP submittal documents.

## EXHIBIT C

### WORK AUTHORIZATION

(To Be Completed and Executed After Contract Execution)

**WORK AUTHORIZATION NO.** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

This Work Authorization is made pursuant to the terms and conditions of the Hays County Contract for Engineering Services, being dated \_\_\_\_\_, 20\_\_\_\_ and entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (the "County") and \_\_\_\_\_ (the "Engineer").

Part 1. The Engineer will provide the following Engineering Services set forth in Attachment "B" of this Work Authorization.

Part 2. The maximum amount payable for services under this Work Authorization without modification is \_\_\_\_\_.

Part 3. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with the Contract.

Part 4. This Work Authorization shall become effective on the date of final acceptance and full execution of the parties hereto and shall terminate on \_\_\_\_\_, 20\_\_\_\_. The Engineering Services set forth in Attachment "B" of this Work Authorization shall be fully completed on or before said date unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Contract.

Part 6. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Authorization. Engineer understands and agrees that County's payment of amounts under this Work Authorization is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

Part 7. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ENGINEER:

[Insert Company Name HERE]

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

COUNTY:

Hays County, Texas

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

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

\_\_\_\_\_  
Title

#### LIST OF ATTACHMENTS

Attachment A - Services to be Provided by County

Attachment B - Services to be Provided by Engineer

Attachment C - Work Schedule

Attachment D - Fee Schedule

**EXHIBIT D**

**Fee/Rate Schedule**

FEE SCHEDULE SHALL BE INSERTED AT THE  
TIME OF AGREEMENT/CONTRACT EXECUTION

**EXHIBIT E**

**CERTIFICATES OF INSURANCE**

**ATTACHED BEHIND THIS PAGE**

# CERTIFICATE OF INTERESTED PARTIES

**FORM 1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY  
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Cobb, Fendley & Associates, Inc.  
Houston, TX United States

Certificate Number:  
2020-643686

Date Filed:

07/13/2020

Date Acknowledged:

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Hays County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

Winters Mill Pkwy  
Professional Engineering Services; RM 3237 and RM 12 Safety Improvements Additional Services

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Silver, Monica	Houston, TX United States	X	
	Bostwick, J. Cal	Frisco, TX United States	X	
	Warth, Dan	Austin, TX United States	X	

5 Check only if there is NO Interested Party. ☐

**6 UNSWORN DECLARATION**

My name is Dan Warth, and my date of birth is 5/29/1960.

My address is 505 E. Huntland Drive, Suite 100, Austin, TX, 78752, US.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 13th day of July, 2020.  
(month) (year)



Signature of authorized agent of contracting business entity  
(Declarant)

**Hays County  
House Bill 89 Verification**

I, Dan Warth (Person name), the undersigned  
representative of (Company or Business name) CobbFendley & Associates, Inc.

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

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

Pursuant to Section 2270.001, Texas Government Code:

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

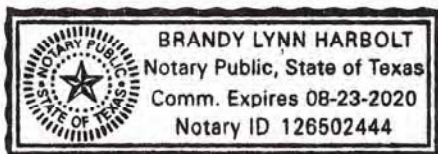
July 14, 2020 DCWARTH  
DATE SIGNATURE OF COMPANY REPRESENTATIVE

On this the 14 day of July, 2020, personally appeared  
DAN WARTH, the above-named person, who after by me being  
duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

NOTARY SIGNATURE

Brandi Lynn Harbolt  
7/14/20  
Date





## Related Party Disclosure Form

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

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

- Current Hays County employee (including elected or appointed official)(Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 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:

No known relationships

Attach additional pages if necessary.

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

CobbFendley & Associates, Inc.

Name of Vendor

Dan Warth

Signature of Certifying Official

Dan Warth

Printed Name of Certifying Official

Executive Vice President

Title of Certifying Official

July 14, 2020

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*
Person	child or parent	grandchild, sister, brother or grandparent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great-grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great-great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

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

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

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

## **CODE OF ETHICS FOR HAYS COUNTY**

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

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

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

1. It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.
2. It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:
  - A. The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.
  - B. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.
  - C. Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

- D. Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.
- E. Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.
- F. Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: 

PRINT NAME & TITLE: Dan Warth, PE | Executive Vice President

COMPANY NAME: CobbFendley & Associates, Inc.

ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/14/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>USI Southwest</b> <b>9811 Katy Freeway, Suite 500</b> <b>Houston, TX 77024</b> <b>713 490-4600</b>		<b>CONTACT NAME:</b> Shelly Brandman/Michelle Weweh <b>PHONE (A/C, No, Ext):</b> 713 490-4600 <b>E-MAIL ADDRESS:</b> shelly.brandman@usi.com <b>FAX (A/C, No):</b>	
<b>INSURED</b> <b>Cobb, Fendley &amp; Associates, Inc.</b> <b>13430 Northwest Frwy, Suite 1100</b> <b>Houston, TX 77040</b>		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Valley Forge Insurance Company <b>INSURER B:</b> Travelers Property Cas. Co. of America <b>INSURER C:</b> Berkley Insurance Company <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b>	
		<b>20508</b>	
		<b>25674</b>	
		<b>32603</b>	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			<b>6072140890</b>	<b>07/10/2020</b>	<b>07/10/2021</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>150,000</b> MED EXP (Any one person) \$ <b>15,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
<b>A</b>	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			<b>6072140873</b>	<b>07/10/2020</b>	<b>07/10/2021</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>B</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$ <b>10,000</b>			<b>ZUP21P28800</b>	<b>07/10/2020</b>	<b>07/10/2021</b>	EACH OCCURRENCE \$ <b>12,000,000</b> AGGREGATE \$ <b>12,000,000</b> \$
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	<b>6072140842</b>	<b>07/10/2020</b>	<b>07/10/2021</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>C</b>	<b>Professional Liability</b>			<b>AEC903777005</b>	<b>07/10/2020</b>	<b>07/10/2021</b>	<b>\$5,000,000 Per Claim</b> <b>\$5,000,000 Annl Aggr.</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability and Automobile Liability policies includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured.

The General Liability and Automobile Liability policies contain a special endorsement with "Primary and (See Attached Descriptions)

## CERTIFICATE HOLDER

## CANCELLATION

**Hays County Auditor**  
**Attn: Vickie G. Dorsett**  
**712 South Stagecoach Trail, Suite 1071**  
**San Marcos, TX 78666**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Shelly Brandman*

## DESCRIPTIONS (Continued from Page 1)

Noncontributory" wording.

The General Liability, Automobile, Workers Compensation, and Professional Liability policies provide a Blanket Waiver of Subrogation when required by written contract.

The General Liability, Automobile, Workers Compensation, Umbrella Liability, and Professional Liability policies include an endorsement providing that 30 days notice of cancellation for reasons other than non-payment of premium and 10 days notice of cancellation for nonpayment of premium will be given to the Certificate Holder by the Insurance Carrier.

The Umbrella Liability policy follows form.

**RE: Professional Engineering Services: Winters Mill Parkway At RM 3237 and RM 12; Safety Improvements Additional Work.**

**Additional Insured includes: Hays County and its directors, officers and employees.**

## 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 between Hays County and Binkley and Barfield, Inc. to provide Utility Coordination services for Darden Hill (RM1826-Sawyer Ranch Road) project in Precinct 4 as part of the Road Bond Program.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	August 25, 2020	\$350,000

#### LINE ITEM NUMBER

03-804-96-867.5621\_700

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry H. Borcharding	SMITH	N/A

#### SUMMARY

The Darden Hill/Sawyer Ranch Road Intersection Round-About [20-867-034] project will be funded through the 2016 Road Bond Program and is one of the highest priorities in Precinct 4 and in the County. The intersection improvements will serve the existing school facilities and the proposed new school site. Binkley and Barfield, Inc. was selected by the Commissioners Court to enter into contract negotiations on June 23, 2020, granting an exemption to formal procurement pursuant to Texas Local Government Code Section 262.024(a)(4) (professional services). The process to initially select an engineering consultant to negotiate a scope of work and fee proposal, with subsequent action by the Hays County Commissioners Court to approve the contract integrating the negotiated scope of work and fee proposal, follows the process set forth in the Hays County Purchasing Policy and Procedures Manual, revised May 30, 2017.

**HAYS COUNTY**  
**CONTRACT FOR ENGINEERING SERVICES**

**FIRM:** Binkley and Barfield, Inc. ("Engineer")  
**ADDRESS:** 3901 South Lamar Blvd. Suite 430, Austin, Texas 78704  
**PROJECT:** Darden Hill (RM 1826 to Sawyer Ranch Road) Utility Coordination ("Project")

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

**THIS CONTRACT FOR ENGINEERING SERVICES** ("Contract") is made and entered into, effective as the date of the last party's execution hereinbelow, by and between Hays County, Texas, a political subdivision of the State of Texas, whose offices are located at 111 E. San Antonio Street, Suite 300, San Marcos, Texas, 78666 (hereinafter referred to as "County"), and Engineer, and such Contract is for the purpose of contracting for professional engineering services.

**RECITALS:**

WHEREAS, V.T.C.A., Government Code §2254.002(2)(A)(vii) under Subchapter A entitled "Professional Services Procurement Act" provides for the procurement by counties of services of professional engineers; and

WHEREAS, County and Engineer desire to contract for such professional engineering services; and

WHEREAS, County and Engineer wish to document their agreement concerning the requirements and respective obligations of the parties;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable considerations, and the covenants and agreements hereinafter contained to be kept and performed by the respective parties hereto, it is agreed as follows:

**ARTICLE 1**  
**CONTRACT DOCUMENTS AND APPLICABLE PROJECT DOCUMENTS**

**A. Contract Documents.** The Contract Documents consist of this Contract, any exhibits attached hereto (which exhibits are hereby incorporated into and made a part of this Contract), any fully executed Work Authorizations; any fully executed Supplemental Work Authorizations and all fully executed Contract Amendments (as defined herein in Article 14) which are subsequently issued. These form the entire contract, and all are as fully a part of this Contract as if attached to this Contract or repeated herein.

**B. Project Documents.** In addition to any other pertinent and necessary Project documents, the following documents shall be used in the development of the Project:

- A. TxDOT 2011 Texas Manual of Uniform Traffic Control Devices for Streets and Highways, including latest revisions
- B. Texas Department of Transportation's Standard Specifications for Construction of Highways, Streets, and Bridges, 2014 (English units)
- C. National Environmental Policy Act (NEPA)
- D. Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, Effective April 4, 1994, including latest revisions
- E. Americans with Disabilities Act (ADA) Regulations
- F. U.S. Army Corps Regulations
- G. International Building Code, current edition as updated
- H. Hays County Design Criteria & Project Development Manual, latest edition
- I. Hays County Multi-Corridor Transportation Plan Project Level Environmental Review and Compliance Protocol, latest edition
- J. Hays County Protocol for Sustainable Roadsides, latest edition
- K. TxDOT Bridge Design Manual - LRFD, latest edition
- L. TxDOT Geotechnical Manual, latest edition

**ARTICLE 2**  
**NON-COLLUSION; DEBARMENT; AND FINANCIAL INTEREST**  
**PROHIBITED**

**A. Non-collusion.** Engineer warrants that he/she/it has not employed or retained any company or persons, other than a bona fide employee working solely for Engineer, to solicit or secure this Contract, and that he/she/it has not paid or agreed to pay any company or engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County reserves and shall have the right to annul this Contract without liability or, in its discretion and at its sole election, to deduct from the contract price or compensation, or to otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**B. Debarment Certification.** Engineer must sign the Debarment Certification enclosed herewith as **Exhibit A**.

**C. Financial Interest Prohibited.** Engineer covenants and represents that Engineer, his/her/its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

### **ARTICLE 3** **ENGINEERING SERVICES**

Engineer shall perform Engineering Services as identified in **Exhibit B** entitled "Engineering Services."

County will prepare and issue Work Authorizations, in substantially the same form identified and attached hereto as **Exhibit C** and entitled "Work Authorization No. 01", to authorize the Engineer to perform one or more tasks of the Engineering Services. Each Work Authorization will include a description of the work to be performed, a description of the tasks and milestones, a work schedule for the tasks, definite review times by County and Engineer of all Engineering Services and a fee amount agreed upon by the County and Engineer. The amount payable for a Work Authorization shall be supported by the estimated cost of each work task as described in the Work Authorization. The Work Authorization will not waive the Engineer's responsibilities and obligations established in this Contract. The executed Work Authorizations shall become part of this Contract.

All work must be completed on or before the date specified in the Work Authorization. The Engineer shall promptly notify the County of any event which will affect completion of the Work Authorization, although such notification shall not relieve the Engineer from costs or liabilities resulting from delays in completion of the Work Authorization. Should the review times or Engineering Services take longer than shown on the Work Authorization, through no fault of Engineer, Engineer may submit a timely written request for additional time, which shall be subject to the approval of the County. Any changes in a Work Authorization shall be enacted by a written Supplemental Work Authorization before additional costs may be incurred. Any Supplemental Work Authorization must be executed by both parties within the period specified in the Work Authorization.

### **ARTICLE 4** **CONTRACT TERM**

**A. Term.** The Engineer is expected to complete the Engineering Services described herein in accordance with the above described Work Authorizations or any Supplemental Work Authorization related thereto. If Engineer does not perform the Engineering Services in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall have the right to terminate this Contract as set forth below in Article 20. So long as the County elects not to terminate this Contract, it shall continue from day to day until such time as the Engineering Services are completed in accordance with each applicable Work Authorization or any Supplemental Work Authorization related thereto. Any Engineering Services performed or costs incurred after the date of termination shall not be eligible for reimbursement. Engineer shall

notify County in writing as soon as possible if he/she/it determines, or reasonably anticipates, that the Engineering Services will not be completed in accordance with an applicable Work Authorization or any Supplemental Work Authorization related thereto.

**B. Work Authorizations.** Engineer acknowledges that each Work Authorization is of critical importance, and agrees to undertake all reasonably necessary efforts to expedite the performance of Engineering Services required herein so that construction of the Project will be commenced and completed as scheduled. In this regard, and subject to adjustments in a particular Work Authorization, as provided in Article 3 herein, Engineer shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all Engineering Services required under this Contract in a professional manner.

**C. Commencement of Engineering Services.** After execution of this Contract, Engineer shall not proceed with Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and has been notified in writing by the County to proceed, as provided in Article 8.

## **ARTICLE 5**

### **COMPENSATION AND EXPENSES**

County shall pay and Engineer agrees to accept up to the amount shown below as full compensation for the Engineering Services performed and to be performed under this Contract. The basis of compensation for the services of principals and employees engaged in the performance of the Engineering Services shall be based on the Rate Schedule set forth in the attached **Exhibit D**.

The maximum amount payable under this Contract, without modification, is **three hundred and fifty thousand Dollars (\$350,000.00)** (the "Compensation Cap"), provided that any amounts paid or payable shall be solely pursuant to a validly issued Work Authorization or any Supplemental Work Authorization related thereto. In no event may the aggregate amount of compensation authorized under Work Authorizations and Supplemental Work Authorizations exceed the Compensation Cap. The Compensation Cap shall be revised equitably only by written Contract Amendments executed by both parties in the event of a change the overall scope of the Engineering Services set forth in **Exhibit B**, as authorized by County.

The Compensation Cap is based upon all labor and non-labor costs estimated to be required in the performance of the Engineering Services provided for under this Contract. Should the actual costs of all labor and non-labor costs rendered under this Contract be less than the above stated Compensation Cap, then Engineer shall receive compensation for only actual fees and costs of the Engineering Services actually rendered and incurred, which may be less than the above stated Compensation Cap.

The Compensation Cap herein referenced may be adjusted for Additional Engineering Services requested and performed only if approved by a written Contract Amendment signed by both parties.

Engineer shall prepare and submit to County monthly progress reports in sufficient detail to support the progress of the Engineering Services and to support invoices requesting monthly payment. The format for such monthly progress reports and invoices must be in a format acceptable to County. Satisfactory progress of Engineering Services shall be an absolute condition of payment.

Engineer shall be reimbursed for actual non-labor and subcontract expenses incurred in the performance of the services under this Contract at the Engineer's invoice cost. Invoices requesting reimbursement for costs and expenditures related to the Project (reimbursables) must be accompanied by copies of the provider's invoice. The copies of the provider's invoice must evidence the actual costs billed to Engineer without mark-up.

## **ARTICLE 6**

### **METHOD OF PAYMENT**

Payments to Engineer shall be made while Engineering Services are in progress. Engineer shall prepare and submit to County's Road Bond Program Manager, not more frequently than once per month, a progress report as referenced in Article 5 above. Such progress report shall state the percentage of completion of Engineering Services accomplished for an applicable Work Authorization or any Supplemental Work Authorization related thereto during that billing period and to date. This submittal shall also include a progress assessment report in a form acceptable to the County Auditor.

Simultaneous with submission of such progress report, Engineer shall prepare and submit one (1) original of a certified invoice to the County Auditor in a form acceptable to the County Auditor. All invoices submitted to County must, at a minimum, be accompanied by an original complete packet of supporting documentation and time sheets detailing hours worked by staff persons with a description of the work performed by such persons. For Additional Engineering Services performed pursuant to this Contract, a separate invoice or itemization of the Additional Engineering Services must be presented with the same aforementioned requirements.

Payments shall be made by County based upon Engineering Services actually provided and performed. Upon timely receipt and approval of each statement, County shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of the County Auditor's receipt. County reserves the right to reasonably withhold payment pending verification of satisfactory Engineering Services performed. Engineer has the responsibility to submit proof to County, adequate and sufficient in its determination, that tasks of an applicable Work Authorization or any Supplemental Work Authorization related thereto were completed.

The certified statements shall show the total amount earned to the date of submission and shall show the amount due and payable as of the date of the current statement. Final payment does not relieve Engineer of the responsibility of correcting any errors and/or omissions resulting from his/her/its negligence.

Upon submittal of the initial invoice, Engineer shall provide the County Auditor with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification that is complete in compliance with the Internal Revenue Code, its rules and regulations.

## **ARTICLE 7**

### **PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Engineer will be made within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which the County Auditor receives a correct invoice for services, whichever is later.

Engineer may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply in the event:

- A. There is a bona fide dispute between County and Engineer concerning the supplies, materials, or equipment delivered or the services performed that causes the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent County from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Engineer and a subcontractor/subconsultant or between a subcontractor/subconsultant and its supplier concerning supplies, materials, or equipment delivered or the Engineering Services performed which causes the payment to be late; or
- D. The invoice is not mailed to the County Auditor in strict accordance with instructions, if any, on the purchase order, or this Contract or other such contractual agreement.

The County Auditor shall document to Engineer the issues related to disputed invoices within ten (10) calendar days of receipt of such invoice. Any non-disputed invoices shall be considered correct and payable per the terms of Chapter 2251, V.T.C.A., Texas Government Code.

## **ARTICLE 8**

### **COMMENCEMENT OF ENGINEERING SERVICES**

The Engineer shall not proceed with any task of the Engineering Services until Engineer has been thoroughly briefed on the scope of the Project and instructed, in writing by the County, to proceed with the applicable Engineering Services. The County shall not be responsible for work performed or costs incurred by Engineer related to any task for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties. Engineer shall not be required to perform any work for which a Work Authorization or a Supplemental Work Authorization related thereto has not been issued and signed by both parties.

**ARTICLE 9**  
**PROJECT TEAM**

County's Designated Representative for purposes of this Contract is as follows:

County's Road Bond Program Manager  
Attn: Michael Weaver  
HNTB Corporation  
701 Brazos, Suite 450  
Austin, Texas 78701

County shall have the right, from time to time, to change the County's Designated Representative by giving Engineer written notice thereof. With respect to any action, decision or determination which is to be taken or made by County under this Contract, the County's Designated Representative may take such action or make such decision or determination or shall notify Engineer in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the County's Designated Representative on behalf of County shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the County's Designated Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the County's Designated Representative shall be binding on County; *provided, however,* the County's Designated Representative shall not have any right to modify, amend or terminate this Contract, an Executed Work Authorization, an executed Supplemental Work Authorization or executed Contract Amendment. County's Designated Representative shall not have any authority to execute a Contract Amendment, Work Authorization or any Supplemental Work Authorization unless otherwise granted such authority by the Hays County Commissioners Court.

Engineer's Designated Representative for purposes of this Contract is as follows:

Nicholas Erwin, EIT  
Binkley and Barfield, Inc.  
3901 South Lamar Boulevard, Suite 430  
Austin, Texas 78704

Engineer shall have the right, from time to time, to change the Engineer's Designated Representative by giving County written notice thereof. With respect to any action, decision or determination which is to be taken or made by Engineer under this Contract, the Engineer's Designated Representative may take such action or make such decision or determination or shall notify County in writing of an individual responsible for and capable of taking such action, decision or determination and shall forward any communications and documentation to such individual for response or action. Actions, decisions or determinations by the Engineer's Designated Representative on behalf of Engineer shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Contract, in which case, actions taken by the Engineer's Designated Representative shall be in accordance with such

express standards or parameters. Any consent, approval, decision or determination hereunder by the Engineer's Designated Representative shall be binding on Engineer. Engineer's Designated Representative shall have the right to modify, amend and execute Work Authorizations, Supplemental Work Authorizations and Contract Amendments on behalf of Engineer.

## **ARTICLE 10**

### **PROGRESS EVALUATION**

Engineer shall, from time to time during the progress of the Engineering Services, confer with County at County's election. Engineer shall prepare and present such information as may be pertinent and necessary, or as may be reasonably requested by County, in order for County to evaluate features of the Engineering Services. At the request of County or Engineer, conferences shall be provided at Engineer's office, the offices of County, or at other locations designated by County. When requested by County, such conferences shall also include evaluation of the Engineering Services. County may, from time to time, require Engineer to appear and provide information to the Hays County Commissioners Court.

Should County determine that the progress in Engineering Services does not satisfy an applicable Work Authorization or any Supplemental Work Authorization related thereto, then County shall review same with Engineer to determine corrective action required.

Engineer shall promptly advise County in writing of events which have or may have a significant impact upon the progress of the Engineering Services, including but not limited to the following:

- A. Problems, delays, adverse conditions which may materially affect the ability to meet the objectives of an applicable Work Authorization or any Supplemental Work Authorization related thereto, or preclude the attainment of Project Engineering Services units by established time periods; and such disclosure shall be accompanied by statement of actions taken or contemplated, and County assistance needed to resolve the situation, if any; and
- B. Favorable developments or events which enable meeting goals sooner than anticipated in relation to an applicable Work Authorization's or any Supplemental Work Authorization related thereto.

## **ARTICLE 11**

### **SUSPENSION**

Should County desire to suspend the Engineering Services, but not to terminate this Contract, then such suspension may be effected by County giving Engineer thirty (30) calendar days' verbal notification followed by written confirmation to that effect. Such thirty-day notice may be waived in writing by agreement and signature of both parties. The Engineering Services may be reinstated and resumed in full force and effect within sixty (60) days of receipt of written notice from County to resume the Engineering Services. Such sixty-day (60) notice may be waived in writing by agreement and signature of both parties. If this Contract is suspended for more than thirty (30) days, Engineer shall have the option of terminating this Contract and, in the event, Engineer shall be compensated for all Engineering Services performed and reimbursable expenses incurred, provided such Engineering Services and reimbursable expenses have been previously authorized and approved by County, to the effective date of suspension.

If County suspends the Engineering Services, the contract period as determined in Article 4, and the Work Authorization or any Supplemental Work Authorization related thereto, shall be extended for a time period equal to the suspension period.

County assumes no liability for Engineering Services performed or costs incurred prior to the date authorized by County for Engineer to begin Engineering Services, and/or during periods when Engineering Services is suspended, and/or subsequent to the completion date.

## **ARTICLE 12**

### **ADDITIONAL ENGINEERING SERVICES**

If Engineer forms a reasonable opinion that any work he/she/it has been directed to perform is beyond the overall scope of this Contract, as set forth in **Exhibit B**, and as such constitutes extra work ("Additional Engineering Services"), he/she/it shall promptly notify County in writing. In the event County finds that such work does constitute Additional Engineering Services, County shall so advise Engineer and a written Contract Amendment will be executed between the parties as provided in Article 14. Any increase to the Compensation Cap due to Additional Engineering Services must be set forth in such Contract Amendment. Engineer shall not perform any proposed Additional Engineering Services nor incur any additional costs prior to the execution, by both parties, of a written Contract Amendment. Following the execution of a Contract Amendment that provides for Additional Engineering Services, a written Work Authorization, which sets forth the Additional Engineering Services to be performed, must be executed by the parties. County shall not be responsible for actions by Engineer nor for any costs incurred by Engineer relating to Additional Engineering Services not directly associated with the performance of the Engineering Services authorized in this Contract, by a fully executed Work Authorization or a fully executed Contract Amendment thereto.

## **ARTICLE 13**

### **CHANGES IN COMPLETED ENGINEERING SERVICES**

If County deems it necessary to request changes to previously satisfactorily completed

Engineering Services or parts thereof which involve changes to the original Engineering Services or character of Engineering Services under this Contract, then Engineer shall make such revisions as requested and as directed by County. Such revisions shall be considered as Additional Engineering Services and paid for as specified under Article 12.

Engineer shall make revisions to Engineering Services authorized hereunder as are necessary to correct errors appearing therein, when required to do so by County. No additional compensation shall be due for such Engineering Services.

#### **ARTICLE 14**

#### **CONTRACT AMENDMENTS**

The terms set out in this Contract may be modified by a written fully executed Contract Amendment. Changes and modifications to a fully executed Work Authorization shall be made in the form of a Supplemental Work Authorization. To the extent that such changes or modifications to a Work Authorization do not also require modifications to the terms of this Contract (i.e. changes to the overall scope of Engineering Services set forth in **Exhibit B**, modification of the Compensation Cap, etc.) a Contract Amendment will not be required.

#### **ARTICLE 15**

#### **USE OF DOCUMENTS**

All documents, including but not limited to drawings, specifications and data or programs stored electronically, (hereinafter referred to as "Engineering Work Products") prepared by Engineer and its subcontractors/subconsultants are related exclusively to the services described in this Contract and are intended to be used with respect to this Project. However, it is expressly understood and agreed by and between the parties hereto that all of Engineer's designs under this Contract (including but not limited to tracings, drawings, estimates, specifications, investigations, studies and other documents, completed or partially completed), shall be the property of County to be thereafter used in any lawful manner as County elects. Any such subsequent use made of documents by County shall be at County's sole risk and without liability to Engineer.

By execution of this Contract and in confirmation of the fee for services to be paid under this Contract, Engineer hereby conveys, transfers and assigns to County all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project Designs and work product developed under this Contract. Copies may be retained by Engineer. Engineer shall be liable to County for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer, including agents, employees, Engineers or subcontractors/subconsultants. All documents so lost or damaged shall be replaced or restored by Engineer without cost to County.

Upon execution of this Contract, Engineer grants to County permission to reproduce Engineer's work and documents for purposes of constructing, using and maintaining the Project, provided that County shall comply with its obligations, including prompt payment of all sums when due, under this Contract. Engineer shall obtain similar permission from Engineer's

subcontractors/subconsultants consistent with this Contract. If and upon the date Engineer is adjudged in default of this Contract, County is permitted to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the work and documents for the purposes of completing, using and maintaining the Project.

County shall not assign, delegate, sublicense, pledge or otherwise transfer any permission granted herein to another party without the prior written consent of Engineer. However, County shall be permitted to authorize the contractor, subcontractors and material or equipment suppliers to reproduce applicable portions of the Engineering Work Products appropriate to and for use in the execution of the Work. Submission or distribution of Engineering Work Products to meet official regulatory requirements or for similar purposes in connection with the Project is permitted. Any unauthorized use of the Engineering Work Products shall be at County's sole risk and without liability to Engineer and its Engineers.

Prior to Engineer providing to County any Engineering Work Products in electronic form or County providing to Engineer any electronic data for incorporation into the Engineering Work Products, County and Engineer shall by separate written contract set forth the specific conditions governing the format of such Engineering Work Products or electronic data, including any special limitations not otherwise provided in this Contract. Any electronic files are provided by Engineer for the convenience of County, and use of them is at County's sole risk. In the case of any defects in electronic files or any discrepancies between them and any hardcopy of the same documents prepared by Engineer, the hardcopy shall prevail. Only printed copies of documents conveyed by Engineer shall be relied upon.

Engineer shall have no liability for changes made to the drawings by other engineers subsequent to the completion of the Project. Any such change shall be sealed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

## **ARTICLE 16**

### **PERSONNEL, EQUIPMENT AND MATERIAL**

Engineer shall furnish and maintain, at its own expense, quarters for the performance of all Engineering Services, and adequate and sufficient personnel and equipment to perform the Engineering Services as required. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the reasonable opinion of County, is incompetent or whose conduct becomes detrimental to the Engineering Services shall immediately be removed from association with the Project when so instructed by County. Engineer certifies that it presently has adequate qualified personnel in its employment for performance of the Engineering Services required under this Contract, or will obtain such personnel from sources other than County. Engineer may not change the Project Manager without prior written consent of County.

## **ARTICLE 17**

### **SUBCONTRACTING**

Engineer shall not assign, subcontract or transfer any portion of the Engineering Services under this Contract without prior written approval from County. All subcontracts shall include the provisions required in this Contract. No subcontract shall relieve Engineer of any responsibilities under this Contract.

## **ARTICLE 18**

### **REVIEW OF ENGINEERING SERVICES**

Engineer's Engineering Services will be reviewed by County under its applicable technical requirements and procedures.

**A. Completion.** Reports, plans, specifications, and supporting documents shall be submitted by Engineer on or before the dates specified in the applicable Work Authorization or Supplemental Work Authorization related thereto. Upon receipt of same, the submission shall be checked for completion. "Completion" or "Complete" shall be defined as all of the required items, as set out in the applicable Work Authorization, have been included in compliance with the requirements of this Contract. The completeness of any Engineering Services submitted to County shall be determined by County within thirty (30) days of such submittal and County shall notify Engineer in writing within such thirty (30) day period if such Engineering Services have been found to be incomplete. If the submission is Complete, County shall notify Engineer and County's technical review process will begin.

If the submission is not Complete, County shall notify Engineer, who shall perform such professional services as are required to complete the Engineering Services and resubmit it to County. This process shall be repeated until a submission is Complete.

**B. Acceptance.** County shall review the completed Engineering Services for compliance with this Contract. If necessary, the completed Engineering Services shall be returned to Engineer, who shall perform any required Engineering Services and resubmit it to County. This process shall be repeated until the Engineering Services are Accepted. "Acceptance" or "Accepted" shall mean that in the County's reasonable opinion, substantial compliance with the requirements of this Contract has been achieved.

**C. Final Approval.** After Acceptance, Engineer shall perform any required modifications, changes, alterations, corrections, redesigns, and additional work necessary to receive Final Approval by the County. "Final Approval" in this sense shall mean formal recognition that the Engineering Services have been fully carried out.

**D. Errors and Omissions.** After Final Approval, Engineer shall, without additional compensation, perform any work required as a result of Engineer's development of the work which is found to be in error or omission due to Engineer's negligence. However, any work required or

occasioned for the convenience of County after Final Approval shall be paid for as Additional Engineering Services.

**E. Disputes Over Classifications.** In the event of any dispute over the classification of Engineer's Engineering Services as Complete, Accepted, or having attained Final Approved under this Contract, the decision of the County shall be final and binding on Engineer, subject to any civil remedy or determination otherwise available to the parties and deemed appropriate by the parties.

**F. County's Reliance on Engineer.** ENGINEER'S DUTIES AS SET FORTH HEREIN SHALL AT NO TIME BE IN ANY WAY DIMINISHED BY REASON OF ANY REVIEW, EVALUATION OR APPROVAL BY THE COUNTY NOR SHALL THE ENGINEER BE RELEASED FROM ANY LIABILITY BY REASON OF SUCH REVIEW, EVALUATION OR APPROVAL BY THE COUNTY, IT BEING UNDERSTOOD THAT THE COUNTY AT ALL TIMES IS ULTIMATELY RELYING UPON THE ENGINEER'S SKILL, ABILITY AND KNOWLEDGE IN PERFORMING THE ENGINEERING SERVICES REQUIRED HEREUNDER.

#### **ARTICLE 19**

#### **VIOLATION OF CONTRACT TERMS/BREACH OF CONTRACT**

Violation of contract terms or breach of contract by Engineer shall be grounds for termination of this Contract, and any increased costs arising from Engineer's default, breach of contract, or violation of contract terms shall be paid by Engineer.

#### **ARTICLE 20**

#### **TERMINATION**

This Contract may be terminated as set forth below.

- A.** By mutual agreement and consent, in writing, of both parties.
- B.** By County, by notice in writing to Engineer, as a consequence of failure by Engineer to perform the Engineering Services set forth herein in a satisfactory manner.
- C.** By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- D.** By County, for reasons of its own and not subject to the mutual consent of Engineer, upon not less than thirty (30) days' written notice to Engineer.
- E.** By satisfactory completion of all Engineering Services and obligations described herein.

Should County terminate this Contract as herein provided, no fees other than fees due and payable at the time of termination plus reimbursable expenses incurred shall thereafter be paid to Engineer. In determining the value of the Engineering Services performed by Engineer prior to termination, County shall be the sole judge. Compensation for Engineering Services at termination will be based on a percentage of the Engineering Services completed at that time. Should County terminate this Contract under Subsection (D) immediately above, then the amount

charged during the thirty-day notice period shall not exceed the amount charged during the preceding thirty (30) days.

If Engineer defaults in the performance of this Contract or if County terminates this Contract for fault on the part of Engineer, then County shall give consideration to the actual costs incurred by Engineer in performing the Engineering Services to the date of default, the amount of Engineering Services required which was satisfactorily completed to date of default, the value of the Engineering Services which are usable to County, the cost to County of employing another firm to complete the Engineering Services required and the time required to do so, and other factors which affect the value to County of the Engineering Services performed at the time of default.

The termination of this Contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of County under this Contract. If the termination of this Contract is due to the failure of Engineer to fulfill his/her/its contractual obligations, then County may take over the Project and prosecute the Engineering Services to completion. In such case, Engineer shall be liable to County for any additional and reasonable costs incurred by County.

Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurements made by Engineer in support of the Engineering Services under this Contract.

## **ARTICLE 21**

### **COMPLIANCE WITH LAWS**

**A. Compliance.** Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including without limitation, minimum/maximum salary and wage statutes and regulations, and licensing laws and regulations. Engineer shall furnish County with satisfactory proof of his/her/its compliance.

Engineer shall further obtain all permits and licenses required in the performance of the Engineering Services contracted for herein.

**B. Taxes.** Engineer will pay all taxes, if any, required by law arising by virtue of the Engineering Services performed hereunder. County is qualified for exemption pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

## **ARTICLE 22**

### **INDEMNIFICATION**

ENGINEER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED

TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM A NEGLIGENT ACT OR OMISSION, NEGLIGENCE, OR INTENTIONAL TORT COMMITTED BY ENGINEER, ENGINEER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON OR ENTITY UNDER CONTRACT WITH ENGINEER INCLUDING, WITHOUT LIMITATION, ENGINEER'S SUBCONSULTANTS, OR ANY OTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL.

ENGINEER FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, JUDGMENTS, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM ENGINEER'S FAILURE TO PAY ENGINEER'S EMPLOYEES, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ENGINEER.

ENGINEER FURTHER AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY AND ALL LIABILITIES, LOSSES, PENALTIES, CLAIMS, LAWSUITS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ("LOSSES") TO THE EXTENT SUCH LOSSES ARE CAUSED BY OR RESULTS FROM THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ENGINEER IN THE PERFORMANCE OF THIS CONTRACT.

THE LIMITS OF INSURANCE REQUIRED IN THIS CONTRACT AND/OR THE CONTRACT DOCUMENTS SHALL NOT LIMIT ENGINEER'S OBLIGATIONS UNDER THIS SECTION. THE TERMS AND CONDITIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THE CONTRACT AND/OR CONTRACT DOCUMENTS OR THE SUSPENSION OF THE WORK HEREUNDER. TO THE EXTENT THAT ANY LIABILITIES, PENALTIES, DEMANDS, CLAIMS, LAWSUITS, LOSSES, DAMAGES, COSTS AND EXPENSES ARE CAUSED IN PART BY THE ACTS OF THE COUNTY OR THIRD PARTIES FOR WHOM ENGINEER IS NOT LEGALLY LIABLE, ENGINEER'S OBLIGATIONS SHALL BE IN PROPORTION TO ENGINEER'S FAULT. THE OBLIGATIONS HEREIN SHALL ALSO EXTEND TO ANY ACTIONS BY THE COUNTY TO ENFORCE THIS INDEMNITY OBLIGATION.

IN THE EVENT THAT CONTRACTORS INITIATE LITIGATION AGAINST THE COUNTY IN WHICH THE CONTRACTOR ALLEGES DAMAGES AS A RESULT OF ANY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, INCLUDING, BUT NOT LIMITED TO, DEFECTS, ERRORS, OR OMISSIONS, THEN THE COUNTY SHALL HAVE THE RIGHT TO JOIN ENGINEER IN ANY SUCH PROCEEDINGS AT THE COUNTY'S COST. ENGINEER SHALL ALSO HOLD THE COUNTY HARMLESS AND INDEMNIFY THE COUNTY TO THE EXTENT THAT ENGINEER, ANY OF ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, CAUSED SUCH DAMAGES TO CONTRACTOR, INCLUDING ANY AND ALL COSTS AND ATTORNEYS' FEES INCURRED BY THE COUNTY IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS WHERE ENGINEER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUBCONSULTANTS, OR SUPPLIERS, OR OTHER ENTITIES OVER WHICH ENGINEER EXERCISES CONTROL, ARE ADJUDICATED AT FAULT.

**ARTICLE 23**  
**ENGINEER'S RESPONSIBILITIES**

Engineer shall be responsible for the accuracy of his/her/its Engineering Services and shall promptly make necessary revisions or corrections to its work product resulting from errors, omissions, or negligent acts, and same shall be done without compensation. County shall determine Engineer's responsibilities for all questions arising from design errors and/or omissions, subject to the dispute resolution provisions of Article 33. Engineer shall not be relieved of responsibility for subsequent correction of any such errors or omissions in its work product, or for clarification of any ambiguities until after the construction phase of the Project has been completed.

**ARTICLE 24**  
**ENGINEER'S SEAL**

The responsible engineer shall sign, seal and date all appropriate engineering submissions to County in accordance with the Texas Engineering Practice Act and the rules of the State Board of Registration for Professional Engineers.

**ARTICLE 25**  
**INSURANCE**

Engineer must comply with the following insurance requirements at all times during this Contract:

**A. Coverage Limits.** Engineer, at Engineer's sole cost, shall purchase and maintain during the entire term while this Contract is in effect the following insurance:

1. Worker's Compensation in accordance with statutory requirements.
2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage limits of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
4. Professional Liability Errors and Omissions Insurance in the amount of \$2,000,000.00 per claim.

**B. Additional Insureds; Waiver of Subrogation.** County, its directors, officers and employees shall be added as additional insureds under policies listed under (2) and (3) above, and on those policies where County, its directors, officers and employees are additional insureds, such insurance shall be primary and any insurance maintained by County shall be excess and not contribute with it. Such policies shall also include waivers of subrogation in favor of County.

**C. Premiums and Deductible.** Engineer shall be responsible for payment of premiums for all of the insurance coverages required under this section. Engineer further agrees

that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Engineer is responsible hereunder, Engineer shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$50,000 in the Engineer's insurance must be declared and approved in writing by County in advance.

**D. Commencement of Work.** Engineer shall not commence any field work under this Contract until he/she/it has obtained all required insurance and such insurance has been approved by County. As further set out below, Engineer shall not allow any subcontractor/subconsultant(s) to commence work to be performed in connection with this Contract until all required insurance has been obtained and approved and such approval shall not be unreasonably withheld. Approval of the insurance by County shall not relieve or decrease the liability of Engineer hereunder.

**E. Insurance Company Rating.** The required insurance must be written by a company approved to do business in the State or Texas with a financial standing of at least an A-rating, as reflected in Best's insurance ratings or by a similar rating system recognized within the insurance industry at the time the policy is issued.

**F. Certification of Coverage.** Engineer shall furnish County with a certification of coverage issued by the insurer. Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse. **In addition to any other notification requires set forth hereunder, Engineer shall also notify County, within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal, or material change in coverage it receives from its insurer.**

**G. No Arbitration.** It is the intention of the County and agreed to and hereby acknowledged by the Engineer, that no provision of this Contract shall be construed to require the County to submit to mandatory arbitration in the settlement of any claim, cause of action or dispute, except as specifically required in direct connection with an insurance claim or threat of claim under an insurance policy required hereunder or as may be required by law or a court of law with jurisdiction over the provisions of this Contract.

**H. Subcontractor/Subconsultant's Insurance.** Without limiting any of the other obligations or liabilities of Engineer, Engineer shall require each subcontractor/subconsultant performing work under this Contract (to the extent a subcontractor/subconsultant is allowed by County) to maintain during the term of this Contract, at the subcontractor/subconsultant's own expense, the same stipulated minimum insurance required in this Article above, including the required provisions and additional policy conditions as shown below in this Article.

Engineer shall obtain and monitor the certificates of insurance from each subcontractor/subconsultant in order to assure compliance with the insurance requirements. Engineer must retain the certificates of insurance for the duration of this Contract, and shall have the responsibility of enforcing these insurance requirements among its subcontractor/subconsultants. County shall be entitled, upon request and without expense, to receive copies of these certificates of insurance.

**I. Insurance Policy Endorsements.** Each insurance policy shall include the following conditions by endorsement to the policy:

1. County shall be notified thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, and such notice thereof shall be given to County by certified mail to:

Hays County Auditor  
c/o: Vickie G. Dorsett  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

With copy to: HNTB Corporation  
Attn: Michael Weaver  
701 Brazos, Suite 450  
Austin, Texas 78701

2. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

**J. Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Engineer shall be borne solely by Engineer, with certificates of insurance evidencing such minimum coverage in force to be filed with County. Such Certificates of Insurance are evidenced as **Exhibit F** herein entitled "Certificates of Insurance."

## **ARTICLE 26** **COPYRIGHTS**

County shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any reports developed by Engineer for governmental purposes.

## **ARTICLE 27** **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors, lawful assigns, and legal representatives. Engineer may not assign, sublet or transfer any interest in this Contract, in whole or in part, by operation of law or otherwise, without obtaining the prior written consent of County.

**ARTICLE 28**  
**SEVERABILITY**

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

**ARTICLE 29**  
**PRIOR AGREEMENTS SUPERSEDED**

This Contract constitutes the sole agreement of the parties hereto, and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein. This Contract may only be amended or supplemented by mutual agreement of the parties hereto in writing.

**ARTICLE 30**  
**ENGINEER'S ACCOUNTING RECORDS**

Engineer agrees to maintain, for a period of three (3) years after final payment under this Contract, detailed records identifying each individual performing the Engineering Services, the date or dates the services were performed, the applicable hourly rates, the total amount billed for each individual and the total amount billed for all persons, records of reimbursable costs and expenses of other providers and provide such other details as may be requested by the County Auditor for verification purposes. Engineer agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Engineer which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Engineer further agrees that County shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Engineer reasonable advance notice of intended audits.

**ARTICLE 31**  
**NOTICES**

All notices to either party by the other required under this Contract shall be personally delivered or mailed to such party at the following respective addresses:

**County:**       Hays County Judge  
                  111 E. San Antonio Street, Suite 300  
                  San Marcos, Texas 78666

With copy to:

HNTB Corporation  
701 Brazos, Suite 450  
Austin, Texas 78701  
Attn: Michael Weaver

and to:

Office of General Counsel  
Hays County  
111 E. San Antonio Street, Room 202  
San Marcos, Texas 78666

**Engineer:**

Brian Rice, P.E.  
Binkley and Barfield, Inc.  
3901 South Lamar Boulevard, Suite 430  
Austin, Texas 78704

## **ARTICLE 32**

### **GENERAL PROVISIONS**

**A. Time is of the Essence.** Subject to Article 3 hereof, Engineer understands and agrees that time is of the essence and that any failure of Engineer to complete the Engineering Services for each phase of this Contract within the agreed work schedule set out in the applicable Work Authorization may constitute a material breach of this Contract. Engineer shall be fully responsible for his/her/its delays or for failures to use his/her/its reasonable efforts in accordance with the terms of this Contract and the Engineer's standard of performance as defined herein. Where damage is caused to County due to Engineer's negligent failure to perform County may accordingly withhold, to the extent of such damage, Engineer's payments hereunder without waiver of any of County's additional legal rights or remedies.

**B. Force Majeure.** Neither County nor Engineer shall be deemed in violation of this Contract if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**C. Enforcement and Venue.** This Contract shall be enforceable in San Marcos, Hays County, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Hays County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas excluding, however, its choice of law rules.

**D. Standard of Performance.** The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this Contract will be the care and skill ordinarily used by members of Engineer's profession practicing

under the same or similar circumstances at the same time and in the same locality.

**E. Opinion of Probable Cost.** Any opinions of probable Project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinions of probable cost Engineer prepares.

**F. Opinions and Determinations.** Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

**G. Reports of Accidents.** Within 24 hours after Engineer becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of the Engineer), whether or not it results from or involves any action or failure to act by the Engineer or any employee or agent of the Engineer and which arises in any manner from the performance of this Contract, the Engineer shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Engineer shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Engineer's performance of work under this Contract.

**H. Gender, Number and Headings.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Contract.

**I. Construction.** Each party hereto acknowledges that it and its counsel have reviewed this Contract and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Contract.

**J. Independent Contractor Relationship.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

**K. No Waiver of Immunities.** Nothing in this Contract shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of

any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**L. Texas Public Information Act.** To the extent, if any, that any provision in this Contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**M. Governing Terms and Conditions.** If there is an irreconcilable conflict between the terms and conditions set forth in this Contract or any Contract Amendment and the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract, the terms and conditions set forth in this Contract or any Contract Amendment shall control over the terms and conditions set forth in any Exhibit, Appendix, Work Authorization or Supplemental Work Authorization to this Contract.

**N. Meaning of Day.** For purposes of this Contract, all references to a "day" or "days" shall mean a calendar day or calendar days.

**O. Appropriation of Funds by County.** County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Engineer understands and agrees that County's payment of amounts under this Contract is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

### **ARTICLE 33** **DISPUTE RESOLUTION**

Except as otherwise specifically set forth herein, County and Engineer shall work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Contract, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the Claim within thirty (30) days following the date in which one party sent written notice of the Claim to the other party, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Contract, shall be selected by agreement of the parties and serve as the mediator.

Any mediation under this Contract shall be conducted in Hays County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction, but this provision shall not preclude either party from filing a lawsuit in a court of competent jurisdiction prior to completing a mediation if necessary to preserve the statute of limitations, in which case such lawsuit shall be stayed pending completion of the mediation process contemplated herein. This provision shall survive the termination of the Contract.

#### **ARTICLE 34**

#### **EQUAL OPPORTUNITY IN EMPLOYMENT**

During the performance of this Contract and to the extent the Project is a federally funded project, Engineer, for itself, its assignees and successors in interest agrees as follows:

**A. Compliance with Regulations.** The Engineer shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

**B. Nondiscrimination.** The Engineer, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor/subconsultant or supplier shall be notified by the Engineer of the Engineer's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. Information and Reports.** The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County (referred to in this Article as the "Recipient") or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Engineer shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract

sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
2. cancellation, termination or suspension of the Contract, in whole or in part.

**F. Incorporation of Provisions.** The Engineer shall include the provisions of Subsections (A) through (F) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor/subconsultant or supplier as a result of such direction, the Engineer may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

#### **SIGNATORY WARRANTY**

The undersigned signatory for Engineer hereby represents and warrants that the signatory is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this Contract.

**IN WITNESS WHEREOF**, County has caused this Contract to be signed in its name by its duly authorized County Judge, as has Engineer, signing by and through its duly authorized representative(s), thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions hereof, to be effective as of the date of the last party's execution below. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND, TERMINATE OR MODIFY THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE HAYS COUNTY COMMISSIONERS COURT.

#### **COUNTY**

HAYS COUNTY, TEXAS

By: \_\_\_\_\_  
Ruben Becerra, County Judge

Date: \_\_\_\_\_, 20\_\_\_\_



8/19/2020

**ENGINEER**

Binkley and Barfield, Inc.

By 

Printed Name: Brian Rice, P.E.

Title: Corporate Vice President

Date: August 13, 2020

**LIST OF EXHIBITS ATTACHED**

- |                      |                           |
|----------------------|---------------------------|
| (1) <b>Exhibit A</b> | Debarment Certification   |
| (2) <b>Exhibit B</b> | Engineering Services      |
| (3) <b>Exhibit C</b> | Work Authorization        |
| (4) <b>Exhibit D</b> | Rate Schedule             |
| (5) <b>Exhibit E</b> | Certificates of Insurance |

**EXHIBIT A**  
**DEBARMENT CERTIFICATION**

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

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

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency:

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public\* transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity\* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions\* terminated for cause or default; and

(e) Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

Binkley & Barfield, Inc

Name of Firm

Brian D Rice

Signature of Certifying Official

Brian D Rice

Printed Name of Certifying Official

Corporate Vice President

Title of Certifying Official

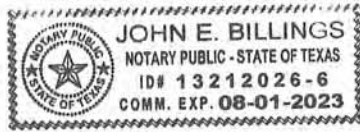
August 13th 2020

Date

(2) Where the PROVIDER is unable to certify to any of the statements in this certification, such PROVIDER shall attach an explanation to this certification.

\* federal, state, or local

SUBSCRIBED and sworn to before me the undersigned authority by Brian D. Rice  
the Corporate Vice President of Bunkley & Barfield Inc. on behalf of  
said firm.



[Signature]  
Notary Public in and for the  
State of Texas

My commission expires: 08-01-2023

## **EXHIBIT B**

### **ENGINEERING SERVICES**

#### **UTILITY COORDINATION FOR DARDEN HILL (RM 1826 TO SAWYER RANCH ROAD)**

The Engineer may perform the following including but not limited to the tasks below, as described in detail in each Work Authorization:

- PROJECT MANAGEMENT AND COORDINATION
- UTILITY PLANNING & RESEARCH
- SUBSURFACE UTILITY ENGINEERING (SUE)
- FIELD SURVEYING
- UTILITY ADJUSTMENT COORDINATION
- UTILITY ENGINEERING & DESIGN
- UTILITY CONSTRUCTION MANAGEMENT AND VERIFICATION



## EXHIBIT C

### WORK AUTHORIZATION

(To Be Completed and Executed After Contract Execution)

**WORK AUTHORIZATION NO.** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

This Work Authorization is made pursuant to the terms and conditions of the Hays County Contract for Engineering Services, being dated \_\_\_\_\_, 20\_\_\_\_ and entered into by and between Hays County, Texas, a political subdivision of the State of Texas, (the "County") and \_\_\_\_\_ (the "Engineer").

Part 1. The Engineer will provide the following Engineering Services set forth in Attachment "B" of this Work Authorization.

Part 2. The maximum amount payable for services under this Work Authorization without modification is \_\_\_\_\_.

Part 3. Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with the Contract.

Part 4. This Work Authorization shall become effective on the date of final acceptance and full execution of the parties hereto and shall terminate on \_\_\_\_\_, 20\_\_\_\_. The Engineering Services set forth in Attachment "B" of this Work Authorization shall be fully completed on or before said date unless extended by a Supplemental Work Authorization.

Part 5. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Contract.

Part 6. County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Work Authorization. Engineer understands and agrees that County's payment of amounts under this Work Authorization is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make payments under this Contract. It is further understood and agreed by Engineer that County shall have the right to terminate this Contract at the end of any County fiscal year if the governing body of County does not appropriate sufficient funds as determined by County's budget for the fiscal year in question. County may effect such termination by giving written notice of termination to Engineer.

Part 7. This Work Authorization is hereby accepted and acknowledged below.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ENGINEER:

COUNTY:

[Insert Company Name HERE]

Hays County, Texas

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

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

Signature

Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

#### LIST OF ATTACHMENTS

Attachment A - Services to be Provided by County

Attachment B - Services to be Provided by Engineer

Attachment C - Work Schedule

Attachment D - Fee Schedule

## EXHIBIT D

### RATE SCHEDULE

Role/Category	Hourly Labor Rate
Sr. Project Manager	\$263.00
Project Manager	\$204.00
Sr. Utility Coordinator	\$159.00
Utility Coordinator	\$139.00
Design Engineer	\$146.00
Sr. CADD Designer	\$142.00
Sr. Clerical Admin	\$89.00



**CPI Rate Adjustments:** Rates will remain firm for the initial first year of the Contract and such rates shall be deemed the "Initial Base Rates". Engineer must request rate adjustments, in writing, at least thirty (30) days prior to each annual anniversary date of the Contract and any rate changes will take effect on the first day following the prior year. If Engineer fails to request a CPI rate adjustment, as set forth herein, the adjustment will be effective thirty (30) days after the County receives Engineer's written request. No retroactive rate adjustments will be allowed.

Price adjustments will be made in accordance with changes in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, South Region (Base 1982-84 = 100).

The rate adjustment will be determined by multiplying the Initial Base Rates by a fraction, the numerator of which is the index number for most recently released index before each annual anniversary date of the Contract and the denominator of which is the index number for the first month of the Contract (the index number for the month in which the Contract was originally executed). If the products are greater than the Initial Base Rates, County will pay the greater amounts as the rates during the successive year until the next rate adjustment. Rates for each successive year will never be less than the Initial Base Rates.

**EXHIBIT E**

**CERTIFICATES OF INSURANCE**

**ATTACHED BEHIND THIS PAGE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/14/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh Wortham, a division of Marsh USA, Inc 2929 Allen Parkway Houston, TX 77019  www.marsh.com	<b>CONTACT NAME:</b> Stephanie Ramirez <b>PHONE (A/C, No, Ext):</b> 713 526 3366 <b>E-MAIL ADDRESS:</b> stephanie.ramirez@marsh.com	<b>FAX (A/C, No):</b> 713 521 8266
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Hartford Fire Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> Property and Casualty Ins Co of Hartford <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
<b>INSURED</b> Binkley & Barfield, Inc. 3901 S. Lamar Blvd., Suite 430 Austin TX 78704	<b>NAIC #</b> 19682  34690	

## COVERAGES

**CERTIFICATE NUMBER:** 57026232

**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			61UUNHF7407	3/20/2020	3/20/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			61UUNHF7407	3/20/2020	3/20/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	61WBAB2VUC	3/20/2020	3/20/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project: Darden Hill (RM 1826 to Sawyer Ranch Road) Utility Coordination  
 Also included as certificate holder: Hays County, its directors, officers and employees.  
 Additional insured status and waiver of subrogation afforded to certificate holders per attached endorsements.

## CERTIFICATE HOLDER

Hays County  
 111 E. San Antonio Street, Suite 300  
 San Marcos TX 78666

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh Wortham, a division of Marsh USA, Inc.

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ACORD 25 (2016/03)

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# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Binkley & Barfield, Inc  
Houston, TX United States

Certificate Number:  
2018-389901

Date Filed:  
08/08/2018

Date Acknowledged:

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Hays County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

2018-P16  
Consulting Engineering Services related to Utility Coordination

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Binkley, James Brett	Houston, TX United States	X	
	Barfield, P. E., Larry	Houston, TX United States	X	
	Hamilton, P.E., David	Houston, TX United States	X	
	Laham, P.E., Youssef	Houston, TX United States	X	
	Williams, RPLS, Steven	Houston, TX United States	X	

**5 Check only if there is NO Interested Party.**

☐

**6 UNSWORN DECLARATION**

My name is Brian Rice, and my date of birth is 5/15/1967.

My address is 3901 South Lamar Blvd., Suite 430, Austin, TX, 78664, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 18th day of August, 2020.  
(month) (year)



Signature of authorized agent of contracting business entity  
(Declarant)

**Hays County  
House Bill 89 Verification**

I, Brian D. Rice, the undersigned

representative of Binkley & Barfield, Inc.

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

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

*Pursuant to Section 2270.001, Texas Government Code:*

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

August 13, 2020  
DATE

BDRice  
SIGNATURE OF COMPANY REPRESENTATIVE

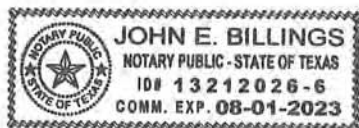
On this the 13<sup>th</sup> day of August, 20 20, personally appeared

Brian D. Rice, 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 SIGNATURE

Date





## Related Party Disclosure Form

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

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

- Current Hays County employee (including elected or appointed official)(Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 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:  
Binkley & Barfield has no known relationships as described above.

Attach additional pages if necessary.

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

Binkley & Barfield, Inc.

Name of Vendor

Brian Rice

Signature of Certifying Official

Corporate Vice President

Title of Certifying Official

Brian Rice

Printed Name of Certifying Official

August 19, 2020

Date

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

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

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

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

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

## **CODE OF ETHICS FOR HAYS COUNTY**

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

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

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

1. It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.
2. It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:
  - A. The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.
  - B. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.
  - C. Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

- D. Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.
- E. Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.
- F. Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: BDR

PRINT NAME & TITLE: Brian D Rice / Corporate Vice President

COMPANY NAME: Binkley & Berfield, Inc.

## 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 Transportation Department to purchase one new 2020 Chevrolet Silverado 1500 valued at \$32,009 for the Inspections and Engineering Division.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-ROADS	August 25, 2020	\$32,009

#### LINE ITEM NUMBER

020.710-00.5713\_700

#### AUDITOR USE ONLY

##### AUDITOR COMMENTS:

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

REQUESTED BY	SPONSOR	CO-SPONSOR
Jerry Borcharding	JONES	N/A

#### SUMMARY

The Transportation Department would like to purchase a new 2020 Chevrolet Silverado 1500 for the Inspections/Engineering Division of the Transportation Department. With the additional staffing and volume of new subdivisions and inspection needs, an additional vehicle is needed for the fleet. Funding would be provided from identified savings within the existing vehicle capital budget.

Attachment: Caldwell Country Chevrolet Quote #201119  
BuyBoard Contract #601-19

**CALDWELL COUNTRY CHEVROLET**

800 HWY. 21 E. CALDWELL, TEXAS 77836

BUY BOARD #601-19

QUOTE #201119

End User: HAYS COUNTYCaldwell Rep: Chris CollinsContact: CARLOS GONZALEZPhone: 979-567-6129Phone/email: 512-749-1158 CARLOS.GONZALEZ@CO.HAYS.TX.USDate: Thursday, August 13, 2020Product Description: CHEVROLET SILVERADO 1500email: chris@caldwellcountry.comA. Bid Series: 25A. Base Price: \$ 17,475.00

## B. Published Options [Itemize each below]

Code	Options	Bid Price	Code	Options	Bid Price
CK10543	2020 SILVERADO CREW 4WD SSV	\$ 9,974.00		220 ALTERNATOR	INCL
L82	ENGINE 5.3L V8	\$ 1,395.00		VINYL FLOOR COVERING	INCL
MYD	TRANSMISSION- 6 SPEED AUTO	INCL		POWER WINDOWS	INCL
GU6	3.42 REAR AXLE	INCL		POWER LOCKS	INCL
NZZ	SKID PLATES	\$ 150.00		TILT	INCL
R6D	17" PAINTED WHEELS	INCL		LH SPOTLIGHT	\$ 825.00
ZLQ	FLEET CONVENIENCE PKG.	\$ 695.00		REAR VISION CAMERA	INCL
Z82	TRAILERING PACKAGE	\$ 395.00			
5W4	SPECIAL SERVICE PKG.	\$ 550.00			
	REMOTE KEYLESS	INCL			
	CRUISE	INCL			

Total of B. Published Options: \$ 13,984.00

## C. Unpublished Options [Itemize each below, not to exceed 25%]

\$= 0.0 %

Options	Bid Price	Options	Bid Price
		WHITE	COLOR
		STOCK LZ173027	DELIVERY

Total of C. Unpublished Options: \$ -

D. Registration, Inspection, Paperwork, Postage cost, Courthouse time, &amp; Runner time:

\$ 150.00

E. UPFITTERS:

\$ -

F. Manufacturer Destination/Delivery:

\$ -

G. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

H. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

I. Contract Price Adjustment:

\$ -J. Additional Delivery Charge: 0 miles CUSTOMER PICKUP\$ -

K. Subtotal:

\$ 31,609.00L. Quantity Ordered 1 x K =\$ 31,609.00

M. Trade in:

\$ -

N. BUYBOARD FEE PER PURCHASE ORDER

\$ 400.00

O. TOTAL PURCHASE PRICE WITH BUYBOARD FEE

\$ 32,009.00

## 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

Discussion and possible action to authorize the Transportation Department to purchase one replacement HC6 Nexstar III Auto Crane and one EHP System Automatic Tire Changer valued at \$32,279 and amend the budget accordingly.

#### ITEM TYPE

ACTION-ROADS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

\$32,279

#### LINE ITEM NUMBER

020.710-00.5719\_700

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Jerry Borcharding

#### SPONSOR

JONES

#### CO-SPONSOR

N/A

#### SUMMARY

The Transportation Department would like to purchase a new HC6 crane for the field mechanic truck that would replace the current crane that is 30+ years old with worn motor and cylinders. A new crane would improve safety, lifting capacity, and productivity of the field mechanic.

Additionally, a new tire changer is needed to replace the current 18-year-old machine which has limited capabilities (designed for changing 15" to 16" tires). The standard newer vehicles are equipped with 17" or larger tires. This replacement tire changer has a range between 15"-22" tires and will increase safety and productivity in the mechanic shop. Savings within the departments heavy equipment budget will cover the cost of the difference in funds needed for these replacements.

Attachments: Knapheide Truck Equipment Center Quote #JB00000061 (Crane)  
Lowest Quoted of Three Vendors  
Snap-on Industrial Quote #CRM-001-434183717 (Tire Changer)  
TxMas Contract #TXMAS-17-51V02

#### Budget Amendment:

Decrease Heavy Equipment Capital .5714\_700 - (\$28,517)  
Increase Miscellaneous Capital Outlay .5719\_700 - \$28,517



Knapheide Truck Equipment - Austin  
 16201 South IH35  
 Buda TX 78610  
 Phone: 512-312-2100  
 Fax: 512-312-2101  
 www.austin.knapheide.com

## QUOTATION

Quote ID: JB00000061

Page 1 of 2

Customer: HAYS COUNTY ROAD AND BRIDGE

Quote Number: JB00000061

Quote Date: 7/28/2020

Quote valid until: 8/27/2020

Contact: ADAM

Phone: 512-694-6069

Fax:

By: Prepared jblaine

Salesperson: Manager

PO#:

### Enduser:

<b>Make:</b>	<b>Model:</b>	<b>Year:</b>	<b>Single/Dual:</b>
<b>Cab Type:</b>	<b>Wheelbase:</b>	<b>Cab-to-Axle:</b>	<b>VIN:</b>

QTY	PART NUMBER	DESCRIPTION	UNIT PRICE	AMOUNT
1	AUTO 492000003	HC6 NEXSTAR III	\$18,000.00	\$18,000.00
1	KTEC HYD. FIT	FITTINGS	\$1,000.00	\$1,000.00
20	LAB INSTALL	INSTALLATION LABOR	\$100.00	\$2,000.00
1	MISC FRT	Freight	\$100.00	\$100.00
1	BUYE SMR15SF25	RESERVOIR 15GAL W/25 MIC. FI LTER	\$350.00	\$350.00
1	FORC 1129070	PUMP/PTO 249FMLX-B455 7/8" 13-SPLINE	\$2,261.54	\$2,261.54

Quote Total: \$23,711.54

Discount: \$0.00

Total Due(Sales tax not included): \$23,711.54

### The following options may be added:

QUANTITY	DESCRIPTION	PRICE EACH	AMOUNT	ADD TO QUOTE
				Yes / No

### Notes:

FURNISH ALL LABOR AND PARTS TO INSTALL  
 HC6 HYDRAULIC CRANE, PTO,PUMP  
 HYD. OIL HOSE AND FITTINGS

This Quote is subject to the following terms and conditions:

#### Credit Card Policy

We do not accept credit cards for payment of any order in excess of \$3,000.00. For other orders, we do accept MasterCard, American Express, Visa and Discover cards for payment.

#### Pricing Policy

- Price Quotation is good on orders received through the expiration date.
- Pricing quoted applies to chassis make/model originally provided and quantity quoted. Any change may result in price change.
- Orders are subject to all applicable state, local and federal excise taxes. Applicable taxes will be applied on final billing to customer upon completion of order.

#### Payment Policy

- Payment Terms are due upon receipt of signed quote unless prior credit agreement has been established at the time of order.
- Payment terms for customers with an established credit account will be Net 30 from date of invoice.



Knapheide Truck Equipment - Austin  
16201 South IH35  
Buda TX 78610  
Phone: 512-312-2100  
Fax: 512-312-2101  
www.austin.knapheide.com

QUOTATION

Quote ID: JB00000061

Page 2 of 2

- Knapheide has right to assess late charges at 1.5% per month on all invoices that are 60 days or more past due.

Return Policy

- All sales are final. Purchased parts or products are non returnable.

Cancellation Policy

- Payment is due in full upon cancellation of any orders for non-stocked parts or products (provided part/product has been ordered by Knapheide) and upon cancellation of installation orders, once product installation has begun.

Customer agrees and understands this Quote is an offer to sell subject to the terms and conditions above and any additional terms or modifications are hereby objected to, unless mutually agreed upon in writing by Customer and Knapheide. The undersigned represents and warrants that he/she is duly authorized to sign below on behalf of Customer and thereby accepts offer and Knapheide will begin processing the order.

Customer must fill out the information below before the order can be processed...

Signature & Print Accepted by:	
Date:	
P.O. number:	



## GOVERNMENT Quote

Submit To: Snap-on Industrial,  
3011 IL Route 176, Door 1  
Crystal Lake, IL 60014

877-740-1900

Number  
Type  
Customer #  
Cust PO #  
Ship Via  
Terms  
Sales Rep  
Fax/Mobile  
E-mail

CRM-001-434183717

Date: 4/16/2020

Quote

Valid Until: 6/15/2020

201083481

TXMAS Tire Machine Quote

UPS FREIGHT COLLECT

P30 - NET 30 DAYS

Russell Blankman / 210-274-9172

russell.s.blankman@snapon.com

**Delivery To :** 201083481

HAYS, COUNTY OF  
ROAD DEPARTMENT  
2171 YARRINGTON RD  
SAN MARCOS, TX 78666

ATTN: Norm Selbig

**Bill To** 200661704

HAYS, COUNTY OF  
1307 UHLAND ROAD  
SAN MARCOS, TX 78666

POC:  
Norm Selbig  
512-738-0751  
norman.selbig@co.hays.tx.us

### STATE OF TEXAS CONTRACT

TXMAS Contract #

TXMAS-17-51V02

Effective 08/31/2017 - 01/31/2021

Vendor ID # 1364070294300

Federal Tax ID# 13640702943

Item	Description	Origin	SIN	Qty	Unit Price	Total
EEWH517B	TIRE CHANGER SHPMT JB SYS V	UNITED STATES	105-002	1	8,161.92	8,161.92
SOEFREIGHT	FREIGHT FOR SNAP-ON EQUIPMENT	UNITED STATES	NON-FSS	405	1.00	405.00

Tax and freight shown are estimates.

Applicable tax and freight will be charged to the Customers account.

The sale of product is subject to Snap-on Industrial's standard terms and conditions of sale. Placement of an order is Customer's assent to these terms and conditions and Snap-on hereby objects to any additional and/or different terms which may be contained in any Customer forms or other documents. No such additional terms will be of any force or effect.

Items on Snap-on's GSA Federal Supply Schedule (FSS) contract are designated as "105-002" in the SIN column. Items that have either the "NON-FSS" designation or no designation are not available under Snap-on's FSS contract. Such items are being sold outside of the FSS process under other procurement authority, such as Federal Acquisition Regulation (FAR) Subpart 13.2 (micro-purchase) or FAR Subpart 13.3 (simplified acquisition).

The sale of product is subject to Customer meeting Snap-on Industrial's credit approvals. Financing through Snap-on Credit LLC is available on most purchases. Ask your Sales Rep for more information.

\*Please provide vendor and pricing information to customer service on this part number.

**Sub Total** **\$8,566.92**

**Freight** **\$0.00**

**Tax Total** **\$0.00**

**Total** **\$8,566.92**

GSA Contract: GS-06F-0006L

Total Weight: 945.00 LB

DUNS: 806095217

Federal ID: 331  
36-4070294

Cage Code: 55719

Page 1 of 1

## 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 Commercial Lease Agreement between Hays County and Show Place Commercial Park, LLC for approximately 3,853 square feet of commercial space.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	August 25, 2020	\$6,000

#### 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

This is for COVID-19 related activities by the County. Leases will be brought to 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

Discussion and possible action to award RFP 2020-P01 HVAC - Maintenance & Repair Services to JM Engineering, LLC and authorize staff and General Counsel to negotiate a contract.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 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

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY

On June 23, 2020 the Commissioners Court approved specifications and authorized Purchasing to solicit for County Wide HVAC - Maintenance & Repair Services. Purchasing received responses from the following firms:

Carrier Commercial Services  
TDIndustries, Inc.  
JM Engineering, LLC.  
Premier Comfort Service Company

After evaluation of the proposals, the evaluation committee's recommendation is to pursue negotiations with JM Engineering, LLC. Upon successful negotiations, a contract will be brought back before court to approve and finalize contract award.

## 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

Hold a public hearing on the proposed Lantana multi-family project in accordance with Tex. Gov't Code, §2306.67071(b) and authorize the execution of a Resolution of No Objection for an application submitted by Mission Development Group, Ltd. to the Texas Department of Housing and Community Affairs.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 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

INGALSBE

N/A

#### SUMMARY

Lantana multi-family project has proposed a development for affordable rental housing of approximately 216 units that will be located at the corner of Rattler Road and Old Bastrop Road, in San Marcos Hays County, Texas. This application is to obtain tax credits.



## **RESOLUTION**

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

**WHEREAS**, the development of affordable housing is important for Hays County; and

**WHEREAS**, the proposed development of the Lantana multi-family project (“Project”) at the intersection of Rattler Road and Old Bastrop Road within the City of San Marcos extraterritorial jurisdiction will create 216 Class-A apartment units within Hays County; and

**WHEREAS**, rental rates for apartment units in the project will range between thirty percent (30%) and seventy percent (70%) of the Area Median Income, so the Project will serve an underserved demographic in Hays County based on a market study for the Project presented to the Texas Department of Housing and Community Affairs (“TDHCA”); and

**WHEREAS**, the developer has submitted an application (“Application”) for Low Income Housing Tax Credits for the Project to the TDHCA; and

**WHEREAS**, the City of San Marcos (“City”) has approved a Resolution of No Objection to the Application; and

**WHEREAS**, the City is in the process of annexing the Project into its corporate limits; and

**WHEREAS**, the developer of the Project is partnering with the San Marcos Housing Authority; and

**WHEREAS**, the Project is located within a census tract that has more than twenty percent (20%) Housing Tax Credit Units per total households as established by the 5-year American Community Survey;

**NOW, THEREFORE, BE IT RESOLVED** that the Commissioners Court finds that the Project is consistent with Hays County’s obligation to affirmatively further fair housing; and that the Commissioners Court does not object to, and specifically supports, the Application.

**RESOLVED, ORDERED, AND DECLARED** this the \_\_\_\_ day of August, 2020, by the Hays County Commissioners Court.

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RUBEN BECERRA  
HAYS COUNTY JUDGE

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ELAINE CARDENAS, MBA, PhD  
HAYS COUNTY CLERK

## 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 reconsider Election Day Vote Center locations for the November 3, 2020 General Election.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

BECERRA

#### SPONSOR

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY

Tabled from last week's Commissioner's Court meeting to give the Citizens Election Advisory Commission time to meet and present a suggestion. Judge Becerra would like to add an election day polling site at the Recreation Center at TXST and consider other locations as requested.



## Vote Center Locations for Early Voting and Election Day 2020 November General Election

### Early Voting: October 13<sup>th</sup>, 2020 — October 30<sup>th</sup>, 2020

Tuesday, October 13 <sup>th</sup> — Friday, October 16 <sup>th</sup>	10 AM — 7 PM
Saturday, October 17 <sup>th</sup>	7 AM — 7 PM
Sunday, October 18 <sup>th</sup>	1 PM — 6 PM
Monday, October 19 <sup>th</sup> — Friday, October 23 <sup>rd</sup>	10 AM — 7 PM
Saturday, October 24 <sup>th</sup>	7 AM — 7 PM
Sunday, October 25 <sup>th</sup>	1 PM — 6 PM
Monday, October 26 <sup>th</sup> — Friday, October 30 <sup>th</sup>	7 AM — 7 PM

### Election Day: November 3<sup>rd</sup>, 2020

Tuesday, November 3 <sup>rd</sup>	7 AM — 7 PM
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**Jennifer Anderson, Elections Administrator: (512) 393-7310**

<b>Early Voting</b>	<b>Election Day</b>	<b><u>San Marcos</u></b>	
	✓	<b>Calvary Baptist Church</b>	1906 North Interstate 35 Frontage Road
	✓	<b>Centro Cultural Hispano</b>	211 Lee Street
	✓	<b>Dunbar Center</b>	801 Martin Luther King Drive
	✓	<b>First Baptist Church San Marcos</b>	325 West McCarty Lane
✓	✓	<b>Hays County Government Center</b>	712 South Stagecoach Trail, Northwest Conference Rooms
✓	✓	<b>Hays County Transportation — Yarrington Building</b>	2171 Yarrington Road
✓	✓	<b>Live Oak Health</b> (formerly County Health Department)	401 Broadway Street #C
	✓	<b>Promiseland Church</b>	1650 Lime Kiln Road
	✓	<b>San Marcos Activity Center</b>	501 East Hopkins Street
	✓	<b>San Marcos Fire Station #5</b>	100 Carlson Circle
	✓	<b>San Marcos Housing Authority/ CM Allen Homes</b>	820 Sturgeon Drive, San Marcos
	✓	<b>Sinai Pentecostal Church</b>	208 Laredo Street
	✓	<b>South Hays Fire Station #12</b>	8301 Ranch Road 12
	✓	<b>Stone Brook Seniors Community</b>	300 South Stagecoach Trail
✓	✓	<b>Texas State University Performing Arts Center</b>	405 North Edward Gary Street

		<b><u>Buda</u></b>	
✓	✓	<b>Buda City Hall</b>	405 East Loop Street, Building 100
	✓	<b>Buda Elementary Upper Campus</b>	300 San Marcos Street
	✓	<b>Hays Hills Baptist Church</b>	1401 North FM 1626
✓	✓	<b>Live Oak Academy High School</b>	4820 Jack C. Hays Trail
	✓	<b>McCormick Middle School</b>	5700 Dacy Lane
	✓	<b>Southern Hills Church of Christ</b>	3740 FM 967
		<b><u>Kyle and Uhland</u></b>	
	✓	<b>Chapa Middle School</b>	3311 Dacy Lane
✓	✓	<b>HCISD Admin — Arnold Transportation Building</b> (formerly the bus barn)	21003 Interstate 35 Frontage Road
	✓	<b>Hays County Precinct 2 Office</b>	5458 FM 2770
✓	✓	<b>Kyle City Hall</b>	100 West Center Street
	✓	<b>Tobias Elementary School</b>	1005 FM 150
	✓	<b>Uhland Elementary School</b>	2331 High Road (Uhland)
	✓	<b>Wallace Middle School</b>	1500 West Center Street
		<b><u>Dripping Springs and Austin</u></b>	
	✓	<b>Belterra Centre</b>	151 [688] Trinity Hills Drive (Austin)
✓	✓	<b>Dripping Springs Ranch Park</b>	1042 Event Center Drive (Dripping Springs)
✓	✓	<b>Hays County Precinct 4 Office</b>	195 Roger Hanks Parkway (Dripping Springs)
	✓	<b>North Hays County Fire/Rescue Station #2 — Driftwood Battalion</b>	15850 FM 1826 (Austin)
		<b><u>Wimberley</u></b>	
	✓	<b>Cypress Creek Church</b>	211 Stillwater Road
✓	✓	<b>Scudder Primary School</b>	400 Green Acres Drive
	✓	<b>VFW Post #6441</b>	401 Jacobs Well Road
✓	✓	<b>Wimberley Community Center</b>	14068 Ranch Road 12

The Court approved on August 11, 2020 the recommendation of the Party Chairs, and approved by the Hays County CEAC (Citizens Election Advisory Committee).

## 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 purchase additional election equipment.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

BECERRA

#### SPONSOR

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY

Additional Election equipment needed to hold fair elections.

## 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 naming a private driveway in precinct 4, Harmony Wood Lane.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Strickland

#### SPONSOR

SMITH

#### CO-SPONSOR

N/A

#### SUMMARY

The owners of property located off of Harmon Hills Rd in precinct 4, would like to name their private driveway, Harmony Wood Lane. Each property owner has signed the request and the proposed name was verified with the Hays County GIS department.

# PROPOSED HARMONY WOOD LANE



SULLIVAN RDG

Harmony Wood Ln

HARMON HILLS RD

0 50 100 200 Feet

## 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 create the Hays County Salary Grievance Committee for the remainder of the fiscal year Pursuant to Chapter 152 of the Local Government Code.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

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

#### REQUESTED BY

Kennedy

#### SPONSOR

BECERRA

#### CO-SPONSOR

N/A

#### SUMMARY

Additional information will provided 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

Discussion and possible action to award RFP 2020-P14 CDBG Mitigation Funding to Langford Community Management Services, LLC and authorize staff and General Counsel to negotiate a contract.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: YES

AUDITOR REVIEW: MARISOL VILLARREAL-ALONZO

#### REQUESTED BY

Tammy Crumley

#### SPONSOR

SHELL

#### CO-SPONSOR

N/A

#### SUMMARY

On July 14, 2020 the Commissioners Court approved specifications and authorized Purchasing to solicit for CDBG Mitigation Funding. Purchasing received responses from the following company:

AECOME  
APSI Construction Management  
Enviropro Consulting Services, Inc.  
IEM  
Lamar Contractors, LLC.  
Langford Community Management Service, LLC  
Tidal Basin Government Consulting, LLC  
Vanir Construction Management, Inc.  
Zarinkelk Engineering

After evaluation of the proposals, the evaluation committee's recommendation is to award the contract to Langford Community Management Service, LLC.

## 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 a Funding Agreement between Hays County and the City of Kyle regarding payment of the Tyler New World Maintenance Agreement for the Computer Aided Dispatch (CAD) System in the new 911 co-located communications center.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 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

The City of Kyle entered an agreement with the County on or about December 4, 2012 for a 911 co-located communications center in the Public Safety Building project. This included sharing a portion of the maintenance and license fees for the installed CAD system.

## **FUNDING AGREEMENT**

This Funding Agreement (the “Agreement”) is made and entered into to be effective as of \_\_\_\_\_, 2020 between Hays County, a political subdivision of the State of Texas (the “County”), 712 South Stagecoach Trail, Suite 2057, San Marcos, Texas, 78666 and The City of Kyle, a Texas Municipality, (the “City”) in an effort to collocate the various 9-1-1 communication centers in Hays County, Texas. County and City may be referred to, collectively, as the “Parties.”

### **RECITALS**

**WHEREAS**, the County and the City recognized the need to achieve a higher level of success by improving the effectiveness of the County’s 9-11 emergency services to the citizens and visitors of Hays County by combining County 9-1-1 communication centers; and

**WHEREAS**, on or about December 4, 2012, in order to improve this effectiveness of the County’s 9-1-1 emergency services, the County and the City entered into a funding agreement for the development and construction of a new, co-located 9-1-1 emergency communications center; and

**WHEREAS**, as part of the planning and development related to a new co-located 9-1-1 emergency communications center, the Parties agreed to the setup of Tyler New World Computer Aided Dispatch (CAD) system;

**WHEREAS**, the City agreed to contribute, *pro rata*, toward the annual cost of the Tyler New World CAD Maintenance Agreement starting in Fiscal Year 2021.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and obligations of the Parties in this Agreement, the County and City agree as follows:

### **ARTICLE 1 PURPOSE**

The purpose of this Agreement is to set forth the terms and conditions under which the City will help provide funding in an amount not to exceed Fifty-Thousand United States Dollars (\$50,000 USD) to the County for partial payment of Tyler New World CAD Maintenance Agreement for ongoing maintenance and licenses of the CAD system in the co-located 9-1-1 emergency communications center for Fiscal Year 2021.

### **ARTICLE 2 OBLIGATIONS AND FUNDING FROM THE CITY**

**2.1** The City shall pay to the County a sum not to exceed Fifty-Thousand United States

Dollars (\$50.000USD) in current funds, as the City's portion of the annual Tyler New World CAD Maintenance Agreement for Fiscal Year 2020.

**2.2** The City's eleven percent (11%) share is calculated by the percentage of total 9-1-1 emergency calls for service in Hays County received by the Kyle Police Department.

**2.3** Said monies shall be paid out of current funds, shall be payable in cash, and shall not be the subject of any claim of offset or credit by the City.

**2.4** The Fifty-Thousand United States Dollars (\$50.000USD) payment is due to Hays County within thirty (30) days after the beginning of Fiscal Year 2021.

### **ARTICLE 3 OBLIGATIONS OF THE COUNTY**

**3.1** The County agrees to utilize the funds it receives under this Agreement to pay for expenses related to Tyler New World CAD Maintenance Agreement

### **ARTICLE 4 TERM AND TIME OF PERFORMANCE**

The effective date of this agreement shall be the date last executed by the Parties, below (the "Effective Date"). The term of the Agreement shall continue from the Effective Date until the completion of the work described in Exhibit "A." The obligations of the Parties shall continue during the Term.

### **ARTICLE 5 SUCCESSORS AND ASSIGNS**

The County and the City, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all covenants of this Agreement. The City shall not assign any interest in this Agreement without the written consent of the County.

### **ARTICLE 6 NOTICE**

Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications related to non-compliance issues required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the County:

Hays County  
Attn: County Judge  
111 E. San Antonio, Suite 300  
San Marcos, Texas 78666

If to the City:

City of Kyle  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Kyle, Texas 78640

## **ARTICLE 7 MISCELLANEOUS**

**7.1** Entire Agreement. This Agreement represents the entire and integrated agreement between the County and the City and supersedes all prior negotiations, representations or arguments either written or oral.

**7.2** Lawful Authority. The execution and performance of this Agreement by the County and the City have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the County and the City in accordance with its terms.

**7.3** Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

**7.4** Indemnification. It is understood and agreed between the Parties that the County and the City, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE COUNTY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE CITY AGREES TO INDEMNIFY, DEFEND AND HOLD THE COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES**

**7.5** Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term "will" is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

**7.6** Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

**7.7** No Waiver. No waiver by the County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

**7.8** Public Information Act. Hays County is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

**7.9** Additional Documents. The City and the County covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

**7.10** Compliance with Laws. In performing this Agreement, the City will comply with all local, state and federal laws.

**7.11** Counterparts. This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

This Funding Agreement is hereby EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 2012.

**County of Hays:**

By: \_\_\_\_\_  
Ruben Becerra Hays County Judge

ATTEST:

\_\_\_\_\_  
Elaine H. Cardenas, MBA, PhD, Hays County Clerk

**The City of Kyle**

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

Name:

Title:

## 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 Termination of Access Restriction Agreement related to four parcels along FM110 in Precinct 1.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 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

INGALSBE

N/A

#### SUMMARY

See attachment.

## **TERMINATION OF ACCESS RESTRICTION AGREEMENT**

This TERMINATION OF ACCESS RESTRICTION AGREEMENT is made by and between HAYS COUNTY, a political subdivision of the State of Texas ("HAYS COUNTY") 427 LINDSEY STREET PARTNERSHIP, LTD., a Texas Limited Partnership ("LINDSEY STREET"), LIMEROCK FARMS, LTD., a Texas Limited Partnership ("LIMEROCK"), and JAMES K. WISE REAL ESTATE, INC., a Texas Corporation ("WISE") upon the following terms and conditions.

### **BACKGROUND**

**WHEREAS**, by instrument dated October 28, 2011, LINDSEY STREET conveyed to HAYS COUNTY a tract of land containing 5.195 acres out of the Cyrus Wickson Survey, A-474, in Hays County Texas, by deed recorded in Volume 4215, page 305, Official Public Records of Hays County, Texas.

**WHEREAS**, by instrument dated October 28, 2011, LIMEROCK conveyed to HAYS COUNTY a tract of land containing 3.166 acres out of the Cyrus Wickson Survey, A-474, in Hays County Texas, by deed recorded in Volume 4215, page 325, Official Public Records of Hays County, Texas.

**WHEREAS**, by instrument dated October 28, 2011, WISE conveyed to HAYS COUNTY a tract of land containing 5.4417 acres out of the Cyrus Wickson Survey, A-474, in Hays County Texas, by deed recorded in Volume 4215, page 334, Official Public Records of Hays County, Texas.

**WHEREAS**, by instrument dated October 28, 2011, WISE conveyed to HAYS COUNTY a tract of land containing 2.2534 acres out of the Cyrus Wickson Survey, A-474, in Hays County Texas, by deed recorded in Volume 4215, page 345, Official Public Records of Hays County, Texas.

**WHEREAS**, all four deeds contained a provision (the "Access Restriction") attached to each deed as Exhibit "B" that prohibited any access from the property described in each deed to the Highway Facilities as defined in each deed, now known as FM110.

**WHEREAS**, Hays County originally planned to provide these properties with access via a connecting roadway, but no longer intends to construct that roadway as part of the mobility solutions for this area;

**WHEREAS**, HAYS COUNTY has the right to enforce, modify or terminate each Access Restriction.

### **TERMINATION**

NOW THEREFORE, HAYS COUNTY, for a valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TERMINATES and RELEASES the Access Restriction described in each respective above described deeds. In consideration for the termination and release, LINDSEY STREET, LIMEROCK, and WISE hereby each agree that any access from its

property to the Highway Facilities shall be subject to such regulation as is determined by the Texas Department of Transportation and/or the Texas Turnpike Authority division to be necessary in the interest of public safety and in compliance with approved engineering principles and practices and subject to compliance with any applicable local municipal or county zoning, platting and permit requirements.

EXECUTED: August 25, 2020

**HAYS COUNTY**

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

ATTEST: \_\_\_\_\_  
Elaine Cardenas, MBA, PhD  
Hays County Clerk

**LINDSEY STREET, LIMEROCK, AND WISE**

\_\_\_\_\_  
Name:  
Title(s):

## 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 vote on a proposed budget and tax rate for Fiscal Year 2021 and schedule public hearings.

#### ITEM TYPE

ACTION-MISCELLANEOUS

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

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

BECERRA

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

1:00 p.m. - Budget Workshop regarding the FY 2021 Hays County Budget. Possible action may follow.

#### ITEM TYPE

WORKSHOP

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

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

BECERRA

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

Executive Session pursuant to Sections 551.071 and 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding the purchase, exchange or value of Right of Way along proposed FM110 in Precinct 1. Possible discussion and/or action may follow in open court.

#### ITEM TYPE

EXECUTIVE SESSION

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

#### LINE ITEM NUMBER

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

#### REQUESTED BY

Kennedy

#### SPONSOR

INGALSBE

#### CO-SPONSOR

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 551.072 of the Texas Government Code: consultation with counsel and deliberation regarding purchase, exchange or value of Right of Way along the former Hays County Civic Center and contiguous properties located on Clovis Barker in Precinct 1. Possible discussion and/or action may follow in open court.

#### ITEM TYPE

EXECUTIVE SESSION

#### MEETING DATE

August 25, 2020

#### AMOUNT REQUIRED

N/A

#### LINE ITEM NUMBER

N/A

#### AUDITOR USE ONLY

#### AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

#### REQUESTED BY

Kennedy

#### SPONSOR

INGALSBE

#### CO-SPONSOR

N/A

#### SUMMARY

Summary to be provided in Executive Session.