

**Commissioners Court -March 10, 2009
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 **10TH day of March, 2009**, in the Hays County Courthouse, Room 301, San Marcos, Texas. An Open Meeting will be held concerning the following subjects:

INVOCATION:

**PLEDGE OF ALLEGIANCE - Pledge of Allegiance to the American Flag & Pledge of Allegiance to the Texas Flag
CALL TO ORDER /ROLL CALL**

PRESENTATIONS & PROCLAMATIONS		
1	1	Compliance Department presentation to the court by Judy Seims. SUMTER
2	2	Presentation by Mike Weaver of the Monthly Progress Report for the Hays County Pass Through Finance Program for February 2009. SUMTER/WEAVER

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.		

CONSENT ITEMS		
The following may be acted upon in one motion. A <u>Commissioner, the County Judge, or a Citizen</u> May request items be pulled for separate discussion and/or action		
3	3	Approve payments of county invoices. HERZOG
4	4-9	Approve Commissioners Court Minutes of March 3, 2009. SUMTER/FRITSCH
5	10-12	Approve renewal of Bid #2008-B08 "Annual Road Striping" for one additional year as provided for in the original bid. SUMTER/HERZOG/MAIORKA/BORCHERDING
6	13-15	Authorize the County Judge to execute Amendment 4 of the Grant Agreement with the Texas Parks and Wildlife Department for Five Mile Dam Park, allowing the existing overhead utility line along the southern side of the old segment of Old Stagecoach Road (now Park Road) to remain. INGALSBE/HAUFF
7	16	Approve the cancellation of Commissioners Court on March 17, 2009. INGALSBE

ACTION ITEMS		
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ROADS

8	17-20	Discussion and possible action for the release of the maintenance bond and accept for maintenance all road and drainage improvements within County ROW for Belterra subdivision, Phase 3, Section 11B. FORD/BORCHERDING
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SUBDIVISIONS

9	21	08-4-64 Ryan Hill, Replat of Lots 1 & 2 Block 'A', and Lots 5 & 7 Block 'B' Consider waiver of preliminary plan and public hearing; consider variance from Hays County minimum lot size rules. Accept final plat. FORD/GARZA
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MISCELLANEOUS

10	22	Discussion with possible action to authorize the County Judge to enter into Joint Election Agreements between the Political Subdivisions holding special and general elections on May 9, 2009 with Hays County. SUMTER/COWAN
11	23-25	Discussion and possible action to promote and fund Health Check 2009 for Hays County employees, employee dependents that are on the County's health insurance plan and authorize payroll deduction of additional fees for optional services employees may elect. SUMTER/BAEN

12	26-31	Discussion and possible action to place Chapter 174 of the Texas Local Government Code in effect in Hays County, pursuant to a majority of votes cast in favor of adoption of that chapter in the November 2008 General Election; and to recognize Combined Law Enforcement Associations of Texas (CLEAT) as the association selected by a majority of the police officers at the Hays County Sheriff's Office to act as the Bargaining Agent for those officers under Chapter 174 of the Texas Local Government Code. CONLEY
13	32-35	Discussion and possible action to approve amended Resolution authorizing the designation of 10.2 acres of the property at Five Mile Dam Park complex as "open space" and to authorize the County Judge to execute the related Amendment Three to the grant agreement with the Texas Parks and Wildlife Department. INGALSBE/HAUFF
14	36-41	Discussion and possible action to authorize the County Judge to execute an Interlocal License Agreement between Hays County and the City of Dripping Springs for landscape/rain garden within the city ROW at the new Pct. 4 building. FORD
15	42	Discussion and possible action to authorize the Road & Bridge Division to provide services for the construction of pedestrian trails at Five Mile Dam Park. INGALSBE/HAUFF/BORCHERDING/PINNIX
16	43-46	Discussion and possible action to extend the Local Disaster Declaration executed by the County Judge on or about the 2 nd day of March 2009. SUMTER
17	47	Discussion and possible action to adopt a policy or provide guidance to define the current OSSF rules regarding surface water vs ground water determination of a public/private provider and provide guidance on letters required from public/private water/wastewater providers to determine water and/or wastewater availability for subdivisions. SUMTER
18	48-99	Discussion and possible action to authorize the County Judge to execute contracts with LAN for Engineering and ROW Services on Dacy Lane. INGALSBE
19	100-102	Discussion and possible action to approve \$376.70 reimbursement to Jerry Pinnix, Parks and Transfer Station Department for training lodging expense. SUMTER/PINNIX

WORKSHOP

20	103-131	1PM Presentation by HDR regarding the water/wastewater facilities planning process. FORD
21	132-157	3PM Presentation by Loomis Partners on the final Application Draft of the Hays County Regional Habitat Conservation Plan. Discussion and possible action to approve the Application for the Hays County RHCP for submittal to US Fish and Wildlife Service. FORD

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.

22	158	Executive Session pursuant to 551.071 of the Texas Government Code, regarding the application for an amended permit by WCID#1 with the Texas Commission on Environmental Quality and pending litigation related thereto. Possible action to follow in open Court. FORD
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ADJOURNMENT

Posted by 5:00 o'clock P.M. on the 6th day of March, 2009.

COMMISSIONERS COURT, HAYS COUNTY, TEXAS

CLERK OF THE COURT

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

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Compliance Department presentation to the court by Judy Seims.

CHECK ONE: ☐ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☒ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Seims

SPONSORED BY: SUMTER

SUMMARY:

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Hays County Commissioners' Court

9:00 a.m. Every Tuesday

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no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205

AGENDA ITEM: Presentation by Mike Weaver of the Monthly Progress Report for the Hays County Pass Through Finance Program for February 2009

CHECK ONE: **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☒ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: none

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Mike Weaver

SPONSORED BY: Sumter

SUMMARY:

Agenda Item Request Form

Hays County Commissioners' Court

2:00 p.m. Every Wednesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Approve payment of county invoices.

CHECK ONE: ☒ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: 3/10/09

AMOUNT REQUIRED: None

LINE ITEM NUMBER OF FUNDS REQUIRED: As attached.

REQUESTED BY: Auditor's Office

SPONSORED BY: Bill Herzog 

SUMMARY:

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: APPROVE COMMISSIONERS COURT MINUTES OF MARCH 3, 2009

CHECK ONE: **X CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: MARCH 10, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: FRITSCHÉ

SPONSORED BY: SUMTER

SUMMARY:



MARCH 3, 2009

VOLUME U PAGE 61

STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 3RD DAY OF MARCH A.D., 2009, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

ELIZABETH "LIZ" SUMTER	COUNTY JUDGE
DEBBIE GONZALES INGALSBE	COMMISSIONER, PCT. 1
JEFFERSON W. BARTON	COMMISSIONER, PCT. 2
WILL CONLEY	COMMISSIONER, PCT. 3
KAREN FORD	COMMISSIONER, PCT. 4
LINDA C. FRITSCHKE	COUNTY CLERK

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Commissioner Conley gave the invocation and led the court in the Pledge of Allegiance to the flags. Judge Sumter called the meeting to order.

25956 APPROVE APPOINTMENT OF HECTOR RANGEL DEPUTY CONSTABLE, PCT. 1 AND SWEARING-IN OF DEPUTY RANGEL AND RESERVE DEPUTY CATHERINE ELLIS

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Barton to approve appointment of Hector Rangel Deputy Constable, Pct. 1 and swearing-in of Deputy and Reserve Deputy Catherine Ellis. All voting "Aye". MOTION PASSED

25957 ADOPT PROCLAMATION RECOGNIZING APRIL 2009 AS "CANCER AWARENESS MONTH" IN HAYS COUNTY

A motion was made by Commissioner Conley, seconded by Commissioner Ingalsbe to approve proclamation recognizing April 2009 as "Cancer Awareness Month" in Hays County. All voting "Aye". MOTION PASSED

RESOURCE PROTECTION AND TRANSPORATION PLANNING (RPTP) PRESENTATION

[T1-192] RPTP Director Jerry Borchering introduced the Road Supervisors in the Road Department. Janice Weber, Infrastructure Services Supt., spoke of work done by the Sanitarians in the Environmental Department and she introduced them to the court. New Senior Planner Lisa Wright spoke to the court regarding her education and various jobs she held at the City of Paris, Texas. Roland Vasquez, Chief Environmental Investigator, spoke regarding his qualifications and services provided to the county by him and Environmental Investigator Mark Andrews. GIS/9-1-1 Program Manager Steve Floyd spoke of services being provided by his department. Subdivision Coordinator Clint Garza spoke of services provided, subdivision regulations, and number of new subdivisions in the county. Garry Ingalsbe, Equipment/Facilities Supt., spoke of work performed and money being saved. Operations Supt. Tim Vande Vorde spoke of traffic control and speed control devices that have been installed. He spoke of Erosion Control Crew that has been created. Environmental Compliance Specialist Betty Lambright spoke of environmental compliance plan, construction oversight and final release. Jerry Borchering spoke of program to address violations and complaints as well as other issues. He spoke of responsibilities of various supervisors in his department and he commended them for the excellent jobs they are doing.

25958 APPROVE PAYMENTS OF COUNTY INVOICES

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve payments of County Invoices in the amount of \$639,609.88 as submitted by the County Auditor. All voting "Aye". MOTION PASSED

25959 APPROVE COMMISSIONER COURT MINUTES OF FEBRUARY 24, 2009

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve Commissioner Court Minutes of February 24, 2009 as presented by the County Clerk. All voting "Aye". MOTION PASSED

**25960 APPROVE UTILITY PERMITS**

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve Utility Permit #02009 to Texas Gas Service on Nutty Brown Road and Permit #02010 to Goforth Special Utility District on Peaceful Valley Road as presented by the Road Department. All voting "Aye". MOTION PASSED

25961 APPROVE A "DISCRETIONARY EXEMPTION" UNDER SECTION 262.024 OF THE TEXAS LOCAL GOVERNMENT CODE FOR THE PURPOSE OF MAKING DIRECT PAYMENT TO SAM, INC., A SUBCONTRACTOR OF CHIANG, PATEL & YERBY, INC. ON THE FM 150 @ IH 35 SOUTH IMPROVEMENT PROJECT

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve a "Discretionary Exemption" under Section 262.024 of the Texas Local Government Code for the purpose of making direct payment to SAM, Inc., a subcontractor of Chiang, Patel & Yerby, Inc. on the FM 150 @ IH 35 South Improvement Project. All voting "Aye". MOTION PASSED

25962 ACCEPT INTO THE COUNTY MAINTENANCE SYSTEM ALL ROADS IN THE MEADOWS AT BUDA SUBDIVISION [T1-140]

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to accept into the county maintenance system all roads in the Meadows at Buda Subdivision. All voting "Aye". MOTION PASSED

25963 RELEASE THE MAINTENANCE BOND AND ACCEPT FOR MAINTENANCE ALL ROAD AND DRAINAGE IMPROVEMENTS WITHIN COUNTY ROW FOR THE OAKS AT GATLIN CREEK SUBDIVISION [T1-1414]

A motion was made by Commissioner Ford, seconded by Commissioner Barton to release the Maintenance Bond and accept for maintenance all road and drainage improvements within County Right-Of-Way for the Oaks at Gatlin Creek. All voting "Aye". MOTION PASSED

25964 [08-4-02 - 1 Lot] DRIPPING SPRINGS RANCH REPLAT OF LOT 1A A RESUBDIVISION OF TRACTS 1 AND 2 - HOLD PUBLIC HEARING APPROVE FINAL PLAT [T1-1430]

Judge Sumter declared the public hearing open. No public input was received and the public hearing was closed. Subdivision Coordinator Clint Garza gave staff recommendation for final plat approval. A motion was made by Commissioner Ford, seconded by Commissioner Conley to approve final plat of Dripping Springs Ranch Replat of Lot 1A a resubdivision of Tracts 1 & 2. All voting "Aye". MOTION PASSED

25965 [07-2-10 - 1 Lot] BILGER TRACT SUBDIVISION AUTHORIZE THE FILING OF THE RECORD PLAT FOR THE BILGER TRACT SUBDIVISION [T1-1448]

Subdivision Coordinator Clint Garza gave staff recommendation for final plat approval. A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to authorize the filing of the record plat for the Bilger Tract Subdivision. All voting "Aye". MOTION PASSED

25966 [09-4-05 - 74 Lots] AMENDED PLAT OF CREEK OF DRIFTWOOD SUBDIVISION APPROVE FINAL PLAT AS AMENDED [T1-1506]

Subdivision Coordinator Clint Garza gave staff recommendation for final plat approval. A motion was made by Commissioner Ford, seconded by Commissioner Conley to approve final plat as amended of Creek of Driftwood Subdivision. All voting "Aye". MOTION PASSED

25967 APPROVE THE RESALE OF PROPERTY HELD IN TRUST [T1-1547]

The property Held in Trust is: Lot 5 and part of Lot 6 Block 5 aka east 48' of that portion of Farm Lot 5 San Marcos, Hays County, Texas at an address of 214 Centre Street, San Marcos, Texas. The property failed to sell at an August 7, 2001 Tax Sale and was struck off to the county. There was another try to sell it on March 8, 2005, but failed. There's a bid on the property for \$3,000.00. This bid has been approved by the San Marcos School Board and it is been requested that the City of San Marcos place the item on their agenda. A motion was made by Commissioner Ingalsbe, seconded by Judge Sumter to approve the resale of property held in trust described as Farm Lot 5 and part of Lot 6 Block 5. All voting "Aye". MOTION PASSED



MARCH 3, 2009

VOLUME U PAGE 63

**25968 AUTHORIZE A TRANSFER OF \$1,200 WITHIN THE CONSTABLE'S DEPARTMENT
FOR NEEDED LAW ENFORCEMENT SUPPLIES [T1-1596]**

Constable David Peterson spoke of need for window tint on his vehicle and need for uniforms and badges/patches. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Barton to authorize a transfer of \$1,200 within the Constable Pct 1's department for needed law enforcement supplies and amend the budget accordingly. All voting "Aye". MOTION PASSED

**25969 APPOINT A HEARING OFFICER TO PRESIDE OVER THE FOOD ESTABLISHMENT
PERMIT REVOCATION HEARING OF THE CENTER FOOD MARKET 110 E
CENTER ST., KYLE, TEXAS [T1-1676]**

Environmental Health Dept. Sanitarian Amanda Kubesch spoke of numerous complaints regarding expired and spoiled food items. Repeated inspections and notices to correct the violations have not convinced the operators to operate in compliance with the regulations. If the permit is revoked the establishment will be able to reapply for a permit if they present a plan for improvement. A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to appoint Justice of the Peace Pct. 3 Scott Cary as hearing officer to preside over the food establishment permit revocation hearing of the Center Food Market 110 E Center St., Kyle, Texas. All voting "Aye". MOTION PASSED

25970 APPOINT PATSY R. WARD TO THE CHILD PROTECTIVE SERVICES BOARD [T1-1835]

A motion was made by Judge Sumter, seconded by Commissioner Ingalsbe to appoint Patsy R. Ward to the Child Protective Services Board. All voting "Aye". MOTION PASSED

**25971 RATIFY AUTHORIZATION FOR COUNTY JUDGE TO EXECUTE WORK
AUTHORIZATIONS #1-7 FOR PROGRAM MANAGEMENT WITH PRIME
STRATEGIES, INC [T1-1843]**

A motion was made by Judge Sumter, seconded by Commissioner Barton to ratify authorization for County Judge to execute work authorizations #1-7 for program management with Prime Strategies, Inc. All voting "Aye". MOTION PASSED

**25972 APPROVE ADDITIONAL COUNTY GRANT MATCHING FUNDS FOR FY09 FOR THE
PURCHASE OF BULLETPROOF VESTS AND AMEND THE BUDGET ACCORDINGLY
[T1-1882]**

Grants Administrator Jeff Hauff spoke of grant for bulletproof vests (50% of cost from grant = \$6,480). County Auditor Bill Herzog advised that he will prepare a budget amendment to fund county's portion of \$6,480 from various Constable budgets. A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve additional county grant matching funds for FY09 for the purchase of bulletproof vests and amend the budget accordingly. All voting "Aye". MOTION PASSED

**25973 ACCEPT THE ANNUAL FINANCIAL REPORT AND AUDIT FROM THE HAYS
COUNTY EMERGENCY SERVICES DISTRICT #5 [T1-1996]**

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to accept the Annual Financial Report and Audit from the Hays County Emergency Services District #5. All voting "Aye". MOTION PASSED

**25974 APPROVE PAYMENT FOR MALPRACTICE INSURANCE COVERAGE FOR THE
FAMILY NURSE PRACTITIONER STARTING MARCH 2, 2009 IN THE WOMEN'S
HEALTH DEPARTMENT AT HAYS COUNTY PERSONAL HEALTH DEPARTMENT
[T1-2014]**

In order to protect Hays County from liability suites, it is necessary for Nurse Practitioners providing direct patient care to have malpractice insurance. It is estimated that the insurance will cost approximately \$2,000 for one year. A motion was made by Judge Sumter, seconded by Commissioner Barton to approve payment for malpractice insurance coverage for the Family Nurse Practitioner starting March 2, 2009 in the Women's Health Department at Hays County Personal Health Department. All voting "Aye". MOTION PASSED



25975 ADOPT A RESOLUTION SUPPORTING FULL TWC CH 36 AUTHORITY FOR THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT [T1-2062]

Andrew Backus (Hays Trinity Groundwater Conservation District Board President) spoke. Commissioner Conley spoke in support of resolution requesting the legislature to pass legislation giving the HTGCD full authority under TWC 36 to carry out its duties and manage its challenges. Sam Davis (Wimberley resident), Dorothy Knight, Daniel Boone (Comal County resident), Frank Sullivan (Wimberley resident), David Baker (Wimberley resident and Executive Director of the Wimberley Valley Water Assn), Susan Cook (Driftwood resident), David Glenn (Wimberley resident), Herb Smith (Wimberley resident), Susan Zimmerman (Wimberley area resident), Susan Nenney (Wimberley resident) made public comment. Commissioner Ford spoke of previous discussion at the February 24, 2009 court meeting and she spoke of resistance at the Legislative level. Andrew Backus spoke. [T2-859] Commissioner Barton suggested the following wording be added to the proposed resolution: *Now, Therefore, Be It Resolved That the Hays County Commissioners Court respectfully requests, that at a minimum, the Texas Legislature to pass legislation giving the Hays Trinity Groundwater Conservation District full authority under TWC 36 to carry out its duties and manage these challenges by:* Judge Sumter requested postponement of action at this time. Commissioner Ingalsbe and Commissioner Ford spoke. [T2-1300] A motion was made by Commissioner Conley, seconded by Commissioner Ford to adopt a Resolution supporting full TWC Ch 36 authority for the Hays Trinity Groundwater Conservation District. Commissioner Ingalsbe, Commissioner Barton, Commissioner Conley, and Commissioner Ford voting "Aye". Judge Sumter abstained. MOTION PASSED

25976 ADOPT PROCESS TO SCORE AND ASSESS PROPOSALS FOR PROFESSIONAL AND ENGINEERING SERVICES RELATED TO HAYS COUNTY'S REQUEST FOR QUALIFICATIONS 2009-P05, ROAD WORK [T2-1325]

Commissioner Barton spoke of recommendations for scoring and assessing proposals. Timeline would be within 45 days, preferably sooner. A motion was made by Commissioner Barton, seconded by Judge Sumter to adopt the selection process as presented including Item #3 with the adoption of Option A rather than Option B and that we authorize and instruct the Director of RTP to negotiate with HDR and their team to provide for assistance in the review process, and that their assistance and consulting to be funding from consulting line item in RTP budget unless we are able to negotiate an overall contract for Program Management. All voting "Aye". MOTION PASSED

25977 APPROVE REQUEST FOR PROPOSALS (RFP) FOR PROGRAM MANAGEMENT FOR THE GOVERNMENT CENTER AND AUTHORIZE PURCHASING TO ADVERTISE [T2-1560]

Need to change date to March 24th. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Conley to approve the RFP for program management for the Government Center and authorize Purchasing to advertise. All voting "Aye". MOTION PASSED

25978 AUTHORIZE COMMISSIONER FORD, WITH SUPPORT FROM SPECIAL COUNSEL, TO NEGOTIATE AND AMEND CURRENT RHCP CONTRACT AND AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE AMENDED CONTRACT FOR EXPANSION OF SCOPE OF SERVICES, IN AN AMOUNT NOT TO EXCEED \$10,000, TO INCLUDE ENDANGERED HABITAT ASSESSMENT ON PROPERTIES UNDER REVIEW BY COUNTY AND FURTHER DISCUSSION OF THE PROPER PROCEDURE FOR MAKING REQUESTS TO LOOMIS FOR THIS PURPOSE [T2-1591]

A motion was made by Commissioner Conley, seconded by Commissioner Ford to authorize Commissioner Ford with support from Special Counsel to negotiate and amend current RHCP contract and authorize the County Judge to execute the amended contract for expansion of scope of services, in an amount not to exceed \$10,000 to include endangered habitat assessment on properties under review by county and proper procedure for making requests to Loomis for this purpose. All voting "Aye". MOTION PASSED

25979 AUTHORIZE PCT 4 COMMISSIONER TO SPEND AN AMOUNT NOT TO EXCEED \$12,000 FOR LANDSCAPE MATERIALS AND INSTALLATION AT THE NEW PCT 4 BUILDING [T2-1702]

On February 3, 2009, the court approved this expenditure with Xanadu Nursery. Additional research has determined that the County can purchase landscaping materials directly from a wholesale nursery at a cost savings. Plans are for Betty Lambright, working with our building maintenance staff, to provide oversight for final design and installation of landscaping. Some hard-to-locate plant materials or installation labor assistance may be purchased from Xanadu Nursery. A motion was made by Commissioner Ford, seconded by Commissioner Ingalsbe to authorize Pct 4 Commissioner to spend an amount not to exceed \$12,000 for landscape materials and installation at the Pct 4 new Building. Commissioner Ingalsbe, Commissioner Barton, Commissioner Ford and Judge Sumter voting "Aye". Commissioner Conley voting "No". MOTION PASSED



MARCH 3, 2009

VOLUME U PAGE 65

25980 ESTABLISH A COMMUNICATION POLICY AND PLAN [T2-1748]

Laureen Chernow spoke of changes made on previously proposed policy. Court requested additional changes. A motion was made by Commissioner Barton, seconded by Commissioner Conley to establish a Communication Policy and Plan as amended this date. All voting "Aye". MOTION PASSED

UPDATE OF HAYS COUNTY STRATEGIC POLICY PLAN AND STATE OF TEXAS, OFFICE OF COMPTROLLER, LOCAL GOVERNMENT MANAGEMENT ASSESSMENT AND RISK ASSESSMENTS [T2-2093]

Judge Sumter gave an update of management assessment and risk assessments. She provided a list of interview questions for strategic policy planning.

Clerk's Note: Agenda Item #20 RE: ADOPT A POLICY OR PROVIDE GUIDANCE TO DEFINE THE CURRENT OSSP RULES REGARDING SURFACE WATER VS. GROUND WATER DETERMINATION OF A PUBLIC/PRIVATE PROVIDER AND PROVIDE GUIDANCE ON LETTERS REQUIRED FROM PUBLIC/PRIVATE WATER/WASTEWATER PROVIDERS TO DETERMINE WATER AND/OR WASTEWATER AVAILABILITY FOR SUBDIVISIONS was PULLED.

Court was adjourned.

I, LINDA C. FRITSCHKE, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on MARCH 3, 2009.



LINDA C. FRITSCHKE, COUNTY CLERK AND EXOFFICIO
CLERK OF THE COMMISSIONERS' COURT OF
HAYS COUNTY, TEXAS

Agenda Item Request Form

Hays County Commissioners' Court

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No later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Approve renewal of Bid #2008-B08 "Annual Road Striping" for one additional year as provided for in the original bid.

CHECK ONE: ☒ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**

☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Herzog/Maiorka/Borcherding

SPONSORED BY:

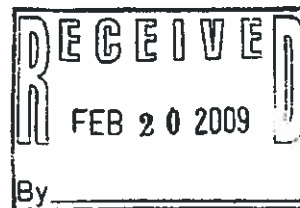
SUMMARY: (See attached) All terms and conditions remain unchanged and in full force and effect as provided in the original bid.



OFFICE OF THE COUNTY AUDITOR

Hays County Purchasing
111 E. San Antonio Street, Suite 101
San Marcos, Texas 78666

512-393-2273
Fax: 512-393-2276
www.co.hays.tx.us



Bill Herzog, CPA
County Auditor
bherzog@co.hays.tx.us

Cindy Maiorka, CPPB
Purchasing Manager
cindym@co.hays.tx.us


Highway Technologies LP
12909 Dessau Road
Austin, Texas 78754

February 17, 2009

The bid for "Annual Road Striping" will expire March 4, 2009. This letter will serve as notice that Hays County would like to renew your existing bid for one (1) additional year, provided all terms and conditions remain unchanged and in full force and effect as provided in the original bid. If you are in agreement with this, please sign below and mail back to Hays County Purchasing Office, 111 E San Antonio St., Ste.101, San Marcos, Texas 78666.

If you have any questions please feel free to contact me at 512-393-2273.

Please find enclosed the tabulation sheet.

Sincerely,

Cindy Maiorka, CPPB
Purchasing Manager

Signature  Date 2/23/09

Printed Name Tim D Jarman

Company Name HIGHWAY TECHNOLOGIES

RFB#2008-B08
ROAD STRIPING
FOR ROAD DEPT.

BID TAB

PRODUCT	Highway Technologies		DIJ Const.	
	Paint	Thermo-Plastic	Paint	Thermo-Plastic
#1 - #4 dashed center line per linear foot	\$ 0.11	0.225	\$ 0.35	\$ 0.45
#2 - arrows straight; left; right, bicycle; each	\$ 27.00	\$ 78.00	\$ 50.00	\$ 145.00
#3 - stop stripes; has marks 18"w all hand work per sq ft	\$ 2.05	\$ 4.40	\$ 1.75	\$ 4.30
#4 - 8" stripes per linear foot	\$ 0.27	0.325	\$ 0.65	\$ 0.85
#5 - new stripes(gold/wht/blk) include layout per linear ft	\$ 0.11	0.225	\$ 0.35	\$ 0.45
#6 - re-striping, per linear foot	0.095	0.175	\$ 0.30	\$ 0.40
#7 - rail road crossing per set	\$ 145.00	\$ 240.00	\$ 300.00	\$ 500.00
#8 - handicap parking emblem per emblem	\$ 20.00	\$ 75.00	\$ 60.00	\$ 145.00
#9 - install 4" traffic button yellow or white	\$ 3.25	\$ 3.25	No bid	\$ 4.00
#10 - bicycle emblem, per emblem	\$	70.00	\$	120.00
#11 - remove existing striping, \$ to scrape off asphalt	\$	0.74	\$	0.50
additional charges: Mobilization charges	\$	500.00	\$	1,500.00

*for any work orders less than \$6000.00

no mobilization fee for work orders over \$6000.00

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Authorize the County Judge to execute Amendment 4 of the Grant Agreement with the Texas Parks and Wildlife Department for Five Mile Dam Park, allowing the existing overhead utility line along the southern side of the old segment of Old Stagecoach Road (now Park Road) to remain.

CHECK ONE: ☒ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**

 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Hauff

SPONSORED BY: Ingalsbe

SUMMARY:

A grant was awarded by the Texas Parks and Wildlife Department (TPWD) and approved by Commissioners Court on March 29, 2005 for improvements to Five Mile Dam Park. Conditions of this agreement called for the removal or burial of existing overhead utility lines within the park boundaries. However, it became apparent during the course of the construction project that removal of the existing overhead electrical line along the old segment of Old Stagecoach Road (now Park Road) would not be feasible, as it serves several customers outside of the park. Furthermore, burial of this electric line would be cost prohibitive as requirements by Pedernales Electric Cooperative, the service provider, call for concrete encasement of such lines when buried within a flood plain, such as is the case for this line. The attached drawing shows the approximate location of this electrical line.

A variance to this grant condition was requested from the TPWD, and the attached Amendment 4 to the project agreement (#48-001061.4) grants the exception to this requirement and allows the existing power line to remain. This amendment provides substantial savings to the County.

TEXAS PARKS AND WILDLIFE DEPARTMENT
TEXAS RECREATION AND PARKS ACCOUNT AGREEMENT
AMENDMENT TO PROJECT AGREEMENT

Project Amendment Number: 48-001061.4

Project Name: Hays County Five-Mile Dam Park

* * *

THIS AMENDMENT to Project Agreement Number 48-001061 is hereby made and agreed upon by the State of Texas, acting through the Texas Parks and Wildlife Department and by the undersigned subdivision pursuant to the Texas Recreation and Parks Account Program.

The political subdivision (sponsor) and the State of Texas, in mutual consideration of the promises made herein and in the fund agreement of which this is an amendment, do promise as follows:

To **DELETE** the following:

Overhead utility lines to be buried or removed

And **ADD**:

The existing overhead electric utility line that parallels the southern boundary of the park shall remain.

In all other respects the fund agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this Amendment as of the date entered below.

TEXAS PARKS AND WILDLIFE DEPARTMENT

by 

Tim Hogsett, Director, Recreation Grants Branch
(Name and Title)

1-21-09
TPWD Approval Date

HAYS COUNTY

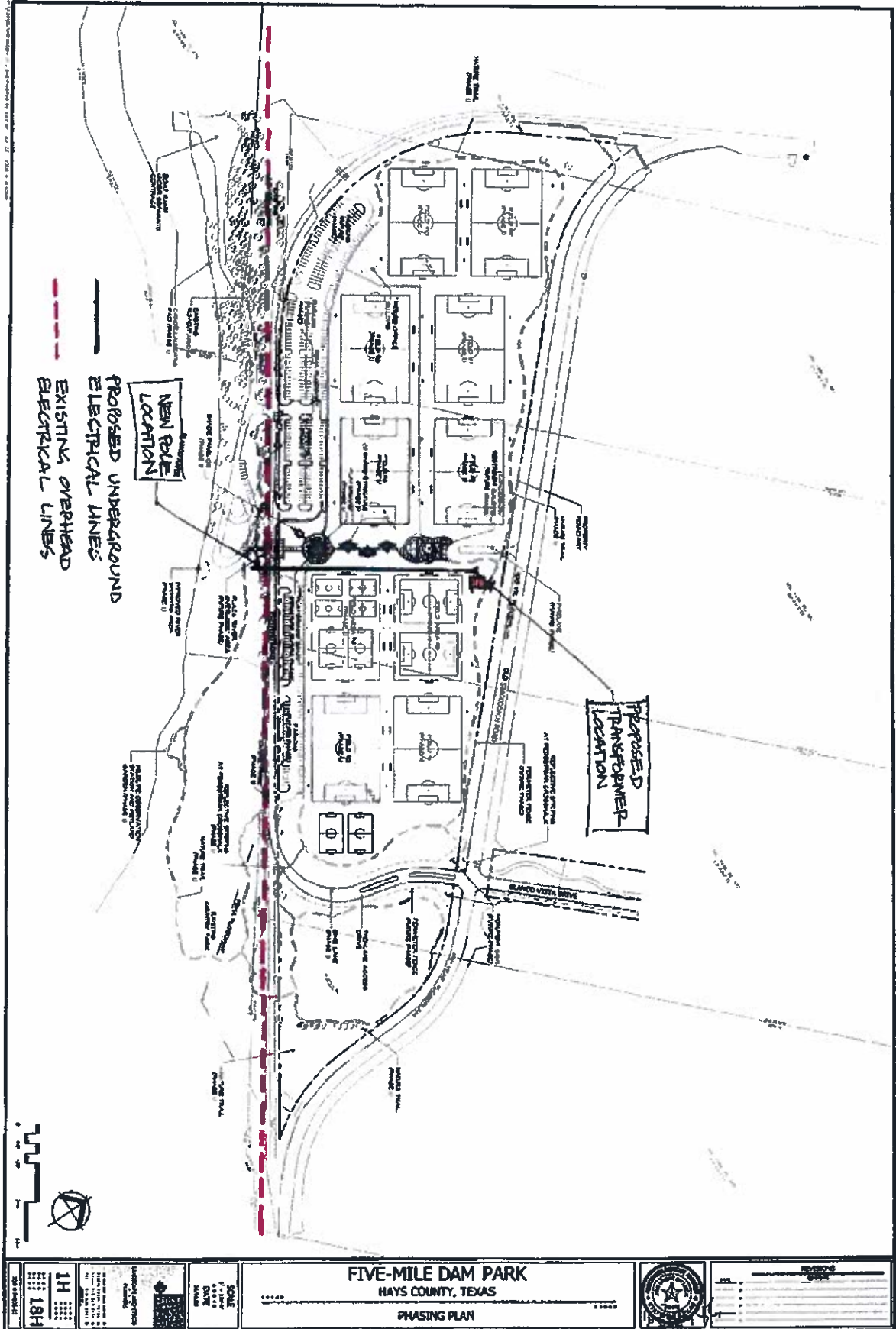
Political Subdivision (Sponsor)

by _____

The Honorable Elizabeth Sumter, County Judge
Name and Title

Date

(Rev. 04/00)



Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Approve the cancellation of Commissioners' Court on March 17, 2009

CHECK ONE: ☒ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Commissioners' Court

SPONSORED BY: Ingalsbe

SUMMARY: It appears there are no scheduled workshops or critical issues requiring immediate action, so the court may want to consider the cancellation of Commissioners' Court for March 17, 2009.

Subdivision/Road/Staff Review Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action for the release of the maintenance bond and accept for maintenance all road and drainage improvements within County ROW for Belterra subdivision, Phase 3, Section 11B.

CIRCLE ONE ACTION ITEM	Subdivision	<u>Road</u>	Staff Recommendation
-------------------------------	--------------------	--------------------	-----------------------------

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Jerry Borcharding

SPONSORED BY: Commissioner Ford

SUMMARY:

The maintenance bond for Belterra subdivision, Phase 3, Section 11B expires March 13, 2009. The Road & Bridge Department has inspected and recommends its acceptance for maintenance.

STAFF REVIEW/COMMENTS

ENVIRONMENTAL HEALTH DIRECTOR:

ROAD DIRECTOR:

STAFF RECOMMENDATIONS:



OFFICE OF THE COUNTY ENGINEER
Jerry Borcharding, P.E.
P. O. Box 906 San Marcos, Texas 78667
(512) 393-7385 Fax (512) 393-7393

March 3, 2009

Honorable Liz Sumter
111 E. San Antonio Street
San Marcos, Texas 78666

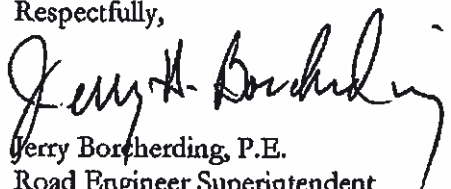
RE: Belterra Phase 3 Section 11B

Dear Commissioners and Judge:

MAK Foster Ranch, L.P., Owner, is requesting that Hays County release the maintenance bond and accept the maintenance of roads in Belterra Phase 3 Section 11B. I have reviewed the file on this subdivision and find that all the requirements have been met per Hays County Subdivision Regulations. William B. Ball, P.E. has submitted a concurrence letter and as-built plans as required by Hays County.

I recommend that the maintenance bond be released and that the roads be accepted into County maintenance.

Respectfully,



Jerry Borcharding, P.E.
Road Engineer Superintendent
Hays County Road & Bridge Department

CMA Engineering, Inc.

Robert P. Callagari, P.E.
Felix J. Manka, P.E.

February 20, 2007

Jerry H. Borcharding, P.E.
County Engineer
Hays County Road Department
2171 Yarrington Road
P.O. Box 906
San Marcos, Texas 78667-0906

RE: Belterra.
Phases 3 Section 11B Construction Completion
CMA No. 1286-001

Dear Mr. Borcharding:

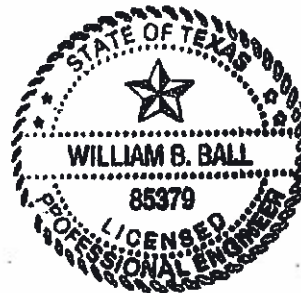
Please be advised that the referenced Project, Belterra Phase 3 Section 11B has been completed. The construction of Section 11B was completed substantially according to the Approved Plans and Specifications. Attached are "As Built" drawings.

Very truly yours,
CMA Engineering, Inc.



William B. Ball, P.E.
Project Manager

cc: Steve Sherrill



14101 West Highway 290, Building 600
Phone: (512) 894-3230

Austin, Texas 78737
Fax (512) 894-3225

N:\1316-Belterra 11B Construction\LTR-County-ConstructionComp1-11B.doc

**RESOURCE PROTECTION, TRANSPORTATION AND PLANNING DEPARTMENT**

P.O. BOX 906
San Marcos, TX 78667
<http://co.hays.tx.us>

512/393-7385 EXT 29
CELL:512/738-2555
FAX: 512/393-7391

INSPECTION REPORT

LOCATION:	Belterra 11B	DATE:	2/9/2009
OWNER:	Mak Foster	WEATHER:	Mostly Cloudy
CONTRACTOR:	Job Site	TIME:	2:00p
INSPECTOR:	Todd Spencer		

SITE OBSERVATIONS:**PUNCHLIST FOR ACCEPTANCE OF CONSTRUCTION**

1. Seal Cracks in roadway
2. Clean roadway
4. Signage
5. All trash and debris to be removed from right-of-way
7. Seal cracks in curb line
8. Repair possible utility failures in roadway
9. Kill & remove vegetation growing between curb and pavement

A handwritten signature in black ink, appearing to read "Todd Spencer", is written over a horizontal line.

Todd Spencer, Construction Inspector

2/9/2009
Date

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM:

08-4-64 Ryan Hill, Replat of Lots 1&2 Block 'A', and Lots 5, & 7 Block 'B'. ; Consider waiver of preliminary plan and public hearing; consider variance from Hays County minimum lot size rules. Accept final plat.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Ford

SUMMARY:

Ryan Hill is a recorded subdivision located off Harmon Hills Road in Precinct 4. Ryan Hill subdivision was platted in 1984 at that time all lots met the minimum lot size requirements. At this time the lots are sized as follows lot 1 (.46), lot 2 (.46), lot 5 (.46), lot 7 (.48). This proposed replat will combine lots 1&2 and create a .92 acre lot, as well as combine lots 5&7 to create a .94 acre lot. A variance from Hays County OSSF regulations section 10.1(a) minimum lot size requirement. The current minimum lot size for lots over the Edwards Aquifer Contributing Zone is 1 acre when water is provided by rainwater collection. Each lot is to be served by rainwater collection only and is prohibited from drilling individual wells. In order to provide equal protection under the OSSF rules, the developer has agreed to meter the wastewater and limit the flow to 240 gallons per day through the OSSF. As an additional restriction the OSSF disposal area is limited to subsurface disposal only. Due to the dense configuration of these lots, this will eliminate the possibility for overspray there by limiting public health risks. This is a combination of lots reducing overall density of the original platted subdivision therefore, neither public notification nor preliminary plan are required (Interim Regulations 11.3(C)).

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion with possible action to authorize the County Judge to enter into Joint Election Agreements between the Political Subdivisions holding special and general elections on May 9, 2009, with Hays County.

TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-WORKSHOP

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Joyce A. Cowan

SPONSORED BY: Sumter

SUMMARY: Political Subdivision holding elections on May 9, 2009 are City of Wimberley, Wimberley ISD, City of Woodcreek and Hays Trinity Groundwater District.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to promote and fund Health Check 2009 for Hays County employees, employee dependents, that are on the County's health insurance plan and authorize payroll deduction of additional fees for optional services employees may elect.

CHECK ONE: **CONSENT** **X ACTION** ☐ **EXECUTIVE SESSION**

 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: Tuesday, February 10, 2009

AMOUNT REQUIRED: \$7,500.00

LINE ITEM NUMBER OF FUNDS REQUIRED: 31-483-5344

REQUESTED BY: Baen

SPONSORED BY: Sumter

SUMMARY: Health Check is a community wide celebration offering health screenings including blood analysis for diabetes, cardiac risk profile (Cholesterol, Triglycerides, HDL, Cholesterol, LDL) and a complete Blood cell count (red, white, hemoglobin, hematocrit and platelets). These tests are valued at \$400, but are offered for only \$30 per person through Health Check.

Additionally, CTMC is offering Hays County employees the option of pre-registering which allows for blood draws at our worksite. Tentative dates/sites for the 2009 draw are:

Wed 3/18: Justice Center

Thurs 3/19 : Road and Bridge (Yarrington)

Thursday 4/2: Sheriff's office

In 2007 and 2008, Hays County paid 100% of the participant's fee. Participation was as follows:

2007: 155 employees participated, \$3875

2008: 184 employees participated, \$5520

The requested amount of \$6,630 (221 employees x \$30) is estimated using 20% increase in participation over 2008.

In addition to the basic blood screenings, employees can choose to have a prostate specific antigen (PSA) test, a thyroid specific hormone (TSH) test and/or a carotid artery test. Each additional test is \$15 each. Similar to last year and in order to minimize cash handling, reconciling and balancing, we are requesting the voluntary fees associated with optional tests to be payroll deducted. This has been coordinated with the Treasurer's office for payroll purposes and Treasurer Tuttle is supportive of this automation.

The actual day-long health fair portion of Health Check will be held on Thursday April 23 from 7pm to 6pm at Central Texas Medical Center. This is in the middle of County Government Week which will be celebrated during the week of April 20-24.

Additionally, discuss possibility of Health Check added as a line item during the budget process.

Agenda Item Routing Form

DESCRIPTION OF Item: Promote and fund Health Check 2009 for Hays County employees. Authorize payroll deduction of additional fees for optional services employees may elect.

PREFERRED MEETING DATE REQUESTED: March 10, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER \$7,500 31-483-5344

COUNTY PURCHASING GUIDELINES FOLLOWED: ___N/A___

PAYMENT TERMS ACCEPTABLE: ___N/A___

COMMENTS: should include any employee dependents, over 18 yrs, that are on the County's health insurance.

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COMMISSIONERS' COURT

APPROVED/DISAPPROVED AND DATE: _____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and Possible Action to place Chapter 174 of the Texas Local Government Code in effect in Hays County, pursuant to a majority of votes cast in favor of adoption of that chapter in the November 2008 General Election; and to recognize Combined Law Enforcement Associations of Texas (CLEAT) as the association selected by a majority of the police officers at the Hays County Sheriff's Office to act as the Bargaining Agent for those officers under Chapter 174 of the Texas Local Government Code.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: n/a

LINE ITEM NUMBER OF FUNDS REQUIRED: n/a

REQUESTED BY: CONLEY

SPONSORED BY: CONLEY

SUMMARY: In November of 2008, a majority of voters in Hays County elected to adopt the terms and conditions of Chapter 174. The 2 actions contemplated by this item are matters preliminary to the County's collective bargaining interactions with the Hays County Sheriff's Office. Copies of the petitions in favor of CLEAT as the Bargaining Agent may be found in back up to this item.

Jennifer Anderson

From: Will Conley [will.conley@co.hays.tx.us]
Sent: Monday, March 02, 2009 10:40 AM
To: Jennifer Anderson
Subject: FW: Hays County Law Enforcement Association Recognition Petition

Remind me about this issue

From: Sam Stock [mailto:sstock2182@yahoo.com]
Sent: Sunday, March 01, 2009 2:02 AM
To: Will Conley
Subject: Hays County Law Enforcement Association Recognition Petition

Commissioner Conley,

After much discussion between members of The Hays County Law Enforcement Association and constituents of CLEAT it was unanimously agreed upon that we ask for your sponsorship of the associations "petition of recognition." In mid 2008 members of HCLEA voted to circulate a petition to citizens of Hays County for the associations interest of having collective bargaining rights placed on November 2008 ballot.

As an association we worked tirelessly to meet our goal. In August of 2008 our association was able to collect more than 1,700 signatures on our petition, which allowed our associations petition to be placed on the November 2008 ballot as Proposition 1. In November 2008 the citizens of Hays County voted unanimously in favor of Proposition 1.

In accordance with Chapter 174 in the Texas Local Government Code our association circulated a petition among employees of the Hays County Sheriff's Office. The purpose of this petition is so that employees of HCSO recognize HCLEA as the sole bargaining agent for our agency. Here is the verbiage of Chapter 174 and said petition:

Pursuant to Chapter 174, Subchapter C, Section 174.051 of the TEXAS LOCAL GOVERNMENT CODE, the proposition shall read as follows:

FOR or AGAINST the following: "Adoption of the state law applicable to police officers that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts."

The petition for recognition was circulated among employees of the Hays County Sheriff's Office and once again we have received an overwhelming affirmation. The petition was submitted to ADA Mark Kennedy and we are looking to have it placed as an Agenda on the March 10th Commissioners Court. At this point there are no other associations protesting or in contention with HCLEA's request to be recognized as the sole bargaining agent in our agency.

I hope that you will consider supporting our association by sponsoring our petition for recognition. Please feel free to contact me via email or cell if you have any questions or concerns. My email is sstock2182@yahoo.com and my cell is 512-738-0724.

Respectfully,

Sam O. Stock
Hays County Law Enforcement Association Vice President



COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS

A GREATER FORCE OF LAW ENFORCEMENT PROFESSIONALS

PLEASE RESPOND TO
THE OFFICE CHECKED

☒ **Administration Office**

400 W. 14th St., Suite 200
Austin, TX 78701
512/495-9111
512/495-9301 FAX
800/252-8153 WATS

☐ **North Texas Office**

904 Collier
Fort Worth, TX 76102
817/882-9548
817/882-9586 FAX
800/825-3281 WATS

☐ **South Texas Office**

1939 N.E. Loop 410, Suite 210
San Antonio, TX 78217
210/826-1899
210/826-2299 FAX
800/752-5328 WATS

☐ **East Texas Office**

14405 Walters Rd., Suite 300
Houston, TX 77014
281/880-5252
281/880-9998 FAX
800/422-5328 WATS

☐ **West Texas Office**

747 E. San Antonio, Suite 103
El Paso, TX 79901
915/533-4924
915/533-5117 FAX
800/328-9940 WATS

☐ **Coastal Bend Office**

3122 Leopard St.
Corpus Christi, TX 78408
361/883-3224
361/884-8357 FAX

☐ **Northeast Texas Office**

2427 Baker Dr., Suite D
Mesquite, TX 75150
972/686-5220
972/686-3350 FAX

☐ **Golden Triangle Office**

595 Orleans St., Suite 412
Beaumont, TX 77701
409/212-9000
409/212-9007 FAX
866/992-5328 WATS

☐ **Arlington Office**

1801 West Park Row
Arlington, TX 76013
817/792-3534

February 27, 2009

Mr. Mark Kennedy
111 E. San Antonio St.
Suite 204
San Marcos, Texas 78666

RE: Hays County Law Enforcement Association
Petition for Recognition as Bargaining Agent

Dear Mr. Kennedy:

Pursuant to Texas Local Government Code Section 174.102, this letter is to officially inform the County Commissioners of Hays County, Texas that a majority of the police officers of the Hays County Sheriff's Department have selected the Hays County Law Enforcement Association as the exclusive bargaining agent for the police officers of that Department. Enclosed are the Petitions for Recognition signed by a majority of the officers.

Accordingly, the Hays County Law Enforcement Association requests that Hays County, Texas recognize the Association as the exclusive bargaining agent for the police officers of the Hays County Sheriff's Department.

If you have any questions concerning this matter, please feel free to contact me.

Sincerely,

Tom A. Stribling
CLEAT Staff Attorney for the
Hays County Law Enforcement Association

Name	SO Number	Name	SO Number
Pedro Hernandez	1759	Brad Doring	3768
Steven Lucio	4675	Dustin Speckels	5229
Herman Adair	2599	Woodie Hall	2586
Steve Avalos	3811	Sterling Bernhard	4983
Chris Normand	4402	Manny Mendoza	4683
Daniel Duggins	3014	Alex Fernandez	4963
Tate Puryear	2202	Casey Lopaskey	4228
Marty Espinoza	1723	Jake Graves	4788
Clint Pulpin	4924	Eric Batch	4664
David Burns	2410	Jennifer Baker	3450
Johnny Greuinbein	1202	Shane Smith	4535
Ronny Torres	4720	Roger Ramirez	3468
Steven Clark	4843	Richard Lozano	4982
Sam Stock	2597	Erika Simmons	3249
Tiffany Walker	5158	Brent Bartch	4609
Michael Hipolito	4540	Patrick Cheatham	3936
Derek Key	3301	Lisa McDougall	4643
Brandon Hale	5221	Joe Faulkner	2633
Jeffrey P Jordan	2774	Andrew Wray	1702
Manuel R Moreno	4761	Juan Villarral	2326
Mark Opiela	2902	Michael Briggs	3375
Robert Wilson	3353	Chris Bartch	2655
Jason R Smith	3342	Ryan Gonzalez	3294
Michael Andrews	5308	Scott Webber	1334
Alvin E Pittman	1131	John Dees	1069
Anne McCoy	4974	Tim Shaffer	2421
Amber Oliphant	4697	Kevin Johnson	1710
Chad Edwards	2665	Julie Villalpando	1588
Stephen Cantwell	4424	Julie Schreider	2251
Bobby Trelles	1153	Juan Saenz	2505
Samuel Ortiz	2275	Patricia Edwards	4332
Pete Chaney	3250	Sirena Cumberland	1445
Michael Para	3782	Mark Cumberland	2507
Maria Haney	1089	Lenny Martinez	2020
Barbara Key	2025	Eugene Carranza	2391
Ricardo Villanueva	3652	Michael Kloish	4583
Curtis Jackson	3930	Cody Mikukreal	5256
James Henry	2854	Jason McCoy	4861
Petricia Wright	4387	Timothy Schneider	1662
Lewis Garcia	2401	Bradley Smith	4339
Enrique Alvarez	2440	Kelly Ferguson	1074
Matthew Egloff	4953	Joshua Alba	4537
Margaret Sanchez	5065	Rosa Guerrero	1138
Ryan Tripleit	3427	Lombardo, Danny	2960
Jacob wardlow	4917	Vicki Morpew	2797

Nicole Bowling	3710 Gerald Simpson	3600
George Dicke	1070 Dale Cocita	2743
Darrell Maze	4916 Paul Banvelos	4489
Jacque Eby	4977 Robert Johnson	4055
George Rosales	4189 Mel Han	4878
Vincent Bujnoch	3481 Ernest Sierra	3480
Samuel Montemayor	4401 Bobby Ramirez	3761
Paul Eichholtz	4951 Jonathon Ayres	5217
John Ruiz	3368 Ron Eby	2702
Melody Jaramio	4910 Lisa Purdy	4690
Alfredo	5145 Larry Sims	5182
Heather Molandes	4862 Louis K Jones	4725
Roy Brosig	5216 Olan Kelley	5228
Carla Martinez	5230 Ronnie Verette	2935
Kelly Wooderd	2768 Teddy Grabarkeritz	1073
Maria Jackson	4077 Richard Schuch	3663
Jesus Canales	2929 Eliseo Galarza	4877
Reuben Laying	3713 Juanaita Jernigan	1103
Don Watson	1330 Suzanne Metz	2218
Cameron Kutscher	2910 Larry Miller	4370
Erica Hernandez	3028 Ralph Williams	1660
Alfred Morales	2947 Edward Farrel	4786
Sergeo Ortiz	4425 Kimberly Martin	4605
David Dunnaway	4606 Jesse Hernandez	2777

Total: 138 Officers

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to approve amended Resolution authorizing the designation of 10.2 acres of the property at Five Mile Dam Park complex as "open space" and to authorize the County Judge to execute the related Amendment Three to the grant agreement with the Texas Parks and Wildlife Department.

CHECK ONE: ☐ **CONSENT** ☒ **ACTION** ☐ **EXECUTIVE SESSION**

 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Hauff

SPONSORED BY: Ingalsbe

SUMMARY:

A grant was awarded by the Texas Parks and Wildlife Department and approved by Commissioners Court on March 29, 2005 for improvements to Five Mile Dam Park. As part of the grant agreement, it was necessary to designate 3.5 acres of the park area as dedicated "open space", and this was authorized by resolution of the Court on April 25, 2006.

Prior to construction at the Park, it was determined that acquiring fill material from the park area - rather than importing this material from off-site - would result in substantial savings during construction. However, such activity would necessitate impacting the previously dedicated open space. Discussions with the Texas Parks and Wildlife Department resulted in allowing use of the previously dedicated open space area for fill material, under condition that the area be restored to include native plant species and expansion from 3.5 to 5 acres of open space. Further, an additional 5.2 acres would be required to be dedicated to perpetual open space use in Randall Vetter Park, adjacent to the Blanco River, bring the total open space dedication to 10.2 acres (see attachments).

The effect of the open space dedication is to allow these areas to remain in a natural or native state, without intensive development or disturbance, in perpetuity. Passive recreational activities are allowed, including nature trails, nature interpretive signs, and wildlife viewing activities. These uses are compatible with and complimentary to the overall development of the Five Mile Dam Park complex .

TEXAS PARKS AND WILDLIFE DEPARTMENT
TEXAS RECREATION AND PARKS ACCOUNT AGREEMENT
AMENDMENT TO PROJECT AGREEMENT

Project Amendment Number: 48-001061.3

Project Name: Hays County Five Mile Dam Park

* * *

THIS AMENDMENT to Project Agreement Number 48-001061 is hereby made and agreed upon by the State of Texas, acting through the Texas Parks and Wildlife Department and by the undersigned subdivision pursuant to the Texas Recreation and Parks Account Program.

The political subdivision (sponsor) and the State of Texas, in mutual consideration of the promises made herein and in the fund agreement of which this is an amendment, do promise as follows:

To EXPAND the dedicated open space area to from 3.5 acres to 10.2 acres

In all other respects the fund agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this Amendment as of the date entered below.

TEXAS PARKS AND WILDLIFE DEPARTMENT

by 

Tim Hogsett, Director, Recreation Grants Branch
(Name and Title)

7-24-08

TPWD Approval Date

HAYS COUNTY

Political Subdivision (Sponsor)

by _____

The Honorable Elizabeth Sumter, County Judge
Name and Title

Date

(Rev. 04/00)

RESOLUTION NO. _____

A RESOLUTION OF THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, DEDICATING TEN AND TWO TENTHS (10.2) ACRES OF PARKLAND IN TWO PARCELS NEAR THE EASTERN END OF FIVE MILE DAM PARK AS DESCRIBED IN EXHIBIT (A) ATTACHED AS OPEN SPACE FOR PERPETUITY, AS REQUIRED BY THE TEXAS PARKS AND WILDLIFE DEPARTMENT; APPROVING THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING ITS EXECUTION BY THE COUNTY JUDGE; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Hays County Commissioners Court desires to provide quality park facilities for the residents of Hays County; and

WHEREAS, the Hays County Commissioners Court has obtained a grant from the Texas Parks and Wildlife Department for the development of a community park and desires to comply with all of the requirements set forth in the grant.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS THAT;

SECTION 1. In order to fulfill the requirements of the Texas Parks and Wildlife Department's grant to Hays County, the Commissioners Court of Hays County, Texas hereby designates 10.2 acres of parkland in the Five Mile Dam Park for Open Space.

SECTION 2. The County Judge of Hays County is hereby authorized to execute the appropriate documents approving the terms and conditions of the agreement with the Texas Parks and Wildlife Department.

SECTION 3. Any prior Resolution of the Hays County Commissioners Court in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 4. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 5. This Resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED AND ADOPTED by the Commissioners Court of Hays County, Texas, on this the 10th day of March, 2009.

APPROVED:

The Honorable Elizabeth 'Liz' Sumter
Hays County Judge

ATTEST:

I, Linda Fritsche, County Clerk for the Commissioners' Court of Hays County, Texas, do hereby certify the foregoing contains a true and correct copy of a resolution passed and adopted by the Commissioners' Court of Hays County, Texas, in a Regular Meeting held on March 10, 2009.

Linda Fritsche, Hays County Clerk

Open
Space
Dedication



Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to authorize the County Judge to execute a Interlocal License Agreement between Hays County and the City of Dripping Springs for landscape/rain garden within the city ROW at the new Pct. 4 building.

TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-WORKSHOP

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Ford

SPONSORED BY: Ford

SUMMARY: See Interlocal License Agreement attached.

STATE OF TEXAS

§

COUNTY OF HAYS

§

CITY OF DRIPPING SPRINGS

§

§

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INTERLOCAL LICENSE AGREEMENT

This Interlocal License Agreement (the "Agreement") is entered into by the City of Dripping Springs, Texas ("City"), and Hays County, a political subdivision of the State of Texas ("County").

RECITALS

WHEREAS, City, as an incorporated municipality, is the custodian of that certain utility, vehicular and pedestrian Right-of-Way located at or about Roger Hanks Parkway and within the incorporated municipal boundary (i.e., "city limits"), in Hays County, Texas; and

WHEREAS, County wishes to utilize a portion of City's Right-of-Way located at 195 Roger Hanks Parkway, Dripping Springs, Texas, 78620 (the "Land") further described in **Exhibit A** for the installation of a rain garden and incorporated landscaping; and

WHEREAS, because of the layout of impervious cover on the Land, County's most practical option for the location of a rain garden and incorporated landscaping (the "Rain Garden") is in the Right-of-Way; and

WHEREAS, County has requested that the City allow the construction of the Rain Garden on the Land and the surface of Right-of-Way; and

WHEREAS, City has determined that allowing County to install the requested area of Rain Garden on the surface of the Right-of-Way under the terms of this Agreement is reasonable under the circumstances, does not pose a threat to public health, safety or welfare, and does not infringe upon the City's or others' use of the Right-of-Way for public purposes.

NOW, THEREFORE, it is agreed as follows:

AGREEMENT

1. LICENSE

- A. City hereby grants to County the right to use the Right-of-Way for the installation of the Rain Garden, subject to the following requirements:

- i. the Rain Garden shall provide frontage to buildings owned or operated by County, shall be installed on the surface of the Right-of-Way, and shall be used solely to control storm water runoff from the Land.
- ii. the Rain Garden shall use only as much of the Right-of-Way as is reasonably necessary to control storm water runoff from the Land, as shown on **Exhibit A**;
- iii. County shall be entirely responsible for the design, planning, construction and installation of all portions of the Rain Garden, and County shall be responsible for operation and maintenance of the entire Rain Garden;
- iv. before commencing installation of the Rain Garden, County must submit to the City in writing, and obtain the City staff's approval of, the design and the specific location of the Rain Garden and must then coordinate with the City Engineer regarding the timing and method of installation, and the City's final inspection;
- v. County must pay all City building permit, inspection and other applicable fees and, if required by the City, also must pay the cost of any traffic control, barriers and other reasonable safety measures needed for County's construction activities under this Agreement;
- vi. at all times, County shall maintain the Rain Garden in good working order, in compliance with all laws; and

B. This License shall run with the land and is binding on successors and assigns.

2. INDEMNITY

County shall hold harmless, defend, and indemnify Licensor against any suits, liabilities, claims, demands, or damages, including but not limited to personal injuries and attorneys' fees (collectively, the "Liabilities"), arising from County's exercise of the license under this Agreement. Nothing in this Section shall be construed as a waiver of County's right to assert Sovereign Immunity as a defense to any claim.

3. LIMITATIONS OF AGREEMENT

This Agreement is limited to the purposes expressly set forth above.

4. TERM, TERMINATION AND ENFORCEMENT

- A. The City, in its sole discretion, may terminate this Agreement if County violates this Agreement and fails to cure the violation after reasonable notice and opportunity to cure, or if County abandons its use of the license granted under this Agreement.

- B. Unless terminated sooner under §4.A. above, this Agreement terminates 60 days after earlier of:
- i. The date that the Rain Garden is removed from the Right-of-Way; or
 - ii. The date that the City Council determines, in its sole discretion, that County's rights under this Agreement conflict with the use of the Right-of-Way by the City or other authorized public entities for their respective authorized public purposes.
- C. Upon termination of this Agreement, County must cease using the Rain Garden. Within a reasonable time after the Agreement terminates, the City may require County to physically remove the Rain Garden from the Right-of-Way.
- D. The City may enforce this Agreement through the equitable remedy of specific performance, in addition to any other legal or equitable remedies available to the City.

5. INTERLOCAL AGREEMENT

The Parties agree that:

- A. this Agreement provides a governmental function that each Party is authorized to perform individually;
- B. this Agreement is duly authorized by the governing body of each of the Parties; and
- C. this Agreement does not contemplate payment for governmental functions that would require the identification of current funds under Chapter 791 of the Texas Government Code.

Effective as of March 10, 2009, having been duly approved by majority vote of the Dripping Springs City Council.

LICENSOR:

by: _____
Mayor Todd Purcell
City of Dripping Springs

Hays County:

by: _____
Elizabeth "Liz" Sumter
Hays County Judge

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

This Interlocal License Agreement was acknowledged before me on this, the ____ day of _____, 2009, by **Todd Purcell**.

Notary Public, State of Texas

My Commission expires: _____

STATE OF TEXAS

§

COUNTY OF HAYS

§

§

This Interlocal License Agreement was acknowledged before me on this, the ____ day of _____, 2009, by **Elizabeth Sumter**.

Notary Public, State of Texas

My Commission expires: _____

Exhibit “A”

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to authorize the Road & Bridge Division to provide services for the construction of pedestrian trails at Five Mile Dam Park.

CHECK ONE: ☒ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**

 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: not to exceed \$2000 in materials cost – covered by RTP

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Hauff/Borcherding/Pinnix

SPONSORED BY: Ingalsbe

SUMMARY:

The Road and Bridge Division has been requested to assist in the construction of pedestrian trails at Five Mile Dam Park by the Parks and Grants departments. This will involve constructing both a loop trail approximately 1.5 miles long by 6 feet wide surrounding the soccer field complex, and a nature trail extending into both the open space area at the east end of the soccer complex and the older Randall Vetter Park. The loop trail will be covered with 2" of road base material and compacted to form a stable trail surface, suitable for walking, jogging, and bicycle use. The nature trail will be approximately 4 feet wide total about a mile in length, and be surfaced with wood mulch obtained from the chipping of downed and invasive tree species located on-site. The overall project will involve the use of County staff time, equipment, and materials.

The use of County forces can be used as an in-kind match to the grant from the Texas Parks and Wildlife Department, with 50% of the staff salaries, equipment hours, and materials cost – with appropriate documentation – reimbursable under the grant. Further, the trails are an element of the grant agreement with TPWD that must be completed and are not currently covered under any contract for park construction. The use of County forces is considered to be a cost-saving measure undertaken to achieve park completion.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and Possible Action to extend the Local Disaster Declaration executed by the County Judge on or about the 2nd day of March, 2009.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: SUMTER

SPONSORED BY: SUMTER

SUMMARY: Section 418.108 of the Texas Government Code authorizes the County Judge to declare a local state of disaster for a maximum period of seven (7) days, before the expiration of which the Commissioners Court may, upon determining a need, affirmatively consent to extend that seven (7) day period long enough to accommodate the disaster need. On or about the 2nd day of March, 2009, the County Judge declared a local state of disaster for the purpose of *a)* securing a finding from the Governor of the State of Texas that Hays County is a "primary disaster-affected county" due to current drought conditions, and *b)* seeking a request from the Governor, under 7 CFR 1945-A that drought relief be granted by the United States Department of Agriculture.

OFFICE OF THE HAYS COUNTY JUDGE



ELIZABETH 'LIZ' SUMTER

111 E. San Antonio St., Suite 300 • San Marcos, Texas 78666
Phone: 512/393-2205 • Fax: 512/393-2282 • E-mail: lizsumter@co.hays.tx.us

LOCAL DISASTER DECLARATION

WHEREAS, Hays County, between January 1, 2008 and March 1, 2009, has experienced less than half of average rainfall it historically receives during those months; and

WHEREAS, the drought and other weather-related conditions pose a significant threat to the county's agricultural crops; and

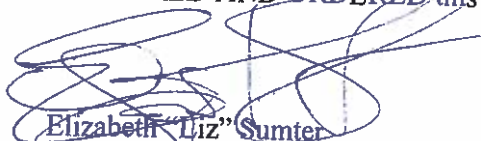
WHEREAS, such drought conditions are not forecast to improve in the foreseeable future; and

WHEREAS, the Hays County Judge has determined that extraordinary measures must be taken to alleviate the suffering of people and livestock, to protect or rehabilitate property, and to restore or maintain the economic framework of our agricultural community.

NOW THEREFORE BE IT PROCLAIMED:

- 1) That a local state of disaster is hereby declared for Hays County, Texas, pursuant to §418.108(a) of the Texas Government Code; and
- 2) That, pursuant to §418.108(b) of the Texas Government Code, this local state of disaster shall continue for a period of not more than seven (7) days from the date cited below, unless this local state of disaster is continued by Resolution of the Hays County Commissioners Court; and
- 3) That, pursuant to §418.108(c) of the Texas Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the Hays County Clerk; and
- 4) That, pursuant to §418.108(d) of the Texas Government Code, this declaration of a local state of disaster activates the Hays County Emergency Management Plan;
- 5) That this Proclamation is being declared for the purpose of a) securing a finding from the Governor of the State of Texas that Hays County is a "primary disaster-affected county" due to current drought conditions, and b) seeking a request from the Governor, under 7 CFR 1945-A that drought relief be granted by the United States Department of Agriculture; and
- 6) That this Declaration shall take effect immediately upon its execution by the Hays County Judge, as is evidenced by her duly authorized signature, below.

DECLARED AND ORDERED this the 2nd day of March, 2009.


Elizabeth "Liz" Sumter
Hays County Judge



RESOLUTION

STATE OF TEXAS §
COUNTY OF HAYS §

WHEREAS, Hays County, between January 2008 and March 2009, has experienced less than half of average rainfall it historically receives during those months; and

WHEREAS, the drought and other weather-related conditions pose a significant threat to the county's agricultural crops; and

WHEREAS, the County Judge, considering a Proclamation Declaring Hays County a Local Disaster Area necessary to promote the preservation of life and property, and to mitigate the imminent threat of disaster, executed such a Resolution on or about March 2, 2009; and

WHEREAS, §418.108 of the Texas Government Code provides that the County Judge's Proclamation may not remain in effect in excess of seven (7) days unless consent to continue it or renew it is provided by vote of the Hays County Commissioners Court; and

WHEREAS, the County Judge's Proclamation was, and this Resolution is, declared for the purpose of a) securing a finding from the Governor of the State of Texas that Hays County is a "primary disaster-affected county" due to these drought conditions, and b) seeking a request from the Governor, under 7 CFR 1945-A, that drought relief be granted by the United States Department of Agriculture

NOW, THEREFORE, BE IT RESOLVED that this Resolution continuing the County Judge's Declaration of Local Disaster executed on or about March 2, 2009 is hereby declared and scheduled to last until it is rescinded by action of the Commissioners Court.

RESOLVED, ORDERED, AND DECLARED this the 10th day of March, 2009.

ELIZABETH SUMTER
HAYS COUNTY JUDGE

ATTEST:

LINDA C. FRITSCHÉ
COUNTY CLERK

RESCISION OF DISASTER DECLARATION

STATE OF TEXAS *

COUNTY OF HAYS *

WHEREAS, on or about the 10th of March, 2009, a Declaration of Local Disaster based on long-term drought conditions was continued by this Court; and

WHEREAS, Hays County has now had an appreciable rainfall and conditions are improving;

NOW, THEREFORE, BE IT RESOLVED that the Declaration of Local Disaster continued by the Hays County Commissioners Court on or about March 10, 2008 is hereby **RESCINDED**.

EXECUTED this the _____ day of _____, 2009.

TO CERTIFY WHICH WITNESS OUR AUTHORIZED SIGNATURES BELOW:

ELIZABETH SUMTER
HAYS COUNTY JUDGE

ATTEST:

LINDA C. FRITSCHÉ
HAYS COUNTY CLERK

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to adopt a policy or provide guidance to define the current OSSF rules regarding surface water vs ground water determination of a public/private provider and provide guidance on letters required from public/private water/wastewater providers to determine water and/or wastewater availability for subdivisions.

CHECK ONE: ☐ CONSENT ☒ ACTION ☐ EXECUTIVE SESSION
 ☐ WORKSHOP ☐ PROCLAMATION ☐ PRESENTATION

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: Clint Garza will lead the discussion of both items.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and Possible action to authorize the County Judge to execute contracts with LAN for Engineering and ROW Services on Dacy Lane.

CHECK ONE:

☐

CONSENT

☒

ACTION

☐

EXECUTIVE SESSION

☐

WORKSHOP

☐

PROCLAMATION

☐

PRESENTATION

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: \$256,500.00 and \$891,580.00

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Ingalsbe

SPONSORED BY: Ingalsbe

SUMMARY: The contracts have been negotiated and we are ready to proceed forward with the Dacy Lane roadwork in accordance to the interlocal agreement with Seton/SCC and the City of Kyle

Agenda Item Routing Form

DESCRIPTION OF Item: Discussion and Possible action to authorize the County Judge to execute contracts with LAN for Engineering and ROW Services on Dacy Lane.
The contracts have been negotiated and we are ready to proceed forward with the Dacy Lane roadwork in accordance to the interlocal agreement with Seton/SCC and the City of Kyle

PREFERRED MEETING DATE REQUESTED: March 10, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER__Unbudgeted_____

COUNTY PURCHASING GUIDELINES FOLLOWED:_____Yes_____

PAYMENT TERMS ACCEPTABLE:_____Yes_____

COMMENTS: This road project has not been budgeted or funded. I believe the intent was to issues certificates of obligation.

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE:_____

COMMENTS:

COMMISSIONERS' COURT

APPROVED/DISAPPROVED AND DATE:_____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED:_____

MASTER AGREEMENT BETWEEN CLIENT AND CONSULTANT FOR PROFESSIONAL SERVICES

THIS IS A MASTER AGREEMENT made as of February 17, 2009, between Hays County, Texas (CLIENT) and Lockwood, Andrews & Newnam, Inc. (CONSULTANT).

A. CLIENT intends to enter into multiple agreements with CONSULTANT to perform Right-of-Way services in connection with the Projects described therein.

B. The professional services, which CLIENT will employ CONSULTANT to perform under this, will be generally described in each Work Authorization when assigned to CONSULTANT.

CLIENT and CONSULTANT agree as set forth below.

CONSULTANT shall perform services in accordance with the terms and conditions of this Agreement as CLIENT's independent consultant for the Project shall be responsible for the means and methods used in performing services under this Agreement and are not a joint venture with CLIENT. CLIENT shall be the general administrator and coordinator of CONSULTANT's services for the Project, and shall facilitate the exchange of information among the independent professional associates and consultants employed by CLIENT for the Project as necessary for the coordination of their services.

CLIENT and CONSULTANT further agree as set forth below.

SECTION 1—BASIC SERVICES OF CONSULTANT

When assigned a specific Work Authorization by CLIENT, CONSULTANT shall provide for CLIENT the basic consulting ROW services described in detail in Section 1 of the Work Authorization within the time periods stipulated therein. CLIENT will pay for basic Services as indicated therein. The CONSULTANT shall at CONSULTANT's own expense obtain all data and information (other than that referred to in paragraphs 3.1, 3.2 and 3.5) necessary for the performance of CONSULTANT's services. CONSULTANT is responsible to see that the documents prepared by CONSULTANT and the services CONSULTANT renders hereunder conform to the applicable laws, rules, regulations, ordinances, codes, orders and special requirements of the place where the Project is located. All of CONSULTANT's communications to or with OWNER or CLIENT's other independent professional associates and consultants will be through or with the knowledge of CLIENT.

SECTION 2—ADDITIONAL SERVICES OF CONSULTANT

Only if and when issued an Additional Services Work Authorization by CLIENT shall CONSULTANT provide any services outside the basic scope of services authorized in the original Work Authorization. Such additional services shall be provided within the time periods stipulated in such authorization. CLIENT will pay for additional Services as indicated therein.

SECTION 3—CLIENT'S RESPONSIBILITIES

Under each individual Work Authorization, if applicable, CLIENT shall do the following in a timely manner so as not to delay the services of CONSULTANT:

- 3.1. Provide criteria and information pertinent to CONSULTANT's services hereunder as to CLIENT's requirements for each Project, including any ROW objectives and constraints, performance requirements, and any budgetary limitations.

3.2. As requested by CONSULTANT, make available Drawings, schedules and other pertinent information, interpretations and data which were prepared by CLIENT, or by others and which are reasonably available to CLIENT.

3.3. Request OWNER to arrange for access to public and private property as required for CONSULTANT to perform services under this Agreement.

3.4. Give prompt written notice to CONSULTANT whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or nonconformance in the work of Contractor affecting the Project.

3.5. Advise CONSULTANT of the identity of other independent professional associates or consultants participating in ROW Acquisition, design or construction administration of the Project and the scope of their services.

3.6. The information and services to be provided by CLIENT under this Section 3 will be without cost to CONSULTANT.

SECTION 4—PERIOD OF SERVICE

CONSULTANT recognizes that the services of CLIENT and others involved in the Project are dependent upon the timely performance of CONSULTANT's services. Unless otherwise provided in any Work Authorization or Additional Services Work Authorization, CONSULTANT shall perform such services in the same character, timing and sequence, as CLIENT is required to perform services under an applicable Prime Agreement. Specific periods of time for rendering services or specific dates by which services are to be completed are set forth in each Work Authorization. If such periods of time or dates are exceeded through no fault of CONSULTANT, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.

SECTION 5—PAYMENTS TO CONSULTANT

5.1. Method of Payment. CLIENT shall pay CONSULTANT for Basic Services rendered under Section I as described in each Work Authorization and shall pay CONSULTANT for Additional Services rendered under any Additional Services Work Authorization as described therein.

5.2. Future Adjustment. If the general scope, extent or character of This Part of the Project is changed materially through no fault of CONSULTANT, the amount of compensation provided for herein shall be subject to equitable adjustment.

5.3. Reimbursable Expense. In addition to the payments provided for in paragraph 5.1, CLIENT shall pay CONSULTANT for Reimbursable Expenses incurred by CONSULTANT in connection with all Basic or Additional Services as authorized in advance by CLIENT in any Work Authorization or Additional Services Work Authorization.

5.4. Times of Payment.

5.4.1. CONSULTANT shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. When compensation is on the basis of a lump sum, fixed fee, or a percentage of Construction Cost, the statements will be based upon CONSULTANT's estimate of the proportion of the total services actually completed at the time of billing.

5.4.2. CLIENT shall bill OWNER monthly on account of CONSULTANT's services and expenses and shall pay CONSULTANT within thirty days.

5.4.3. If CLIENT has received an acceptable statement from CONSULTANT for services or expenses and if thereafter CLIENT fails to pay CONSULTANT for the services and expenses covered by such statement within thirty days, then after said thirtieth day, (a) the amounts covered by such statement will be increased at the rate of 1 ½ % per month from the date which first occurs, and (b) CONSULTANT may, after giving seven days' written notice to CLIENT, suspend services under this Agreement until payment in full of all amounts covered by CONSULTANT's acceptable statements for services and expenses.

5.4.4. In the event of any termination, and if CLIENT has received an acceptable statement from CONSULTANT, CONSULTANT will be paid on the basis shown in each Work Authorization for all unpaid Basic Services and Additional Services performed to the date of termination, plus all unpaid Reimbursable Expenses incurred to the date of termination, and for the unpaid charges of CLIENT approved independent professionals and consultants employed by CONSULTANT to render services on the Project to the date of termination plus other termination expenses.

5.4.5. If, during any portion of CONSULTANT'S services, the procurement of adequate qualified personnel by CONSULTANT would result in taxable professional services being charged to CONSULTANT (e.g. Surveying), then the charges for such services shall be

paid by CLIENT directly so that CLIENT may assert tax exemption under Section 151.309 of the Texas Tax Code, or other applicable law. Any such direct payment by CLIENT is hereby granted, by the Hays County Commissioners Court, a discretionary exemption from the competitive requirements set out in Section 232.023 of the Texas Local Government Code.

5.5. Reproductions and Information.

5.5.1. CONSULTANT shall, at CONSULTANT's expense, furnish CLIENT five copies of all progress information required by CLIENT for performance of CLIENT's services under each Agreement for review of CONSULTANT's services while in progress.

5.5.2. CLIENT shall at CLIENT's expense furnish information and progress reproductions of CLIENT's work and that of others assigned to the Project as may be required for the orderly performance of CONSULTANT's services.

SECTION 6—GENERAL CONSIDERATIONS

6.1. Termination.

6.1.1. The obligation to provide further services under this Agreement may be terminated by CONSULTANT upon thirty days' written notice to CLIENT in the event of substantial failure by CLIENT to perform in accordance with the terms hereof through no fault of CONSULTANT. CLIENT may terminate this Agreement with or without cause upon thirty days' written notice to CONSULTANT.

6.1.2.1. This Agreement will terminate automatically upon termination of the Prime Agreement. CLIENT will promptly notify CONSULTANT of such termination.

6.2. Reuse of Documents. All drawings, plans, specifications, programs and other documents, including those in electronic form, prepared by CONSULTANT in the performance of CONSULTANT's Work at any stage of any project shall be the property of CONSULTANT. Such documents are not intended or represented to be suitable for reuse by CLIENT or others on any other project. Any such reuse without specific written verification and adaptation by CONSULTANT for the specific purposes intended will be at the reuser's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or consultants; and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from CLIENT's reuse without such adaptation or verification. Providing others have not modified

documents and the project is constructed in strict accordance with the contract documents, CONSULTANT shall remain liable for all errors and omissions in the documents as are specific to the Work Authorization project for which the documents have been prepared.

6.3. Records.

6.3.1. Fiscal records of CONSULTANT pertinent to CONSULTANT's compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices.

6.3.2. CONSULTANT shall maintain all records (fiscal and other) and design calculations on file in legible form. A copy of these shall be available to CLIENT at CONSULTANT's expense and the originals shall not be disposed of by CONSULTANT until after sixty days' prior written notice to CLIENT, or three years, whichever is earlier.

6.3.3. CONSULTANT's records and design calculations will be available for examination and audit if and as required by the Prime Agreement.

6.4. Not used.

6.5. Indemnification and Insurance.

6.5.1. CLIENT and CONSULTANT shall each procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders, as defined in paragraph 6.5.3.

6.5.2. Also CLIENT and CONSULTANT shall each procure and maintain professional liability insurance, or its equivalent, for protection from claims arising out of performance of professional services caused by a negligent error, omission or act for which the insured is legally liable; such professional liability insurance will provide for coverage as defined in paragraph 6.5.3. Additional requirements may be set forth in each individual Work Authorization.

6.5.3. Insurance.

The CONSULTANT shall carry and maintain the following insurance coverages with an A.M. Best Rated Insurance carrier with a minimum of B+ rating in accordance with paragraphs 6.5.1 and 6.5.2 as follows:

6.5.3.1. Comprehensive General Liability insurance including contractual liability and products/completed operations liability with a Combined Single Limit of \$1,000,000 per occurrence, with a general aggregate of \$2,000,000.

6.5.3.2. Comprehensive Auto Liability insurance with a Combined Single Limit of \$1,000,000 per occurrence.

6.5.3.3. Workers Compensation with Employers Liability Limits of \$500,000/\$500,000/\$500,000.

6.5.3.4. Excess or Umbrella Liability insurance of \$1,000,000. Such policy shall follow the form of the underlying policies.

6.5.3.5. Professional Liability insurance of \$1,000,000 per claim and in the aggregate.

The CONSULTANT shall maintain or renew such Professional Liability coverage for the life of the Contract plus three years or as required by the any Prime Agreement on which a Work Authorization shall be based.

6.5.3.6. All such insurance shall have minimum limits of liability as indicated. The CONSULTANT shall furnish CLIENT with an original certificate of insurance, including a 30-day notice of cancellation provision.

6.5.3.7. In the event of a conflict between the terms of the insurance requirements of this Master Agreement and the insurance requirements of any Prime Agreement attached to individual Work Authorizations, then the terms of this Master Agreement shall take precedent.

6.5.4. Indemnification.

6.5.4.1. CONSULTANT AGREES TO INDEMNIFY AND HOLD HARMLESS CLIENT AND ITS CLIENT FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, LIABILITY AND EXPENSE INCLUDING ATTORNEYS' FEES AND COURT COSTS, FOR DAMAGE TO PROPERTY AND INJURIES TO AND DEATH OF ANY PERSON ARISING OUT OF, OR IN CONNECTION WITH THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONSULTANT, ITS SUBCONTRACTORS AND CONSULTANTS AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FOR WHICH CONSULTANT IS FOUND TO BE LEGALLY LIABLE.

6.5.4.2. The indemnities herein shall apply to the degree of negligence of the CONSULTANT and others for which CONSULTANT is legally liable as compared to the total legal liability of all parties.

6.5.4.3. Any loss or damage to CONSULTANT's machinery, equipment, or tools owned by CONSULTANT at job site for work performed under this contract shall be at CONSULTANT's sole expense and risk.

6.5.4.4. Indemnity provisions herein shall take precedent over the indemnity provisions of any Prime Agreement.

6.5.4.5. Notwithstanding the above, CONSULTANT's liability for all losses, costs or damages caused by or alleged to be caused by CONSULTANT in the performance of services under this Agreement shall be limited to actual damages.

6.6. Laws/Regulations.

6.6.1. This Agreement is to be governed by the laws of the State of Texas.

6.6.2. CLIENT and CONSULTANT hereby certify that each are bound by the policy of non-discrimination and equal employment opportunity and/or committed to complying with Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Section 503 of the Rehabilitation Act of 1973; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963 and other applicable local, state or federal statute or any regulation. Both parties agree that the contents of this paragraph shall be included in all other subcontracts issued by either party pursuant to this Agreement.

6.7. Successors and Assigns.

6.7.1. CLIENT and CONSULTANT each is hereby bound, and the partners, successors, executors, administrators, and legal representatives of each and to the extent permitted by paragraph 6.7.2 the assigns of CLIENT and CONSULTANT are hereby bound, to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

6.7.2. Neither CLIENT nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or

discharge the assignor from any duty or responsibility under this Agreement.

6.7.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than CLIENT and CONSULTANT and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of CLIENT and CONSULTANT and not for the benefit of any other party.

6.8. Delegation of Duties.

If, in any individual Work Authorization issued pursuant to this Agreement, it is stated that the Basic Services of CONSULTANT are to be performed by one or more specified individuals within CONSULTANT's organization, only the individuals so specified shall perform services hereunder and their duties shall not be delegated to any other individual or entity without the written consent of CLIENT. CONSULTANT may employ such other independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder with the prior written consent of CLIENT

SECTION 7—SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

7.1. Special Provisions. This Agreement is subject to the following special provisions.

7.1.1. Upon execution, each individual Work Authorization will be attached to and made a part of this Agreement. No work shall be accomplished under this Agreement without an executed Work Authorization describing the specific scope of work and other project-specific contract items relating to the project described in the Work Authorization.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CONSULTANT
Lockwood, Andrews & Newnam, Inc.

By: _____

Printed Name: James M. Pierce

Title: Associate

Address for Giving Notices:

2925 Briarpark Drive

Houston, Texas 77042

7.2. Exhibits and Schedules. Exhibits and schedules, including pertinent portions of any Prime Agreement, will be attached to and made a part of each individual Work Authorization to CONSULTANT.

7.3. This Agreement (consisting of pages 1 to 5, inclusive), together with any issued Work Authorizations and Additional Services Work Authorizations, constitute the entire agreement between CLIENT and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Work Authorizations may only be amended, supplemented, modified or cancelled by a duly executed written instrument. It is expressly understood that each individual Work Authorization and the contents of this Master Agreement form separate independent contracts and will be negotiated independently from and have no relationship to other Work Authorizations or contracts.

CLIENT
Hays County, Texas

By: _____

Printed Name: _____

Title: _____

Address for Giving Notices:

Dacy Lane
From: Bunton Rd (CR 130)
To: Chapa Middle School (1,800' North of Bebee Rd (CR 122))
County: Hays

Work Authorization No. 1

EXHIBIT A

The work to be performed under this contract shall consist of providing support services for the engineering required for the development of final plans, specifications and estimates, utility coordination, and traffic signals and related documents to reconstruct Dacy Lane in Kyle/Hays County Texas. The support services needed to accomplish the engineering include right-of-way (ROW) acquisition. The proposed route is identified in the *Initial Route Selection Report* prepared by LAN, dated July 24, 2008.

SERVICES TO BE PROVIDED BY THE COUNTY

The COUNTY and the City of Kyle shall provide to the Engineer the following items/information, if needed:

FC___ RIGHT-OF-WAY ACQUISITION

1. Provide coordination with City of Kyle for acquisition of needed tracts.
2. Provide assistance in contacting requested property owners.
3. Provide legal assistance for right of entry and acquisition of tracts

SERVICES TO BE PROVIDED BY THE CONSULTANT

FC___ RIGHT-OF-WAY ACQUISITION

4. Prepare Introduction Letters and provide Landowner Bill of Rights letters to each property owner..
5. Draft standard Offer Letters, Final Offer Letters, etc. for use (final approval of format by Hays County).
6. Draft standard instruments of conveyance, releases, affidavits, etc. for use (final approval of format by County).
7. Provide copies of all correspondence to City of Kyle and County.
8. Coordination with County staff as needed.
9. Maintain records of all payments to land owners.
10. Rights of Entry – Ownership research and contact land owners to secure written permission to enter onto property.
11. Title Curative Services – Obtain services of Title Company to provide title commitments and title policies.
 - a. Review Title Commitments
 - i. review restrictive covenants and other land restrictions
 - ii. removal of non-pertinent abstracts of judgment and M&M liens
 - iii. bankruptcy of intestacy research
 - iv. curative of other complex title encumbrances
 - v. meet with Title Examiners
 - vi. Oversee Deed record research
 - b. Perform QA/QC on all curative matters
 - i. review corporate resolutions, affidavits, lien releases, etc.

- ii. negotiate with owner and attorney as needed
 - c. Draft title documents
- 12. Negotiation Services including:
 - a. Pre-Offer Preparation consisting of: site inspections; review of ROW map(s); review of field notes/compare with ROW map(s); review of title report; review of appraisal; call owner to set up meeting, and; preparation of offer letter and offer package.
 - b. Initial Offer – meet with owner
 - c. Post Offer Response including: troubleshooting; continual follow-up with property owners; Administrative Settlement Procedures (counteroffer consideration); preparation of Final Offer Letter (if needed), and; preparation of conveyance instruments/condemnation packet.
- 13. Appraisal Services including: ordering of appraisal; review of appraisal, and; obtain client approval of appraisal.
- 14. Closing Services including: ordering of updated commitment(s); preparation of payment requests; scheduling of closing(s); attendance of closing(s), and; preparation of closing documentation wrap-up.
- 15. Condemnation Support* including;
 - Pre- Hearing Support consisting of the following:
 - i. order appraisal updates for hearing
 - ii. review appraisal updates
 - iii. file original petition with the County Court at Law
 - iv. File Lis Pendens with the County Clerk's Office
 - v. File Order Appointing commissioners with the judge
 - vi. Secure Oath of Commissioners and Order Setting Hearing, including provision of two (2) copies of Notice of Hearing
 - vii. File all originals with Court and send copies to County Attorney/designee
 - viii. Send copy of petition to Title Company
 - ix. Set Commissioner's Hearing including the following: send written notice to Hays County; coordinate hearing date; coordinate a pre-hearing conference prior to the Hearing; serve Notices of Hearing to indicated parties; file the original notices with Court and send copies to County Attorney/designee, and; send reminder letter to all parties
 - Post- Hearing Support consisting of the following:
 - x. obtain signatures of Commissioners on Award of Commissioners and file with Court
 - xi. obtain and distribute certified copies
 - xii. request payment on amount of award
 - xiii. deposit award check in the Registry of the Court
 - xiv. send notices of the date of deposit
 - xv. appear as expert witness as requested.

(*Condemnation Support is included in fee schedule at an hourly rate and will be provided on an as needed basis.)

Date: February 17, 2009

Work Authorization No. X

Project Name: Dacy Lane – ROW Acquisition

Date of Master Agreement: February 17, 2009

1 CONSULTANT NAME / ADDRESS

Name: Lockwood, Andrews & Newnam, Inc.
Address: 2925 Briarpark Dr.
Houston, TX 77042

Attention: Jim Pierce

CLIENT NAME / ADDRESS:

Name: Hays County, TX
Address:

Attention:

2 SCOPE OF SERVICES

The Consultant shall perform the following services:

See Exhibit "A"

Work Authorization No. X

3 COMPENSATION

For Services performed under Article 2, the Consultant's compensation will be paid: \$172,500.00

☒ hourly, not to exceed (based on attached Exhibit B):

☐ Lump Sum:

In addition, reimbursable expenses will be paid per terms of the Master Agreement Not to Exceed: \$84,000.00

Total Authorized Compensation: \$256,500.00

4 INSURANCE

Insurance shall be provided in accordance with the Master Agreement.

5 GENERAL

This Work Authorization, consisting of 2 pages, is bound by the terms and conditions of the Master Agreement, and constitute the entire Agreement between the Client and Consultant superseding all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument. The following Exhibits are attached and made part of this Work Authorization:

5.1. Exhibit A, Scope of Services, consisting of 2 pages.

5.2. Exhibit B, Fee Schedule, consisting of 1 page.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

CONSULTANT

Lockwood, Andrews & Newnam, Inc.

By: _____

Printed Name: James M. Pierce

Title: Associate

Date: _____

CLIENT

Hays County, Texas

By: _____

Printed Name: Charles Crossfield

Title: _____

Date: _____

WORK AUTHORIZATION NO.:
LIMITS: DACY LN - PHASE I
COUNTY: HAYS

EXHIBIT B - DACY LANE DESIGN SUPPORT SERVICES SUMMARY FEE PROPOSAL						
	UNITS	QUANTITY	FEE/ EACH			AMOUNT
FC - RIGHT-OF-WAY ACQUISITION						
RIGHT OF ENTRY AND DESIGN SUPPORT	PARCEL	35	\$500			\$17,500
ACQUISITION SERVICES	PARCEL	35	\$4,000			\$140,000
CONDEMNATION SUPPORT	HOUR		\$15,000			\$15,000
APPRAISAL SERVICES (ACTUAL COST - PASS THROUGH) - DIRECT COST	PARCEL	35	\$2,400			\$84,000
		35				\$172,500
TOTAL WORK AUTHORIZATION NUMBER 1						\$256,500

MASTER AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

**Adapted for Exclusive Use of
LOCKWOOD, ANDREWS & NEWNAM, INC.**

June 1992

Amended January 1993

Amended March 2003

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the other.

Based Upon
EJCDC No. 1910-1 (1992 Edition)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use, completion or modification. This document should be adapted to the particular circumstances of the contemplated Project and the applicable laws of the jurisdiction in which the professional services for the Project are to be performed.

MASTER AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS A MASTER AGREEMENT made as of February 17, 2009, between Hays County, Texas ("OWNER") and Lockwood, Andrews & Newnam, Inc. ("ENGINEER"). OWNER intends to assign work authorizations to ENGINEER to perform services. Said services shall be defined in each authorization. The term "Project" throughout this Master Agreement will relate to a respective work authorization.

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of professional engineering services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth in this Agreement and in each individual Work Authorization.

SECTION I—GENERAL

1.1. Standard of Care.

ENGINEER shall perform for or furnish to OWNER professional engineering and related services in all phases of the Project to which this Agreement applies as hereinafter provided. The ENGINEER shall serve as the OWNER's prime design professional and engineering representative for the Project providing professional engineering consultation and advice with respect thereto. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

1.2. Coordination with Other Documents.

It is the intention of the parties that the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

1.3. Definitions.

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.3.1. *Additional Services.* Additional Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 3 of this Agreement.

1.3.2. *Agreement.* Agreement means this Master Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Section 9 of this Master Agreement plus an individual Work Authorization from the OWNER.

1.3.3. *Basic Services.* Basic Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 2 of this Agreement.

1.3.4. *Construction Cost.* Construction Cost means the total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Section 4 of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

1.3.5. *Contractor.* Contractor means the person or entity with whom OWNER enters into a written agreement covering construction work to be performed and furnished with respect to the Project.

1.3.6. *ENGINEER's Consultant.* ENGINEER's Consultant means a person or entity having a contract with ENGINEER to furnish Basic or Additional Services as ENGINEER's independent professional associate or consultant engaged directly on the Project.

1.3.7. *Reimbursable Expenses.* Reimbursable Expenses means the expenses incurred directly in connection with the performance or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit B, "Payments to Engineer for Services and Reimbursable Expenses" ("Exhibit B").

1.3.8. *Resident Project Representative.* Resident Project Representative means the authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit C, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit C").

1.3.9. *Standard General Conditions.* Standard General Conditions means the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) of the Engineers Joint Contract Documents Committee.

1.3.10. *Total Project Costs.* Total Project Costs means the sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive.

SECTION 2—BASIC SERVICES OF ENGINEER

Upon this Agreement becoming effective and issuance of an individual Work Authorization from the OWNER, ENGINEER shall provide the following basic services as identified in "Exhibit A" of the respective Work Authorization.

2.1. Study and Report Phase.

2.1.1. Consult with OWNER to understand OWNER's requirements for the Project and review available data.

2.1.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 4.4 which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.

2.1.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.

2.1.4. Evaluate various alternate solutions available to OWNER as described in Exhibit A, and, after consultation with Owner, recommend to OWNER those solutions which in the ENGINEER's judgment best meet OWNER's requirements for the Project.

2.1.5. Prepare a report (the "Report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design professional and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.

2.1.6. Furnish the Report to and review it with OWNER.

2.1.7. Revise the Report in response to OWNER's comments, as appropriate, and furnish final copies of the Report in the number set forth in Exhibit A.

2.1.8. Submit the Report within the stipulated period indicated in Exhibit A.

2.1.9. ENGINEER's services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to review the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.

The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 2.1 are amended and supplemented as indicated in Exhibit A.

2.2. Preliminary Design Phase.

After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

2.2.1. On the basis of the Report, the recommended solution selected by OWNER and the specific modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER, prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

2.2.2. Advise OWNER if additional reports, data or other information or services of the types described in paragraph 4.4 are necessary and assist OWNER in obtaining such reports, data or other information and services.

2.2.3. Based on the information contained in the Preliminary Design documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph 2.1.5.

2.2.4. Furnish the Preliminary Design documents to and review them with OWNER.

2.2.5. Submit the Preliminary Design documents and revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.2.6. ENGINEER's services under the Preliminary Design Phase will be considered complete at the earlier of (1) the date when the Preliminary Design documents have been accepted by OWNER or (2) if no acceptance or rejection of Preliminary Design documents is communicated by OWNER, thirty days after the date when such Preliminary Design documents are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Preliminary Design documentation, if such approval is to be obtained during the Preliminary Design Phase.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase as set forth in this paragraph 2.2 are amended and supplemented as indicated in Exhibit A.

2.3. Final Design Phase.

After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

2.3.1. On the basis of the accepted Preliminary Design documents, the modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER and the revised opinion of probable Construction Cost, prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute).

2.3.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

2.3.3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph 2.1.5, as a result of changes in scope, extent, or character or design requirements of the Project.

2.3.4. Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which will be generally consistent in form and substance with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

2.3.5. Furnish the above documents, Drawings and Specifications to and review them with OWNER.

2.3.6. Submit the above documents, Drawings and Specifications and a revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.3.7. ENGINEER's services under the Final Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Final Design Phase.

The duties and responsibilities of ENGINEER during the Final Design Phase as set forth in this paragraph 2.3 are amended and supplemented as indicated in Exhibit A.

2.4. Bidding or Negotiating Phase.

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

2.4.1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.

2.4.2. Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.

2.4.3. Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.

2.4.4. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

2.4.5. The Bidding or Negotiating Phase will terminate and the services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may otherwise be required to complete the services called for in paragraph E7.2.5, if Exhibit E is a part of this Agreement).

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 2.4 are amended and supplemented as indicated in Exhibit A.

2.5 Construction Phase.

During the Construction Phase:

2.5.1. *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in Exhibit A and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

2.5.2. *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor while it is in progress:

2.5.2.1. ENGINEER shall make visits to the site as required in Exhibit A of the respective Work Authorization to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 2.5. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 2.5.2.2 and other express or general limitations in this Agreement and elsewhere.

2.5.2.2. The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the

other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

2.5.3. *Defective Work.* During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

2.5.4. *Clarifications and Interpretations; Field Orders.* ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

2.5.5. *Change Orders and Work Change Directives.* ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

2.5.6. *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

2.5.7. *Substitutes.* ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph 3.2.2.

2.5.8. *Inspections and Tests.* ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

2.5.9. *Disagreements between OWNER and Contractor.* ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

2.5.10. *Applications for Payment.* Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

2.5.10.1. ENGINEER shall determine the amounts owing to Contractor and recommend in writing payments to Contractor in such amounts. Such recommendations of payment will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 2.5.10.1 are

expressly subject to the limitations set forth in paragraph 2.5.10.2 and other express or general limitations in this Agreement and elsewhere.

2.5.10.2. By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.5.11. *Contractor's Completion Documents.* ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings approved or reviewed under paragraph 2.5.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment (but the extent of such review will be limited as provided in paragraph 2.5.8); and shall transmit them to OWNER with written comments.

2.5.12. *Substantial Completion.* Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor, upon approval of work by both the OWNER.

2.5.13. *Final Notice of Acceptability of the Work.* ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit D (the "Notice of Acceptability of Work") that the work is acceptable (subject to the provisions of paragraph 2.5.10.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

2.5.14. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

2.5.15. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment. If the Project involves more than one prime contract as indicated in paragraph 5.5, Construction Phase services may be rendered at different times in respect of separate prime contracts.

2.5.16. *Taxable Professional Services.* If, during any phase of the Project, the procurement of adequate qualified personnel by ENGINEER would result in taxable professional services being charged to ENGINEER (e.g. Surveying), then the charges for such services shall be paid by OWNER directly so that OWNER may assert tax exemption under Section 151.309 of the Texas Tax Code, or other applicable law. Any such direct payment by OWNER is hereby granted, by the Hays County Commissioners Court, a discretionary exemption from the competitive requirements set out in Section 232.023 of the Texas Local Government Code.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 2.5 are amended and supplemented as indicated in Exhibit A.

2.6. Operational Phase.

During the Operational Phase, ENGINEER shall, when requested by OWNER:

- 2.6.1. Provide assistance in connection with the refining and adjusting of any equipment or system.
- 2.6.2. Assist OWNER in training OWNER's staff to operate and maintain the Project.
- 2.6.3. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
- 2.6.4. Prepare a set of reproducible record drawings showing record information which ENGINEER considers significant based on the Drawings, Shop Drawings, and other record documents furnished by Contractor to ENGINEER which were annotated by Contractor to show all changes made during construction. ENGINEER will not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents.
- 2.6.5. In company with OWNER, visit the Project to observe any apparent defects in the completed work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.
- 2.6.6. Provide miscellaneous services as requested by OWNER in connection with Project closeout.
- 2.6.7. The Operational Phase may commence during the Construction Phase and will terminate one year after the date of Substantial Completion.

The duties and responsibilities of ENGINEER during the Operational Phase as set forth in this paragraph 2.6 are amended and supplemented as indicated in Exhibit A.

SECTION 3—ADDITIONAL SERVICES OF ENGINEER

3.1. Additional Services Requiring Authorization in Advance.

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 3.1.1 through 3.1.19, inclusive, as amended and supplemented as indicated in Exhibit A. These services are not included as part of Basic Services except to the extent otherwise provided in Exhibit A. These services will be paid for by OWNER as indicated in Section 6.

3.1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

3.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

3.1.3. Services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Exhibit A.

3.1.4. Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, Drawings, Specifications, or Contract Documents, or are due to any other causes beyond ENGINEER's control.

- 3.1.5. Services resulting from facts revealed about conditions:
- 3.1.5.1. which are different from information about such conditions that OWNER previously provided to ENGINEER under paragraph 4.4 and upon which ENGINEER was entitled to rely; or
 - 3.1.5.2. as to which OWNER had responsibility to provide information under paragraph 4.4 if such information was not previously provided.
- 3.1.6. Providing renderings or models for OWNER's use.
- 3.1.7. Preparing documents for alternate bids requested by OWNER for Contractor's work which is not executed or documents for out-of-sequence work.
- 3.1.8. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 3.1.9. Furnishing services of ENGINEER's Consultants for other than Basic Services; and furnishing data or services of the types described in paragraph 4.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same under paragraph 4.4.
- 3.1.10. Services attributable to a variation in the number of prime contracts from the number specified in Exhibit A for work designed or specified by ENGINEER.
- 3.1.11. Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 2.
- 3.1.12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructibility Review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or Contract Documents as a result of such review processes.
- 3.1.13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 3.1.14. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in paragraph E7.2.5, if Exhibit E is a part of this Agreement.
- 3.1.15. Providing field surveys for design purposes, engineering surveys and staking to enable Contractor to proceed with its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 3.1.16. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 2.6.3.
- 3.1.17. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs 2.1.3 and 2.3.2).
- 3.1.18. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 4.12.
- 3.1.19. Other additional services performed or furnished by ENGINEER in connection with the Project, including services which are to be furnished by OWNER under Section 4, and services not otherwise provided for in this Agreement.

3.2 Required Additional Services.

When required by the Contract Documents in connection with the performance or furnishing of ENGINEER's services during the Construction Phase, ENGINEER shall perform or furnish, without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 3.2.1 through 3.2.6, inclusive. These services are not included as part of Basic Services except to the extent provided in Exhibit A. Required Additional Services will be paid for by OWNER as indicated in Section 6. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

3.2.1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER if, because of the method of compensation agreed upon by OWNER and ENGINEER, the resulting change in compensation for Basic Services is not commensurate with the extent of the additional services rendered.

3.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution which is inappropriate for the Project or an excessive number of substitutions.

3.2.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.

3.2.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of *defective*, neglected or delayed work of Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Contractor.

3.2.5. Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to its Substantial Completion.

3.2.6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the work.

SECTION 4—OWNER'S RESPONSIBILITIES

Except as otherwise provided in Exhibit A, OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

4.1. Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

4.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

4.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

4.4. Furnish to ENGINEER, as requested by ENGINEER for performance of Basic Services or as required by the Contract Documents, the following:

4.4.1. data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

4.4.2. the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment prior to and after installation, or to evaluate the performance of materials, equipment and facilities of OWNER, prior to specification, and during construction;

4.4.3. appropriate professional interpretations of all of the foregoing;

4.4.4. environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

4.4.5. property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;

4.4.6. property descriptions;

4.4.7. zoning, deed and other land use restrictions; and

4.4.8. other special data or consultations not covered in Section 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

4.5. Provide, as required by the Contract Documents, field surveys for design purposes, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.

4.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

4.7. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

4.8. Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

4.9. Provide, as may be required for the Project:

4.9.1. accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

4.9.2. such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and

4.9.3. such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

4.10. Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

4.10.1. that Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to its performing and furnishing the work; or

4.10.2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 4.10.1 and 4.10.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

4.11. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructibility Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

4.12. Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

4.13. If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

4.14. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive) and other costs of the types referred to in paragraph 2.1.5 so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

4.15. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections.

4.16. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

4.17. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 3.1 of this Agreement or other services as required.

SECTION 5—TIMES FOR RENDERING SERVICES

5.1. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of construction contracts, construction and initial operation of the Project including extra work and required extensions thereto.

5.2. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

5.3. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within the stipulated period identified in this Agreement (plus such additional time as may be required to complete the services called for under paragraph E7.2.5 of Exhibit E is a part of this Agreement) after completion of the Final Design Phase or does not proceed in an orderly and

continuous progression, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

5.4. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER:

5.4.1. for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised; or

5.4.2. for more than one year through no fault of ENGINEER, or if ENGINEER for any reason is required to render Construction Phase services more than one year after Substantial Completion is achieved, the rates and amounts of compensation provided for elsewhere in this Agreement will be subject to equitable adjustment to reflect, among other things, changes in the various elements that comprise such rates of compensation.

5.5. In the event that the work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in Exhibit A whether or not the work under such contracts is to proceed concurrently.

SECTION 6—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

6.1. Methods of Payment for Services and Expenses of ENGINEER.

6.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis set forth in Exhibit B.

6.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Section 3 on the basis set forth in Exhibit B.

6.1.3. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 6.1.1 and 6.1.2, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit B. The amount payable for Reimbursable Expenses will include a factor to the extent so indicated in Exhibit B.

6.2. Other Provisions Concerning Payments.

6.2.1. *Preparation of Invoices.* Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. The amount billed for Basic Services and Additional Services in each invoice will be calculated on the basis set forth in Exhibit B. Invoices are due and payable on receipt.

6.2.2. *Unpaid Invoices.* If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

6.2.3. *Payments Upon Termination.*

6.2.3.1. *Termination by OWNER for Cause.* In the event of termination by OWNER for cause under paragraph 8.1.1:

6.2.3.1.1. Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants engaged directly on the Project through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.1.2. During any phase of the Basic Services, ENGINEER also will be paid for such services performed or furnished in accordance with this Agreement by ENGINEER during that phase through the date of termination on the basis specified in Exhibit B. ENGINEER also will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services to the extent such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.2. *Termination by OWNER for Convenience.* In the event of termination by OWNER under paragraph 8.1.2:

6.2.3.2.1. Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants engaged directly on the Project through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3 below.

6.2.3.2.2. During any phase of Basic Services, ENGINEER also will be paid for such services performed or furnished by ENGINEER during that phase through the date of termination on the basis specified in Exhibit B. In addition, ENGINEER will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3 below.

6.2.3.2.3. In the event of termination by OWNER for convenience during or at completion of any phase of Basic Services, OWNER shall pay ENGINEER's reasonable expenses directly attributable to termination in accordance with rates applicable to the various categories of Additional Services measured from the date of termination, including other fair and reasonable sums for overhead and profit, and costs of terminating contracts with ENGINEER's Consultants.

6.2.3.3. *Termination By ENGINEER for Cause.* In the event of termination by ENGINEER for cause under paragraph 8.1.1, ENGINEER shall be entitled to receive compensation calculated as set forth in paragraph 6.2.3.2.

6.2.4. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

SECTION 7—OPINIONS OF COST

7.1 Opinions of Probable Construction.

ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. 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 cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in paragraph 4.9.1.

7.2. Designing to Construction Cost Limit.

If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit E, "Construction Cost Limit," to this Agreement.

7.3. Opinions of Total Project Costs.

ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs provided for in Section 2.

SECTION 8—GENERAL CONSIDERATIONS

8.1. Termination.

The obligation to provide further services under this Agreement may be terminated:

8.1.1. *For cause,*

8.1.1.1. by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

8.1.1.2. by ENGINEER:

8.1.1.2.1. upon seven days' written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional; or

8.1.1.2.2. upon seven days' written notice if the ENGINEER's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

8.1.1.2.3. In the case of termination under this paragraph 8.1.1.2, ENGINEER shall have no liability to OWNER on account of such termination.

8.1.2. *For convenience,* by OWNER effective upon the receipt of notice by ENGINEER.

8.2. Reuse of Documents.

All documents including Drawings and Specifications provided or furnished by ENGINEER (or ENGINEER's Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER and ENGINEER's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of ENGINEER and ENGINEER's Consultants, as appropriate) whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by ENGINEER and ENGINEER's Consultants, as appropriate, for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's Consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

8.3. Insurance.

8.3.1. ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. ENGINEER shall list OWNER as an additional insured on ENGINEER's general liability insurance policy.

8.3.2. OWNER shall list ENGINEER and ENGINEER's Consultants as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list ENGINEER and ENGINEER's Consultants as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insureds thereunder.

8.3.3. At any time OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, different limits or revised deductibles in excess of those specified. If so requested by OWNER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by OWNER, at OWNER's sole expense.

8.4. Laws/Regulations.

8.4.1. This Agreement is to be governed by the laws of the State of Texas.

8.4.2. OWNER and ENGINEER are each bound to a policy of non-discrimination and equal employment opportunity. OWNER and ENGINEER committed to complying with Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Section 503 of the Rehabilitation Act of 1973; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963 and any other applicable local, state or federal statutes or regulations.

8.5. Successors and Assigns.

8.5.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 8.5.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

8.5.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitations, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.5.3. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph shall apply to the indemnity provided under paragraph 8.7.2 of this Agreement, and shall appear in the Contract Documents.

8.6. Dispute Resolution.

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit

G, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit G or other provisions of this Agreement, or under law.

8.7. Allocation of Risks — Indemnification.

8.7.1. TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS OWNER, OWNER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, LOSSES AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) CAUSED SOLELY BY THE NEGLIGENT ACTS OR OMISSIONS OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND ENGINEER'S CONSULTANTS IN THE PERFORMANCE AND FURNISHING OF ENGINEER'S SERVICES UNDER THIS AGREEMENT. THE INDEMNIFICATION PROVISION OF THE PRECEDING SENTENCE IS SUBJECT TO AND LIMITED BY THE PROVISIONS AGREED TO BY OWNER AND ENGINEER IN EXHIBIT H, "ALLOCATION OF RISKS," IF ANY.

8.7.2. TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO AN EXTENT THAT DOES NOT RESULT IN A WAIVER OF SOVEREIGN IMMUNITY OTHERWISE ASSERTABLE BY OWNER, OWNER SHALL INDEMNIFY AND HOLD HARMLESS ENGINEER, ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES AND AGENTS AND ENGINEER'S CONSULTANTS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, LOSSES AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) CAUSED SOLELY BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND OWNER'S OTHER CONSULTANTS AND CONTRACTORS WITH RESPECT TO THIS AGREEMENT OR THE PROJECT.

8.7.3. IN ADDITION TO THE INDEMNITY PROVIDED UNDER PARAGRAPH 8.7.2 OF THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO AN EXTENT THAT DOES NOT RESULT IN A WAIVER OF SOVEREIGN IMMUNITY OTHERWISE ASSERTABLE BY OWNER, OWNER SHALL INDEMNIFY AND HOLD HARMLESS ENGINEER AND ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS AND ENGINEER'S CONSULTANTS FROM AND AGAINST ALL CLAIMS COST, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) CAUSED BY, ARISING OUT OF OR RELATING TO THE PRESENCE, DISCHARGE, RELEASE, OR ESCAPE OF ASBESTOS, PCBS, PETROLEUM, HAZARDOUS WASTE, OR RADIOACTIVE MATERIAL AT, ON, UNDER OR FROM THE PROJECT SITE.

8.7.4. All indemnities herein shall be based on Comparative Negligence Principles, but shall not be construed as a waiver, by OWNER, of Sovereign Immunity.

8.8. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

8.9. Survival.

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of ENGINEER under this Agreement or the termination of this Agreement for any reason.

8.10. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SECTION 9—EXHIBITS AND SPECIAL PROVISIONS

9.1. This Agreement is subject to the provisions of the following Exhibits which are attached to and made part of the Agreement:

9.1.1. Exhibit D, "Notice of Acceptance," consisting of 2 pages.

9.1.2. Exhibit F, Not used.

9.1.3. Exhibit G, "Dispute Resolution," consisting of 1 page.

9.1.4. Exhibit H, "Allocation of Risks," consisting of 2 pages.

Additionally, the following Exhibits for a specific Work Authorization shall become part of this Agreement upon issuance of the Work Authorization for specific services (number of pages may vary according to the specific authorization):

9.1.5. Exhibit A, "Further Description of Basic Engineering Services and Related Matters," consisting of ____ pages.

9.1.6. Exhibit B, "Payments to Engineer for Services and Reimbursable Expenses," consisting of ____ pages.

9.1.7. Exhibit C, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of ____ pages.

9.1.8. Exhibit E, "Construction Cost Limit," consisting of ____ pages.

9.1.9. Exhibit I, "Special Provisions," consisting of ____ pages.

9.2. This Agreement (consisting of pages 1 to 19, inclusive and the Exhibits identified above), plus the specific Work Authorizations, constitute the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

[The rest of this page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement to be effective as of the date first above written.

OWNER: _____

By: _____

Title: _____

Address for giving notices: _____

ENGINEER: _____

By: _____

Title: _____

Address for giving notices: _____

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use, completion or modification. This document should be adapted to the particular circumstances of the contemplated project and the applicable laws of the jurisdiction in which the professional services for the project are to be performed.

**WORK AUTHORIZATION BASED UPON
MASTER AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

Adapted for Exclusive Use of
LOCKWOOD, ANDREWS & NEWNAM, INC.
June 1992
Amended January 1993

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated and a change in one may necessitate a change in the other.

Based Upon
EJCDC No. 1910-1 (1992 Edition)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use, completion or modification. This document should be adapted to the particular circumstances of the contemplated Project and the applicable laws of the jurisdiction in which the professional services for the Project are to be performed

**WORK AUTHORIZATION BASED UPON
MASTER AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS A WORK AUTHORIZATION made as of February 17, 2009, between Hays County, Texas ("OWNER") and Lockwood, Andrews & Newnam, Inc. ("ENGINEER") and is governed by all provisions of the OWNER-ENGINEER MASTER AGREEMENT dated February 17, 2009.

OWNER intends to re-construct Dacy Lane between Goforth Road and Beebee Road into a 4-lane roadway with a bridge structure over the Bunton Branch tributary and culverts for the unnamed tributary. The project includes surveying, geotechnical investigation, environmental services, roadway design controls, drainage analysis, a traffic signal warrant analysis, bridge design, design and bid phase services and project management/coordination (the "Project").

OWNER AND ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of professional engineering services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth below and in the Master Agreement between the parties dated February 17, 2009. Execution of the Work Authorization by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the first phase of the Basic Services described in Section 2 of the Master Agreement and as further set forth in Exhibit A, "Further Description of Basic Engineering Services and Related Matters" ("Exhibit A") of this Work Authorization and in the other exhibits listed in Section 9 of the Master Agreement and as designated below. This Work Authorization will become effective on the date first above written.

SECTIONS 1-8—AS IDENTIFIED IN MASTER AGREEMENT

SECTION 9—EXHIBITS AND SPECIAL PROVISIONS

Sections 9.1.1 - 9.1.4 as identified in Master Agreement.

9.1.5 Exhibit A, "Further Description of Basic Engineering Services and Related Matters," consisting of 9 pages.

9.1.6 Exhibit B, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 1 page.

9.1.7 Exhibit C, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," Not Used.

9.1.8 Exhibit E, "Construction Cost Limit," Not Used.

9.1.9 Exhibit I, "Special Provisions," Not Used

9.2 As identified in Master Agreement.

9.3. This Work Authorization (consisting of pages 1 to 2, inclusive and the Exhibits identified above), becomes part of the Master Agreement between OWNER and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

By: _____

Title: _____

Address for giving notices:

ENGINEER:

By: Brian D. Rice, PE

Title: Vice President

Address for giving notices:

400 W. Hopkins, Suite 203

San Marcos, TX 78666

This is **EXHIBIT A**, consisting of 11 pages, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated February 17, 2009.

Initial:
OWNER _____
ENGINEER _____

Further Description of Basic Engineering Services and Related Matters

Sections 2, 3, 4 and 5 of the Master Agreement are amended and supplemented and the time periods for the performance of the Basic Services as indicated in Section 5 of the Master Agreement are established, all as indicated below:

SECTION 2—BASIC SERVICES OF ENGINEER

A2.0 General.

The Basic Services are premised on the following general scope of professional services:

The work to be performed under this contract shall consist of providing engineering services required for the development of final plans, specifications and estimates, utility coordination, and traffic signals and design for Goforth, FM 1626, Downing Way and Bebee Road intersections, and related documents to reconstruct Dacy Lane in Kyle/Hays County, Texas from Goforth Road to Chapa Middle School located approximately 1,800 feet north of the Bebee Road intersection. Dedicated left turn lanes including transitions will be provided for turns from Dacy Lane at each of the previously referenced intersections. The roadway improvements will be final designed through the City of Kyle's park site north of Bebee Road including a transition back to the existing pavement section adjacent to the southwest corner of the Chapa Middle School tract. Bid alternate will be provided to construct the pavement improvements through the Bebee Road intersection only.

The existing typical section consists of a local two lane section without shoulders. The proposed Dacy Lane typical section consists of an arterial section with two 12-ft inside lanes, and 15-ft outside lanes. The proposed typical section includes curb and gutter, storm sewer, and pedestrian elements. The proposed route is identified in the *Initial Route Selection Report* prepared by LAN, dated July 24, 2008.

To the extent possible, the Engineer will utilize TxDOT's standard drawings, standard specifications, special provisions and special specifications where City of Kyle standards and specifications may not be determined. The plans will be developed using MicroStation/ Geopak V8 CADD and the electronic files will be furnished to Hays County and the City of Kyle at the project's completion. Upon receipt of entirety of design survey (to be performed under separate authorization) information we anticipate submittal of 100% review plans to Hays County in eight (8) months.

SECTION 2—BASIC SERVICES OF ENGINEER

A2.0.1. The following services listed will be performed or furnished by ENGINEER as part of ENGINEER's Responsibilities under Section 2:

FC110 ROUTE AND DESIGN STUDIES

1. Collect data relevant to project including: as-built plans, traffic data, and survey information and drainage reports.
2. Prepare preliminary cost estimate.
3. Attend design concept conference.
4. The Engineer will obtain and review data supplied by the City of Kyle and Hays County outlined in "Exhibit A". The Engineer and the Engineer's Sub-Consultants will also conduct field reconnaissance and collect data to identify items that may affect the geometric alternative.
5. Identify locations and areas where temporary construction easements may be required.
6. Evaluate context sensitive design alternatives for Dacy Lane.
7. The Engineer will prepare a 30% Roadway Schematic depicting roadway horizontal and vertical alignments, pavement widths, typical sections, right-of-way requirements, existing utilities, roadway striping and preliminary drainage.

FC160 ROADWAY DESIGN CONTROLS

1. Prepare existing and proposed typical sections.
2. Prepare vicinity map.
3. Develop plans, specifications and estimates. Two (2) plan sets will be submitted for City of Kyle and Hays County review at 60%, 90% and Final.
4. Show utility information on plans.
5. Develop design criteria data sheet.
6. Develop horizontal and vertical roadway centerline alignments.
7. Design at grade intersections with major roadway crossings.
8. Develop design cross sections and earthwork (excavation, embankment) quantities. Cross sections will be delivered on a 22" roll plot.
9. Develop signing and pavement marking quantities.
10. Determine potential utility conflicts.
11. Develop Final Cross-Sections.
12. Perform internal Quality Control reviews to provide quality and accuracy of design for this task.

FC161 DRAINAGE

1. Evaluate existing drainage conditions. Determine number and type of stream crossings; known crossings are Bunton Branch and its un-named tributary to the north.
2. Analyze hydrology and hydraulics of all stream crossings and storm sewer outfalls affected by proposed improvements.
3. Procure FEMA study if required and determine impacts on proposed project.
4. Develop drainage area map and discharge rates for overall project limits for roadway and first 200 feet of contributing area outside of proposed right-of-way and relate to current City of Kyle (FEMA) study. Determine 25, 50, and 100year discharge rates by methods defined in **TxDOT Hydraulic Manual**.
5. Determine 50, and 100year water surface elevations for the existing condition in Bunton Branch and its un-named tributary.
6. Determine 50, and 100year water surface elevations for proposed condition in Bunton Branch and its un-named tributary; Bunton Branch crossing shall assume implementation of proposed bridge structure.
7. Coordinate with the Plum Creek Conservation District on possible flood control dam improvements downstream of Dacy Lane.
8. Develop preliminary sizing of storm sewer system for development of storm sewer assignment in roadway section. Submit proposed storm sewer assignment location to City and County Engineer's for review and approval.
9. Develop preliminary sizing of culvert crossing at un-named tributary to Bunton Branch; culvert will be designed

for 25-year storm event. 25-year and 100-year storm events will also be analyzed as part of the Bunton Branch analysis scope.

10. Prepare final storm sewer system(s) design to accommodate curb-and-gutter roadway section conveying 25-year storm event within curb section and with 100-year storm event contained within right-of-way.
11. Prepare final design of culvert at un-named tributary to Bunton Branch.
12. Develop details needed for construction of storm sewer and culvert improvements.
13. Develop storm sewer and culvert quantities.
14. Perform internal Quality Control reviews to provide quality and accuracy of design for this task.

FC162 SIGNING, MARKINGS AND SIGNALIZATION

1. Prepare Signing and Pavement Marking Layout
2. Prepare Summary of pavement markings.
3. Prepare small sign layout and details
4. Prepare summary of small signs
5. Prepare traffic signal layouts, elevations and phase diagrams.
6. Provide initial traffic signal timing
7. Prepare interconnect layouts

FC163 MISCELLANEOUS (ROADWAY)

1. Develop Misc. Roadway details.
2. Provide coordination of dry utilities relocations and develop utility layout sheets.
3. Prepare waterline relocation design for City's waterline from Goforth Rd. to its northern terminus.
4. Formulate Overall TCP Concepts
5. Develop TCP Narrative
6. Develop TCP Layouts 1"=100' Dbl Bank and details.
7. Develop TCP Quantities – Summary Sheet
8. Develop CPM Construction Schedule
9. Title and Index Sheet
10. Prepare Final Construction Cost Estimate
11. Special Specifications
12. General Notes
13. Assemble Plans for Submittals – 60%, 90% and Final
14. Attend Review Meetings – 90%
15. Assemble/Furnish CADD Files

FC164 PROJECT MANAGEMENT/COORDINATION

1. Attend kickoff meeting with Hays County and the City of Kyle staff.
2. Conduct monthly progress meetings with Hays County and the City of Kyle.
3. Conduct bi-weekly internal staff meetings.
4. Provide Design schedule. Update to be implemented as milestones change.
5. Perform internal Quality Control reviews to insure quality and accuracy of design for FC162 and FC163 tasks.
6. Provide written documentation of all meetings and coordination efforts, with requests for written objection if appropriate.
7. All submittals to be delivered to Hays County and the City of Kyle. City will distribute to utility companies and other stakeholders.
8. Sub-consultant management.
9. Prepare Progress Reports, Invoices and Design Schedule

FC167 TRAFFIC SIGNAL WARRANT ANALYSIS AND DESIGN

1. Conduct a field visit to review existing and planned intersection geometry and traffic control within the study area. Conduct a 12-hour manual turning movement count (TMC) at the intersection of Dacy Lane and Bebee Road as well as Dacy Lane at Goforth Road. Additional 24-hour Automated Traffic Recorder (ATR) counts at seven locations within the study area will also be conducted. Traffic count locations are as follows:
 - Dacy Lane and Bebee Road – 12-hour turning movements

- Westbound Bebee Road east of Dacy Lane – 24-hour tube count
 - Eastbound Bebee Road west of Dacy Lane – 24-hour tube count
 - Southbound Dacy Lane north of Bebee Road – 24-hour tube count
 - Northbound Dacy Lane south of Bebee Road – 24-hour tube count
 - Dacy Lane and Goforth Road – 12-hour turning movements
 - Southbound Dacy Lane west of Goforth Road – 24-hour tube count
 - Eastbound Goforth Road west of Dacy Lane – 24-hour tube count
 - Westbound Goforth Road east of Dacy Lane – 24-hour tube count
- Traffic count data and site visit photos will be included in TWSA report appendices.
2. Conduct a Traffic Signal warrant Analysis (TWSA) of observed conditions at the intersections of a) Dacy Lane and Bebee Road, and b) Dacy Lane and Goforth Road following the procedures presented in the 2006 Texas Manual of Uniform Traffic Control devices (TxMUTCD). Prepare a Draft Report summarizing the results of the TWSA including recommendations for any improvements deemed necessary. Note that no signal installation is a possible recommendation. Upon receipt of comments from Hays County, a Final Report will be prepared and provided to the County in both hardcopy and electronic format.
 3. Two (2) review meetings, one (1) with County staff, and one (1) with City of Kyle staff, to review the draft TWSA as part of the Basic Scope of Services. These review meetings will be scheduled after submittal of the draft report.
 4. Perform internal Quality Control reviews to provide quality and accuracy of design for this task.

FC170 BRIDGE DESIGN

1. Prepare bridge layout plan and elevation drawing for review and approval by City of Kyle and Hays County Engineer and incorporate their review comments. Bridge layout shall incorporate Wincore generated soil boring plots and be in accordance with TxDOT Bridge Division Detailer's Manual and TxDOT design practices.
2. Prepare Bridge Design and Details upon review approval of Bridge Layout by City and County Engineer's. Bridge foundation design shall be in accordance with the TxDOT Bridge Division Geotechnical Manual. Bridge structure details will conform to standard TxDOT Bridge design criteria and detailing practices. Bridge design will be in accordance with TxDOT and AASHTO LRFD design requirements. **No architectural or aesthetic amenities** are anticipated and not included in scope of services. Bridge design and detailing will account for the following special conditions:
 - Special non-standard Bridge drawings, details and analysis on new bridge due to two stage bridge construction sequence. Existing roadway single lane to remain in service.
 - Special shoring plan and details at all bridge abutments due to existing vertical full height abutments transition to new 2:1 riprap slope requirements. Proposed new approach roadway profile should be higher than existing in service roadway.
3. Provide all of the bridge quantities by construction phase and the estimate of probable cost for the bridge for 60%, 90% and 100% submittals.
4. Bridge Design Assumptions:
 - Overall bridge width to be approximately 56' wide to accommodate an approach roadway width of 54' wide face-to-face curb consisting of 2-12' lanes and 2-15' lanes with no center median.
 - Bridge design shall incorporate the two stage construction sequence by designing stage one half bridge width of 27' followed by stage two half of bridge width of 27'. Stage one bridge design will account for two lanes of ongoing traffic.
 - New bridge will replace a low water crossing consisting of a multiple CMP culvert on fill section.
 - Bridge location is in a rural location and with no significant building and utility conflicts.
 - Bridge design will not accommodate any pedestrian sidewalks or architectural aesthetic amenities.
 - Roadway and bridge will be on a straight bearing alignment with no vertical curve profile on bridge.
 - There shall be no stream crossing skewed alignment under bridge.
5. Bridge layouts and structural details shall undergo quality review prior to each milestone submittal referenced previously. Quality control includes review of final bridge details with Bridge Design checklist and coordination with structural calculations prior to 100% PS&E submittal.
6. Evaluate context sensitive design alternatives for Dacy Lane.

FC___ SURVEYING SERVICES

1. Route Boundary Survey of existing Dacy Lane (CR 205), with a proposed 80' ROW width, with additional ROW primarily to be acquired from parcels on the west side. Boundary survey will be prepared in substantial accordance with the TSPS Category 1-B, Condition II requirements.
 - Prepare composite map showing existing ROW, subject tract parcels, and any easement information provided by the County, or listed in a commitment for title provided by County.
 - Locate and verify all boundary corners, and any material discrepancies will be reported.
 - All work will be based upon Texas South Central Zone State Plane Coordinate System.
2. Topographic and tree survey will be conducted and mapped showing visible improvements, visible utilities, one foot contour intervals, spot elevations, trees 8" diameter and larger, utility pipe sizes and flow lines when possible. Vertical information will be USGS, FEMA or other acceptable datum. Critical root zones (tree circles) will be shown in accordance with City of Austin standards (unless specific local standards are provided). This does not include utility research or plotting record utility line locations.
 - One-Call (or similar underground utility service) will be located with advance notification, and markings are in place at the time the field data is collected. County is responsible for coordinating with One-Call and any costs associated therewith shall be born by the County.
3. Survey related portions of individual parcel descriptions will be prepared, which will include metes and bounds description and accompanying sketch. This does not include staking parcel acquisition corners.
4. Survey related portions of individual easement descriptions will be prepared, which will include metes and bounds description and accompanying sketch. This does not include staking easement corners.
5. Collect cross-sections consisting of x, y and z values for Bunton Branch and its un-named tributary at grade breaks for sections along both creeks 500 feet upstream and downstream of the existing Dacy Lane alignment.

FC___ GEOTECHNICAL INVESTIGATION AND PAVEMENT THICKNESS DESIGN

1. Perform field investigation of project route including drilling of borings using truck mounted drill rigs, as follows:
 - Pavements – consisting of borings every 500 feet to a depth of 5-feet, resulting in 20 borings totaling 100 feet of depth.
 - Culvert (un-named tributary to Bunton Branch) – consisting of 2 borings to a depth of 15-feet each and totaling 30 feet of depth.
 - Bridge (Bunton Branch crossing) – consisting of 2 borings to a depth of 55 feet each totaling 110 feet of depth.
 - Efforts assume no site clearing, grading or traffic controls are planned.
2. Laboratory tests will be conducted as follows:
 - Natural water content determinations;
 - Atterberg limits;
 - Partial gradation analyses;
 - Free swell tests – will be performed to classify soil strata and to evaluate plasticity and shrink/swell potential;
 - Soluble sulfate tests and pH lime series, and;
 - Unconfined compression tests – will be conducted on selected intact soil and /or rock specimens to evaluate the compressive strength of the subsurface strata.
3. Preparation of Engineering Report including engineering analyses of the results of the field and laboratory data will be made to develop foundation design criteria and construction recommendations for the bridge and culvert, and pavement thickness design and construction recommendations. Specifically, the report will include:
 - General subsurface conditions, discussion of site geology, boring logs with descriptions of strata and laboratory test results, and water levels obtained a the time of drilling;
 - Boring location plan;
 - Recommendations for bridge foundation type, including allowable bearing pressures and depths, and associated settlement;
 - Recommendations for culverts including allowable bearding pressures and equivalent lateral earth pressures;

- Flexible pavement thickness design in accordance with TxDOT FPS-19 Design Methodology with mechanistic check, and based on provided traffic loading information, and;
- General foundation and pavement construction and earthwork requirements.
- An electronic (PDF) copy and four (4) hard copies of the report will be provided unless otherwise requested.

FC ENVIRONMENTAL SERVICES

1. Prepare a Phase I environmental site assessment (ESA). The report and preparation procedure will follow the guidelines in ASTM Standards on Environmental Site Assessments for Commercial Real Estate, *E1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. The assessment will also be conducted in accordance with the U.S. Environmental Protection Agency's All Appropriate Inquiry (AAI) standards published in 2006. Preparation of the report will include the following:
 - Comprehensive search of accessible records, including federal, state, local and tribal hazardous materials databases;
 - Review of all other readily available historical records;
 - Identification and review of any gaps in available data;
 - Visual inspection of the subject properties and adjacent properties;
 - Interviews with the Phase I ESA User (Hays County), current/past owners, facility managers and/or occupants and adjacent landowners, facility managers, and/or occupants where appropriate;
 - Interviews with available local and state agencies;
 - Environmental lien search for subject properties, and;
 - The findings of the records review, interviews and site inspection will be presented in Phase I ESA report; prepared by qualified environmental professional as defined in ASTM E1527-05 and the AAI Rule.
2. U.S. Army Corps of Engineers Jurisdictional Waters Delineation: conduct review of existing files and information relevant to the proposed project site. The review will include sources such as the National Wetland Inventory (NWI) mapping, the Natural Resource Conservation service (NRCS) soil survey for Hays County, U.S. Geological Survey (USGS) topographic mapping, and aerial imagery as well as the following:
 - Conduct a jurisdictional waters delineation following the technical standards and procedures described in the USACE Wetland Delineation Manual, Technical Report Y-87-1 (1987 Manual) and pursuant to current USACE-Fort Worth District methods and practices.
 - Investigate the project site and delineate any areas that possess the three (3) mandatory wetland parameters (hydrophytic vegetation, hydric soils and wetland hydrology).
 - Delineate any watercourse that possess an ordinary high water mark (OHWM)
 - Geographically reference features such as data points, wetland boundaries, and OHWM boundaries obtained during field investigation phase using a Trimble differentially-corrected global positioning system (GPS), or equivalent.
 - Record points, lines, and polygons associated with waters and wetlands determine dot be potentially jurisdictional in accordance with the USACE-Fort Worth District's Standard Operating Procedure (SOP) for Recording Jurisdictional Delineations using GPS.
 - Prepare a jurisdictional delineation report for submittal to the USACE; report will contain a description of the property, the methods employed in preparing the delineation and findings. Report will include field data sheets, on-site photographs, figures depicting the jurisdictional boundaries, and the appropriate data needed to comply with USACE-Fort Worth District's SOP for Recording Jurisdictional Delineations using GPS.
3. Intensive Cultural Resources Survey: conduct a thorough background archeological literature and records search for the proposed project site. An archeologist will search the Texas Archeological Sites Atlas (Atlas) online database for any previously recorded surveys and historic or pre-historic archeological sites located in or near the project site. The Atlas review will also include the following types of information: National Register of Historic Places (NRHP) properties, State Archeological Landmarks (SALs), Official Texas Historical Markers (OTHMs), Registered Texas Historic Landmarks (RTHLs), cemeteries, and local neighborhood surveys.
 - Because project involves lands owned by political subdivision of the State of Texas (Hays County and City of Kyle) the archaeological field investigations will require a Texas Antiquities Permit in compliance with the guidelines of the Antiquities Code of Texas. A permit application package

including the requisite information and signatures by the political subdivision will be prepared and submitted to the Texas Historical Commission (THC).

- Upon completion of background review and permit obtained, archeological field survey will be conducted of the project site. Field survey will consist of walking entirety of project route. THC survey standards require excavation of 16 shovel tests per mile; the project will require a total of 22 shovel tests.
 - Any discovered or previously documented sites, both prehistoric and historic, will be documented on appropriate forms and plotted on USGS 7.5-minute topographic maps and appropriate project maps for planning purposes. Additional shovel tests will be excavated to define site boundaries within the project area. A non-collection survey will be conducted: artifacts will be tabulated, analyzed and documented in the field but not collected. Temporally diagnostic artifacts or discoveries will be collected. This policy will reduce or eliminate curation costs once the fieldwork is concluded.
 - Prepare draft report of investigations, once field survey is completed, for review by County and ultimately THC. Report will conform to THC, Council of Texas Archeologists, and Antiquities Code of Texas reporting standards. It will document the general nature of the project area, the methodology used in the investigations, the presence and condition of any previously recorded sites revealed in the records review, the general nature and extent of cultural resources encountered during the archeological survey, recommendations on the need for further efforts, and the potential significance of the cultural resources in regards to future development and State Archeological Landmark status.
 - Incorporate County comments and submit final draft to the THC and any other involved regulatory agency. The Texas Antiquities Code also requires that 20 copies of final reports be submitted once the project is completed. All recovered artifacts and documentation must be curated at an approved repository. If artifacts are recovered and curation is needed, the materials will be curated at the Center for Archeological Research at UTSA. Curation would require preparing artifacts (washing, labeling, cataloging, etc.) and paying a fee for storage space. Because proposal is for a non-collection survey, curation fees are not included in this scope. It is unlikely artifacts will be recovered; in the event artifacts are recovered a separate fee proposal will be provided.
4. Protected Species Habitat Assessment: conduct a habitat assessment on the subject route to inspect and describe vegetation communities and evaluate the potential for those communities to provide habitat for federal or state-listed species. Upon completion of field work, prepare report providing opinion of the potential for the habitats along the existing and proposed ROW to support protected species; effort includes site visit, letter report preparation and map depicting distribution of any protected species habitat located on or along proposed ROW.
5. U.S. Army Corps of Engineers Jurisdictional Waters Permitting Strategy: The best environmental planning is to avoid and/or minimize impacts to jurisdictional wetlands and waters to the maximum extent possible. However, mitigation will be required for impacts that cannot be avoided. Successful permitting of the project will require careful environmental planning to meet the goals of the County and satisfy the USACE's requirements. A permitting strategy for the Dacy Lane crossing of Bunton Branch and its un-named tributary will be developed in close coordination with County staff.
- Develop a detailed alternatives analysis of two (2) scenarios for accomplishing the project goals through either a nationwide permit (NWP) or an individual permit (IP) based upon the results of the jurisdictional delineation (Task 2, above). Alternatives analysis of each scenario will include a comparison of scopes, cost estimates, conceptual mitigation plans, and timelines and USACE requirements. Upon selection of a permitting alternative a more specific scope will be developed for preparing and processing the USACE application.

FC364 BIDDING PHASE SERVICES

1. Prepare the bid package
2. Attend Pre-bid meeting
3. Attend bid opening
4. Prepare bid tabulation
5. Prepare bid award recommendation letter

DELIVERABLES

1. Phase I Construction plans, specifications and estimates (2 sets each for County and Kyle at each submission)

2. Phase I bid documents
3. Project design criteria data sheet.
4. Preliminary driveway profiles.
5. Estimate of Probable Construction Costs at each milestone deliverable.
6. Record Drawings (1 copy to the County and 1 copy to Kyle with a CD of all drawings)
7. Phase I ESA
8. Jurisdictional Delineation Report for submittal to the USACE
9. Permit application package for Texas Antiquities Permit
10. Report of archeological field survey for submittal to Texas Historical Commission
11. Protected Species Habitat Assessment
12. Geotechnical Report including Pavement Thickness Design
13. Project route boundary and topographic and tree survey for use in project design
14. Rights of entry for affected project parcels

SERVICES NOT INCLUDED IN THE SCOPE OF WORK:

1. Work extending outside of the study area,
2. Design of traffic signals, if warranted
3. Development of detailed signal timing plans
4. Any additional traffic data collection,
5. Changes to the study area, and
6. Resident Project Representative services.

REFERENCES

1. Standard Specifications for Construction of Highways, Streets, and Bridges - TxDOT.
2. Special Provisions and Special Specifications - TxDOT.
3. PS& E Preparation Manual - TxDOT.
4. Division of Bridges and Structures Operation and Planning Manual - TxDOT.
5. Division of Bridges and Structures Hydraulic Manual - TxDOT.
6. Division of Bridges and Structures Design Examples - TxDOT.
7. Division of Bridges and Structures Bridge Design Guide - TxDOT.
8. Division of Bridges and Structures Detail Manual - TxDOT.
9. Division of Bridges and Structures Foundation Exploration and Design Manual TxDOT.
10. Standard Specifications for Highway Bridges - AASHTO.
11. Division of Highway Design Operations and Procedures Manual - TxDOT.
12. Division of Highway Design Operations and Procedures Manual Part IIB - Environmental and Public Involvement Procedures During Project - Specific Planning and Development - TxDOT.
13. A Policy on Geometric Design of Highways and Streets ("The Green Book") AASHTO.
14. Highway Capacity Manual Special Report 209 - Texas Research Board (TRB).
15. Technical Advisory T6640.8A - FHWA.
16. Noise Guidelines - TxDOT.
17. Air Quality Guidelines - TxDOT.
18. Flexible Pavement Design Manual - TxDOT.
19. Guide for the Design of Pavement Structures, 1996 - AASHTO.
20. Texas Manual on Uniform Traffic Control Devices - TxDOT.
21. Standard Highway Sign Designs for Texas - TxDOT.
22. Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals - AASHTO.
23. Utility Accommodation Policy - TxDOT.
24. Utility Manual -TxDOT.
25. Division of Right of Way, ROW Manual - Book I - TxDOT.
26. Division of Right of Way, ROW Manual - Book II - TxDOT.
27. Code of Federal Regulations, Title 23 - "Highway" - Federal Register.
28. Administrative Order No. 5-89 - Signing, Sealing and Dating of Engineering Documents - TxDOT.
29. Administrative Circular No. 26-91 - Minimum Signing, Sealing and Dating Procedures for Department

- Engineering Documents - TxDOT.
30. Administrative Circular No. 25-84 - Soils Information for High Mast Lighting, Overhead Sign Bridges, and Retaining Walls - TxDOT.
 31. Administrative Circular No. 33-87 - Preliminary Retaining Wall Layouts to be submitted to Division of Bridges and Structures - TxDOT.
 32. Administrative Circular No. 25-92 - Division of Bridges and Structures to be responsible for all geotechnical engineering support for foundations, retaining walls, and embankment stability and settlement - TxDOT.
 33. NOTES
 34. All design shall be in accordance with the above references, except where variances are permitted in writing by the State. The current references at the date of execution of this work authorization shall be used.
 35. The Engineer is responsible for purchasing all references that are required for the project.
 36. Division of Highway Design Operations and Procedures Manual Part IIB - Environmental and Public Involvement Procedures During Project - Specific Planning and Development - TxDOT.
 37. Flexible Pavement Design Manual - TxDOT.
 38. Guide for the Design of Pavement Structures, 1996 - AASHTO.
 39. Texas Manual on Uniform Traffic Control Devices - TxDOT.
 40. Division of Right of Way, ROW Manual - Book I - TxDOT.
 41. Division of Right of Way, ROW Manual - Book II - TxDOT.
 42. Code of Federal Regulations, Title 23 - "Highway" - Federal Register.
 43. Administrative Order No. 5-89 - Signing, Sealing and Dating of Engineering Documents - TxDOT.
 44. Administrative Circular No. 26-91 - Minimum Signing, Sealing and Dating Procedures for Department Engineering Documents - TxDOT.
 45. Administrative Circular No. 25-84 - Soils Information for High Mast Lighting, Overhead Sign Bridges, and Retaining Walls - TxDOT.
 46. Administrative Circular No. 33-87 - Preliminary Retaining Wall Layouts to be submitted to Division of Bridges and Structures - TxDOT.
 47. Administrative Circular No. 25-92 - Division of Bridges and Structures to be responsible for all geotechnical engineering support for foundations, retaining walls, and embankment stability and settlement - TxDOT.
 48. NOTES
 49. All services shall be in accordance with the above references, except where variances are permitted in writing by the State. The current references at the date of execution of this work authorization shall be used.
 50. The Engineer is responsible for purchasing all references that are required for the project.

SECTION 3—ADDITIONAL SERVICES OF ENGINEER

None.

SECTION 4—OWNER'S RESPONSIBILITIES

- A4.0.1.** The following services listed will be performed or furnished by OWNER as part of OWNER's Responsibilities under Section 4:

The COUNTY and the City of Kyle shall provide to the Engineer the following items/information, if needed:

FC110 ROUTE AND DESIGN STUDIES

1. Existing and Design year Traffic evaluations and projections
2. Provide Roadway Design Criteria
3. Coordinate with Adjacent Project Studies
 - a. Drainage Studies
 - b. Alignment Studies
 - c. Residential, commercial and industrial development plans
 - d. Existing Roadway Plans (Hard Copy and Electronically, if available)

- e. Electronic Copy of Final Schematic Documents
- 4. Provide Background Information
 - f. Proposed typical Sections
 - g. Design Speeds
 - h. Current and Proposed Traffic Volumes
 - i. Existing Pavement Sections/Design
- 5. Attend Design Concept Conference

FC160 ROADWAY DESIGN CONTROLS

- 1. Provide Current and Projected Traffic Information
- 2. Provide proposed Pavement Design
- 3. Provide Current Special Specifications, Special Provisions, and General notes

FC162 SIGNINGS, MARKINGS, & SIGNALIZATION

- 1. Provide Standards for Signage and Pavement Markings in MicroStation or Clean Paper Copy if not using TxDOT standards.

FC163 MISCELLANEOUS (ROADWAY)

- 1. Copies of applicable County or City Standard sheets
- 2. Relay Approvals for Local, Regional, State and Federal Agencies and Provide Assistance to Obtain Necessary Data, Information, and Approvals from the Various Agencies.
- 3. Provide Reviews, Decisions and Directions Necessary to Permit the Project to Progress According to the Agreed upon project Schedule.

This is **EXHIBIT B**, consisting of 1 page, referred to in the Agreement between **OWNER** and **ENGINEER** for Professional Services, dated February 17, 2009.

Initial:
OWNER _____
ENGINEER _____

Payments to ENGINEER for Services and Reimbursable Expenses

Section 6 of the Master Agreement is amended and supplemented to include the following agreement of the parties:

Lump Sum Method of Payment
(with additional payments for Reimbursable Expenses)

SECTION B6—PAYMENTS TO ENGINEER

B6.1. Methods of Payment for Services and Expenses of ENGINEER.

B6.1.1. For Basic Services. OWNER shall pay ENGINEER for Basic Services as follows:

B6.1.1.1. General. A lump sum fee of \$891,580 for all services of ENGINEER including services of ENGINEER's Consultants.

B6.1.1.2. Study and Report Phase Services. Not Used.

B6.1.1.3. Resident Project Representative Services. Not Used.

B6.1.1.4. Operational Phase Services. Not Used.

B6.1.2. For Additional Services. OWNER shall pay ENGINEER for Additional Services as follows:

B6.1.2.1. General. For services of ENGINEER's principals and employees engaged directly on the Project performed or furnished pursuant to paragraph 3.1 or 3.2 (except services as a consultant or witness under paragraph 3.1.17), an amount agreed upon by the OWNER and ENGINEER prior to the ENGINEER commencing with the work.

B6.1.2.2. ENGINEER's Consultants. For services of ENGINEER's Consultants performed or furnished pursuant to paragraph 3.1 or 3.2, the amount billed to ENGINEER therefor times a factor of 1.10.

B6.1.2.3. Cost-Plus or Incentive Savings Construction Contracts. Not Used.

B6.1.2.4. Several Prime Contracts. Not Used.

B6.1.2.5. Serving as a Witness. Not Used.

B6.1.3. For Reimbursable Expenses. OWNER shall pay ENGINEER for Reimbursable Expenses such as: Additional plan sets in addition to those provided in the scope of work.

The amount payable to ENGINEER for Reimbursable Expenses will be the charge actually incurred or the imputed cost allocated by ENGINEER therefor times a factor of 1.05.

B6.1.4. Salary Costs. Not Used.

B6.1.5. Adjustment of Salary Costs. Not Used.

B6.2. Other Provisions Concerning Payments.

B6.2.1. Preparation of Invoices. The portion of the amount billed for ENGINEER's services which is on account of the Lump Sum will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing.

B6.2.3. Payments Upon Termination.

B6.2.3.4. In the event of termination during any phase of the Basic Services, ENGINEER will be paid for services performed or furnished in accordance with this Agreement during that phase on the basis of ENGINEER's Salary Costs times a factor of 3.35 for services performed or furnished during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project.

This is **EXHIBIT D**, consisting of 2 pages, referred to in the Agreement between **OWNER** and **ENGINEER** for Professional Services, dated February 17, 2009.

Initial:
OWNER _____
ENGINEER _____

NOTICE OF ACCEPTABILITY OF WORK

PROJECT _____

OWNER _____

OWNER's Contract No. _____

CONTRACTOR _____

CONSTRUCTION CONTRACT DATE _____

ENGINEER _____

To _____
OWNER

And To _____
CONTRACTOR

The undersigned hereby gives notice to the above OWNER and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable expressly subject to the provisions of the above Contract and the terms and conditions set forth on the reverse side hereof.

ENGINEER

Dated:

_____, 20__

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice on the front side of this paper is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the Engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.
3. Said Notice is given as to the best of ENGINEER's knowledge, information and belief.
4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the Work) under ENGINEER's Agreement with OWNER and under the Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the above-referenced Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 1 page, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated February 17, 2009.

Initial:
OWNER _____
ENGINEER _____

Dispute Resolution

Section 8 of the Agreement is amended and supplemented to include the following agreement of the parties:

G8.6. Dispute Resolution.

G8.6.1. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by the American Arbitration Association.

This is **EXHIBIT H**, consisting of 2 pages, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated February 17, 2009.

Initial:
OWNER _____
ENGINEER _____

Allocation of Risks

Section 8 of the Agreement is amended and supplemented to include the following agreement of the parties:

H8.7.4 Limitation of ENGINEER'S Liability

H8.7.4.1. *ENGINEER's Liability Limited to Amount of ENGINEER's Compensation nor to exceed \$100,000.00*

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants, and any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents or ENGINEER's Consultants or any of them, shall not exceed the total compensation received by ENGINEER under this Agreement or to \$100,000.00, whichever is less.

H8.7.4.2. *Exclusion of Special, Incidental, Indirect and Consequential Damages*

To the fullest extent permitted by law, and not withstanding any other provision in the Agreement, ENGINEER and ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants shall not be liable to OWNER or anyone claiming by, through or under OWNER for any special, incidental, indirect or consequential damages whatsoever, arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents or ENGINEER's Consultants, or any of them.

H8.7.4.3. *Limitation of ENGINEER's Liability on Comparative Negligence Basis*

Subject to and limited by the provisions agreed to by OWNER and ENGINEER in paragraph(s) H8.7.4.1 and H8.7.4.2 of Exhibit H, "Allocation of Risks", and to the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through or under OWNER for any claim, cost, loss or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER and all other negligent entities and individuals determined on the basis of comparative negligence principles. OWNER further agrees to hold harmless ENGINEER from and against any such claim, cost, loss or damages but only to the extent of the percentage share that OWNER's negligence bears to the total negligence of OWNER, ENGINEER and all other negligent, entities and individuals determined on the basis of comparative negligence principles.

H8.7.4.4. Agreement Not to Claim for Cost of Certain Change Orders

OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities or inconsistencies in the Drawings, Specifications and other design documentation furnished by ENGINEER or in the other professional services performed or furnished by ENGINEER under this Agreement ("Covered Change Orders"). Accordingly, OWNER agrees not to sue and otherwise to make no claim directly or indirectly against ENGINEER on the basis of professional negligence, breach of contract or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of ENGINEER for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that OWNER would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity or inconsistency in the Contract Documents and without any other error or omission of ENGINEER related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, ENGINEER is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term ENGINEER includes ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants. OWNER further agrees not to sue and otherwise to make no claim directly or indirectly against ENGINEER with respect to any Covered Change Order not in excess of such percentage stated above and OWNER agrees to hold ENGINEER harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to approve \$376.70 reimbursement to Jerry Pinnix, Parks and Transfer Station Department for training lodging expense.

CHECK ONE: ☐ **CONSENT** ☒ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: March 10, 2009

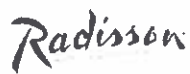
AMOUNT REQUIRED: \$376.70

LINE ITEM NUMBER OF FUNDS REQUIRED: 07-487-5311

REQUESTED BY: Pinnix

SPONSORED BY: SUMTER

SUMMARY: County policy does not allow for reimbursement for lodging unless the training location is at least 45 miles away. In this case, the training ended at 5pm and started at 7:30am each morning. It is within the discretion of the Commissioners Court to reimburse the employee if they wish.



Mr. Jerry Pinnix
102 N L B J Dr
#210
San Marcos, TX 78666-5698

Room No. : 0322
Arrival : 02-25-09
Departure : 02-27-09
Page No. : 1 of 1
Folio No. : 483136
Conf. No. : 488996
Cashier No. : 164

INVOICE

Membership No. :
A/R Number :
Group Code : 0902TRAPSI
Company Name : Texas Recreation and Park Sc

02-27-09

Date	Text	Charges	Credits
02-25-09	Room Charge	149.00	
02-25-09	6% State Occupancy Tax	8.94	
02-25-09	9% City Occupancy Tax	13.41	
02-25-09	Valet Parking	17.00	
02-26-09	Room Charge	149.00	
02-26-09	6% State Occupancy Tax	8.94	
02-26-09	9% City Occupancy Tax	13.41	
02-26-09	Valet Parking	17.00	
02-27-09	High Speed Internet	9.95	376.7
02-27-09	Mastercard XXXXXXXXXXXX7725 XX/XX		386.65
Total		386.65	386.65
Balance			0.00

Join goldpoints plus today! Enroll in goldpoints plus at a participating hotel front desk or on line at
goldpointsplus.com and start earning Gold Points today!

Thank You For Staying With Us

I agree that my liability for this bill is not waived and agree to be held personally responsible in the event that the indicated person, company or association fails to pay for any portion or the full amount of these charges.

Guest Signature _____

Radisson Hotel and Suites Austin - Town Lake
111 E. Cesar Chavez St. at Congress
Austin, TX 78701
Telephone: (512) 478-9611 Fax: (512) 473-8399
Email: RHI_AUTX@Radisson.com

Texas Recreation & Park Society

[Home](#) [Membership](#) [Education & Training](#) [Boards & Committees](#) [Regions & Branches](#)

Annual Institute & Trade Show



The Society holds an Annual Institute and Trade Show each spring which rotates around the state. Educational sessions featuring leaders from around the nation include tracks on a variety of issues relating to park, recreation and leisure services. Employees of all levels are guaranteed a rewarding variety of continuing education opportunities at the Institute. Combined with a trade show, the Institute provides a keen opportunity for vendors to interact with members of all levels, providing them information and research on the latest trends and technology available to enhance the field.

2009 Texas Recreation Park Society Institute

In Cooperation with Texas
Parks & Wildlife and NRPA
Southwest Region

Institute Dates:
February 24 - 27, 2009

Institute Site
Palmer Event Center
900 Barton Springs Road

[Institute Mailer & Program](#)

Schedule of Events
Registration is now closed. Please register on-site.
Registration Hours
Tuesday, February 24 3:00 - 5:00 p.m.
Wednesday, February 25 7:30 a.m. - 5:30 p.m.



Institute Chair

Joanna Mesecke, M.Ed.
CPRP Austin Parks and
Recreation Department

Quick Links

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and Vendor Brochure](#)

[Newsletter](#)

[Calendar](#)

[Affiliates](#)

[Job Postings](#)

**THANK YOU
2009
SPONSORS**



Agenda Item Request Form

**Hays County Commissioners' Court
9:00 a.m. Every Tuesday
Request forms are due in the County Judge's Office
no later than 2:00 p.m. on WEDNESDAY.
Phone (512) 393-2205 Fax (512) 393-2282**

AGENDA ITEM: Presentation by HDR regarding the water/wastewater facilities planning process.

**TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-
WORKSHOP**

PREFERRED MEETING DATE REQUESTED: March 10, 2009; 1-2pm

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: Ford

SUMMARY:

Attached are the contract with HDR, the contract with TWDB for the grant, and parts of the grant application, for background.

MULTIPLE PROJECT AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of this 27th day of January, 2009, between Hays County, TX, hereinafter referred to as "OWNER", and HDR Engineering, Inc., hereinafter referred to as "ENGINEER," for engineering services as described in this Agreement.

WHEREAS, OWNER desires to retain ENGINEER, a professional engineering firm, to provide professional engineering, consulting and related services ("Services") on one or more projects in which the OWNER is involved; and

WHEREAS, ENGINEER desires to provide such services on such projects as may be agreed, from time to time, by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION I. PROJECT TASK ORDER

- 1.1 This Agreement shall apply to as many projects as OWNER and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for OWNER hereunder shall be designated by a "Task Order." Task Order 1 is attached to this Agreement. No Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.
- 1.3 ENGINEER will provide the Scope of Services as set forth in Part 2 of each Task Order.

SECTION II. RESPONSIBILITIES OF OWNER

In addition to the responsibilities described in paragraph 6 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services," OWNER shall have the responsibilities described in Part 3 of each Task Order.

HDR Engineering, Inc.

Terms and Conditions for Professional Services

1. 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 Agreement 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. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation Insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability Insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability Insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability Insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. Upon request, OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER's insurance.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

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.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard

Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement.

The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by

law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. LIMITATION OF LIABILITY

ENGINEER's and its employees' total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER's and its employees' professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total compensation received by ENGINEER hereunder, except as otherwise provided under this Agreement, and OWNER hereby releases and holds harmless ENGINEER and its employees from any liability above such amount.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.

TASK ORDER No. 1

This Task Order pertains to an Agreement by and between Hays County, TX, ("OWNER"), and HDR Engineering, Inc. ("ENGINEER"), dated January 27th, 2009, ("the Agreement"). Engineer shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: 1

PROJECT NAME: Hays County Regional Water and Wastewater Facility Plan

PART 1.0 PROJECT DESCRIPTION:

Perform engineering services to develop a regional facility plan, to examine options for developing water and wastewater facilities to serve certain areas of Hays County, all as described by the County's grant application to the TWDB for this project and the scope of services below.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:

See Attachment A (Contract between Hays County and TWDB), article II.2.

PART 3.0 OWNER'S RESPONSIBILITIES:

See Attachment A (Contract between Hays County and TWDB).

PART 4.0 PERIODS OF SERVICE:

See Attachment A (Contract between Hays County and TWDB), article I.

PART 5.0 PAYMENTS TO ENGINEER:

The above referenced scope of services will be paid by a lump sum of \$200,000, as described by the attached Contract between Hays County and TWDB. Absent a valid amendment or modification to this Task Order No. 1, Owner's obligation to pay Engineer under this Task Order, including reimbursable expenses, shall not exceed \$200,000. Invoices for work completed and reimbursable expenses will be submitted on a percent complete by task order basis, in accordance with the attached Terms and Conditions of Professional Services.

PART 6.0 OTHER:

Not used.

This Task Order is executed this 27th day of January, 2009.

Hays County
"OWNER"

BY:

NAME:

TITLE:

ADDRESS:

Elizabeth Sumter

Hays County Judge

111 E. San Antonio St #302
San Marcos, TX 78666

HDR ENGINEERING, INC.
"ENGINEER"

BY:

NAME:

TITLE:

ADDRESS:

Neil A. Graff, PE

Senior Vice President

4401 West Gate Blvd #400
Austin, TX 78745

Attachment A
Contract between Hays County and Texas Water Development Board
TWDB Contract No. 0804830842
30 Pages

STATE OF TEXAS

TWDB Contract No. 0804830842

COUNTY OF TRAVIS

Research and Planning Fund
Regional Facility Planning

Hays County

This Contract, (hereinafter "CONTRACT"), between the Texas Water Development Board (hereinafter "BOARD") and Hays County (hereinafter "CONTRACTOR (S)"), is composed of two parts: Section I. Specific Conditions and Exceptions to the Standard Agreement and Section II. Standard Agreement. The terms and conditions set forth in Section I will take precedence over terms and conditions in Section II.

**SECTION I. SPECIFIC CONDITIONS AND EXCEPTIONS
TO STANDARD AGREEMENT**

ARTICLE I. DEFINITIONS: For the purposes of this CONTRACT, the following terms or phrases shall have the meaning ascribed therewith:

- A. **BOARD** - The Texas Water Development Board, or its designated representative.
- B. **CONTRACTOR (S)** – Hays County
- C. **EXECUTIVE ADMINISTRATOR** The Executive Administrator of the Board or his designated representative.
- D. **PARTICIPANT (S)** – Hays County, Aqua Texas, Inc., City of Dripping Springs, Dripping Springs Water Supply Corporation, Barton Springs/Edwards Aquifer Conservation District, Guadalupe-Blanco River Authority, Hays Trinity Groundwater Conservation District, Lower Colorado River Authority, Village of Wimberley, Wimberley Water Supply Corporation, City of Woodcreek.
- E. **REQUIRED INTERLOCAL AGREEMENT (S)** – N/A
- F. **REGIONAL FACILITY PLAN** – Develop a comprehensive approach for providing water supply and wastewater treatment for Hays County.
- G. **BOARD APPROVAL DATE** – May 27, 2008.
- H. **PLANNING AREA** – The planning area is Hays County which is located approximately 16 miles south of Austin on off of Interstate 35. The project area is more specifically defined in Exhibit A (the original grant application).
- I. **DEADLINE FOR CONTRACT EXECUTION** – August 22, 2008

SECTION III. COMPENSATION

Compensation for ENGINEER's Services shall be in accordance with Part 5 of each Task Order, and in accordance with paragraph 11 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services."

SECTION IV. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The "HDR Engineering, Inc. Terms and Conditions for Professional Services," which are attached hereto, are incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

HAYS COUNTY, TX

"OWNER"

BY: 

NAME: Elizabeth Sumter

TITLE: Hays County Judge

ADDRESS: 111 E San Antonio St #300
San Marcos, TX 78666

HDR ENGINEERING, INC.

"ENGINEER"

BY: 

NAME: Neil A. Graff, PE

TITLE: Senior Vice President

ADDRESS: 4401 West Gate Blvd #400
Austin, TX 78745

- J. CONTRACT INITIATION DATE – August 22, 2008
- K. DRAFT FINAL REPORT SUBMISSION DATE – August 22, 2009
- L. FINAL REPORT DEADLINE (CONTRACT EXPIRATION) – February 22, 2010
- M. TOTAL STUDY COSTS - \$200,000
- N. BOARD SHARE OF THE TOTAL STUDY COSTS – The lesser of \$100,000 or 50 percent of the total study costs or individual voucher submission
- O. LOCAL SHARE OF THE TOTAL STUDY COSTS - \$85,000 in cash and \$15,000 in in-kind services or 50 percent of the total study costs or individual voucher submission
- P. VOUCHER SUBMISSION SCHEDULE - Quarterly
- Q. OTHER SPECIAL CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT OF THIS CONTRACT –

The CONTRACTOR (S) will complete the Scope of Work and will deliver seven (7) double-sided copies of a draft final report to the EXECUTIVE ADMINISTRATOR no later than the DRAFT FINAL REPORT SUBMISSION DATE. The draft final report will include at a minimum an executive summary, the methodology and findings of the study, including alternatives considered.

IN WITNESS WHEREOF, the parties have caused this CONTRACT to be duly executed in multiple originals.

**TEXAS WATER DEVELOPMENT
BOARD**


J. Kevin Ward
Executive Administrator

Date: 8/19/08

HAYS COUNTY


Judge Elizabeth "Liz" Sumter
Hays County Judge

Date: 8/19/08

I. GENERAL INFORMATION

1. Legal name of applicant(s):

Hays County, TX
111 E. San Antonio St., Suite. 300
San Marcos, Texas 78666
Contact: Elizabeth 'Liz' Sumter, Hays County Judge
Phone: (512) 393-2205

2. Participating political subdivision(s):

- a. Aqua Texas, inc.
1106 Clayton Lane
Suite 400W
Austin, TX 78723
Contact: Glen E. Lewis
Phone: (512) 990-4400 ext. 104
- b. City of Dripping Springs
511 Mercer Street
Dripping Springs, Texas 78620
Contact: Mayor Todd Purcell
Phone: (512) 858-4725
- c. Dripping Springs Water Supply Corporation (DSWSC)
PO Box 354
Dripping Springs, TX 78620
Contact: Doug Cones
Phone: (512) 413-6161
- d. Barton Springs / Edwards Aquifer Conservation District
1124 Regal Row
Austin, Texas 78748
Contact: Kirk Holland, P.G.
Phone: (512) 282-8441
- e. Guadalupe-Blanco River Authority (GBRA)
933 East Court Street
Seguin, TX 78155
Contact: Bill West
Phone: 830-379-5822
- f. Hays Trinity Groundwater Conservation District (HTGCD)
PO Box 1648
Dripping Springs, Texas 78620
Contact: Andrew Backus – President, Board of Directors
Phone: (512) 858-9253

- g. Lower Colorado River Authority (LCRA)
P.O. Box 220
Austin, TX 78767
Contact: Thomas G. Mason – General Manager
Phone: (512) 473-3200
- h. Village of Wimberley
12111 RR 12
Wimberley, TX 78676
Contact: Don Ferguson – City Administrator
Phone: (512) 847-0025
- i. Wimberley Water Supply Corporation (WWSC)
110 La Pais Dr
Wimberley, TX 78676
Contact: Tom Haley - President, Board of Directors
Phone: (512) 847-7883
- j. City of Woodcreek
41 Champion Circle
Woodcreek, TX 78676
Contact: Gloria Whitehead - Mayor
Phone: (512) 847-9390

3. Authority of law under which the applicant was created:

Hays County was formed on March 1, 1848 by the Texas State Legislature.

4. Applicant's official representative:

Judge Elizabeth 'Liz' Sumter
Hays County Judge
111 E. San Antonio St.
Suite 300
San Marcos, TX 78666
Phone: (512) 393-2205
Fax : (512) 393-2282
lizsumtrcr@co.hays.tx.us

5. Citations of applicant's legal authority to plan, develop, and operate a regional facility for the planning area:

Local Government Code Title 13 Subchapter 412.016.a states that a county has authority to "... acquire, own, operate, or contract for the operation of, a water or sewer utility system to serve an unincorporated area of the county...".

6. Is this application in response to a Request for Proposals published in the Texas Register?

Yes ☒ No ☐

7. If yes to No. 6 above, list document number and date of publication of the Texas Register:

The RFP for this application was published in 32 TexReg 7152 on October 5, 2007 under the heading "Request for Applications for Regional Water and Wastewater Facility Planning"

8. Type of proposed planning (Check all that apply):

Regional Water Supply Facility Planning ☐

Regional Wastewater Facility Planning ☒

9. Total proposed planning cost:

\$200,000

10. Applicant Cash Contribution to the study:

\$25,000

11. List source of cash contribution, explanation of source of local cash contribution:

\$25,000 provided by the Guadalupe Blanco River Authority

\$5,000 provided by Aqua Texas

\$5,000 provided by the Barton Springs Edwards Aquifer Conservation District

\$5,000 provided by the City of Dripping Springs

\$5,000 provided by the Dripping Springs Water Supply Corporation (tentative)

\$5,000 provided by the Hays Trinity Groundwater Conservation District

\$5,000 provided by the Village of Wimberley

\$5,000 provided by the Wimberley Water Supply Corporation

\$TBD provided by the Village of Woodcreek

\$60,000 total cash contribution

12. Applicant in-kind contribution including a description of in-kind services to be provided:

\$15,000. The participating entities will provide in-kind services requiring staff time and resources to provide the following:

- See memorandum from LCRA for specific commitment to in-kind contribution.
- See memorandum from Barton Springs Edwards Aquifer Conservation District for specific commitment to in-kind contribution.
- Project management and coordination
- Staff time for at least one participant dedicated to representing each participant's interests in the study.

- Detailed information regarding OSSF systems.
- Interpretations of existing and proposed regulations.
- Development and update of water conservation plans.
- Current water and wastewater CCN maps in GIS or CAD format.
- Details of bulk water delivery agreements.
- Engineering information regarding water distribution and treatment facilities and wastewater collection and treatment facilities.

Consultant services, as required, to provide or develop information and services needed for the study.

13. Total grant funds requested from the Texas Water Development Board:

\$100,000. The applicant requests that the review committee consider the option of making additional grant funds available as additional participants join the planning process with cash or in-kind contributions.

14. Detailed description of why proposed planning is needed:

Water resources in Hays County are extremely limited. The Hays Trinity Groundwater Conservation District has reported that current science indicates that demand for Hays County's ground water will soon exceed supply, and protecting the aquifer and its resources will include significant restrictions and substantial expense to businesses and citizens. As Hays County continues to grow at its current rapid rate, its dependence on water sources outside of the County will grow. Additional sources will require investments in water rights, infrastructure, and treatment, all at potentially high cost. It is possible that many of Hays County's citizens will soon find themselves unable to afford safe and reliable drinking water. There is a need to identify a regional strategy that will provide Hays County the flexibility to grow wisely, and keep water safe, reliable, and affordable.

Residents of rural Hays County get their water from two major groundwater sources, the Edwards and Trinity aquifers, and two river authorities, the GBRA, and the LCRA. Recently, the Region K and Region L water plans predicted that many of the County's water systems will experience demands that exceed supply by 2010. Without even approaching the drought of record, many wells in Hays County went dry during the summer of 2006 while Lake Travis dropped substantially and water use restrictions were imposed on many systems served by the LCRA. Many of the County's citizens are concerned that this will happen again. There is a need to verify the current state of water demand in the County, and assess the ability of the County's water sources to provide for current and future needs.

- Analyze the potential impact of rainwater collection systems.
- Analyze the feasibility of an aquifer storage and recovery (ASR) system.
- Develop specific options for collection, treatment, reuse, and disposal of wastewater in the planning area.
- Research cutting edge technologies for wastewater treatment and reuse appropriate for the planning area.
- Identify priority areas for conversion from OSSF to regional collection and treatment systems.
- Identify potential for expansion of existing discharge permits (including zero-discharge facilities), as allowable by the State Water Quality Management Plan.
- Explore potential for advanced OSSF treatment systems, including biological nutrient removal, for areas that may not be feasibly served by collection systems.
- Explore the potential for new methods of management and operation of small plants where a regional solution is not appropriate.
- Identify improvements to OSSF inspection and reporting programs as well as monitoring and enforcement systems.
- Identify existing water conservation public education programs that have been implemented in the planning area, and investigate the potential to expand and consolidate those programs into a regional water education program.
- Calculate water savings in water demand by an aggressive county-wide water conservation program, and estimate costs.
- Explore the implementation of conjunctive use programs, such as combining rainwater collection systems with public water supply systems, as a method of expanding the effective capacity of public water systems.
- Detailed description of why state funding assistance is needed:

State funding is needed to support the regional planning of the distribution, treatment, and collection system improvements needed by the study participants. The study participants realize that an organized plan for supplying water and providing for wastewater treatment is important to most effectively and economically provide service. There is no other direct funding mechanism in place to provide planning for the areas included in the proposed study.

The Regional plans cite a number of ways that the gap between demand and supply may be closed. These include expanding utilization of the Trinity aquifer, voluntary or mandatory water conservation, expanding surface water availability from the Colorado River and the Guadalupe River, and others. Some of these options may no longer be feasible. Other options have been identified and need to be more fully explored. There is a need to qualify and quantify the potential effectiveness of these options for addressing the needs of the County as a whole.

With increased population and water demands come a similar increase in wastewater production. The small number of services areas and wastewater CCN's in Hays County (see Exhibit 1) is testament to the magnitude, complexity, and cost of developing wastewater facilities in the area. The growing number of small independent water and wastewater districts threatens the implementation of a comprehensive plan. There is a need to identify and implement a forward thinking regional approach to wastewater treatment, beneficial reuse, and discharge that protects the waters of the State of Texas, as well as the County's natural and economic resources.

Hays County has issued permits for hundreds of on site sewage facilities (OSSF's) in the past 7 years. Prior to 2000, a significant number aerobic and septic systems were installed in the County. The cumulative failure rates and impacts of widespread use of these systems has not been studied locally, but research indicates that 10 percent of OSSF systems can be expected to fail at any given point in time. This represents a significant potential for the discharge of untreated or partially treated wastewater. Because a majority of the land in Hays County sits over the Trinity and Edwards aquifer recharge and contributing zones, there is a need to plan for the implementation of more effective wastewater treatment and beneficial reuse.

Therefore, this study proposes to:

- Develop a comprehensive approach for providing safe, reliable, sustainable, and affordable supplies of water for Hays County.
- Develop a comprehensive approach for treatment and reuse of wastewater generated by new growth.
- Identify the existing and pending water and wastewater CCN's in Hays County, and examine the geographic, supply, and legal capabilities of each CCN holder.
- Assess the current and future state of water demand in rural Hays County, with emphasis on comparing existing conditions to those predicted in the Regions L and K water plans.
- Develop specific options for delivery and treatment of water in the planning area.
- Consider and possibly reconfigure projects proposed in the Regions L and K water plans.
- Assess incomplete projects that the County's individual water providers are already developing.
- Analyze the potential impact of a "preferred growth area" program.

15. Identify potential sources and amounts of funding available for implementation of viable solutions resulting from proposed planning:

Funding, depending on the political subdivision, can be acquired from a number of different sources:

- Revenue Bonds
- General Obligation Bonds
- United States Department of Agriculture—Rural Utility Service Program
- Office of Rural Community Affairs (ORCA)
- Economic Development Administration—U.S. Department of Commerce

In addition, the potential exists for partnership agreements between the political subdivisions involved in this study, for solutions that provide mutual benefit.

16. Qualifications and direct experience of proposed project staff:

Hays County will manage the project with guidance from its consulting partner. Hays County's grant administration staff has managed numerous infrastructure planning grants and studies.

Richard Salmon has been Hays County's Grants Administrator since 1993. As Grants Administrator, his duties include oversight of the development of all grants for the County, submission and tracking through the review and award processes and administration of grants that are funded. Mr. Salmon is currently managing a total of 14.2 million dollars in grants, including such varied facility improvements as roads in environmentally sensitive areas, hike and bike trails, low water crossing early warning systems, park improvements, dam improvements, and solid waste.

The County will select a consulting partner that has extensive experience in administration of Texas Water Development Board water and wastewater planning grants, as well as experience assisting political subdivisions in securing funding, designing facility improvements, and administration of construction.

17. How much money has the applicant secured toward financing the proposed project? List the participating entities and the amount budgeted/committed by each entity:

No funding has been secured for possible construction projects. Funding will be secured by the appropriate political subdivision at the time of implementation. See response to question 11 for amounts of funding committed to this study.

18. Have any local entities included this project in the current CIP budget? Provide the name of the entity and provide proof that this project is included in the CIP:

None of the participating entities have allocated CIP funds for possible construction of the facility options recommended as party of this study. Funding will be secured by the appropriate political subdivision at the time of implementation.

19. Do you have support from the community for this project? Provide letters, resolutions, etc. showing proof of local support:

See the attached letters of support from:

- Aqua Texas
- Barton Springs Edwards Aquifer Conservation District
- City of Dripping Springs
- Dripping Springs Water Supply Corporation
- Guadalupe Blanco River Authority
- Hays Trinity Groundwater Conservation District
- Lower Colorado River Authority
- Village of Wimberley
- Wimberley Water Supply Corporation
- Village of Woodcreek

As of the submission date of this application, the following entities have communicated interest in participating, but had not taken official action:

- Dripping Springs Water Supply Corporation

20. Percent of annual budget used for capital expenditure for past five years.

The information listed below was still being gathered at the time of the submission of this application. The information will be provided as it is received from the participating entities. If the information is not received during the application process, it will be gathered as part of the study, as it is of material importance to assessing the needs of the participating entities.

Exhibit 2
Scope of Proposed Study
Regional Water Supply and Wastewater Facilities Planning Grant Application

Task 100 – Project Management

Hays County will provide project management and quality control throughout the project, with assistance from the Consultant. The Consultant will organize and schedule deliverables, meetings, and site visits working in conjunction with Hays County and other project participants. The Consultant will provide quality control reviews of all calculations and modeling runs and provide quality assurance of reported results.

Task 200 – Information Gathering

With assistance from Hays County staff and project participants, the Consultant will compile information on:

- Existing water rights, utility systems, pumping capacity, and treatment capacity.
- Wastewater conveyance and treatment capacity.
- Water storage, metering systems, and distribution mains.
- Wastewater treatment facilities, pumping facilities, and collection mains.
- Existing water system demands, demand patterns, delivery points, and operational characteristics.
- Existing wastewater production, production patterns, and operational characteristics.

From the information gathered, a summary of the existing conditions of water and wastewater service will be developed in maps and figures for use in the study report.

Task 300 – Growth Prediction

With assistance from Hays County staff and project participants, the Consultant will develop a growth projection of the planning area. Growth will be analyzed for the years 2010, 2020, and 2050.

A projection of population growth will be developed using existing reports, as well as input from Hays County staff and project participants. Water demand and wastewater production rates will be established, using the information gathered in Task 200. This information will then be used to predict water and wastewater demand in the study years.

The Consultant will analyze the potential effects of proposed OSSF permitting and development regulations and apply these factors to the growth prediction.

The growth projection will be developed in maps and figures for use in the study report.

Task 400 – Analysis of Deficiencies and Impact

Using information gathered in Task 200 and Task 300, the Consultant will identify areas whose water and wastewater needs cannot be met by existing and currently proposed facilities, and the difference between demands and supply and capacity will be quantified.

The Consultant will quantify the resultant well water demand and number of OSSF systems that will be required to meet the future conditions if the participating entities cannot meet the demand, to be used as a baseline for measuring the effectiveness of proposed facility options.

Task 500 – Evaluation of Facility Improvements

When Task 400 is complete, the plan participants will propose facility improvements to meet the deficiencies identified in Task 400. The Consultant will provide guidance on the general feasibility of the proposed options.

The study participants will meet to discuss their plans and develop additional facility improvements to serve additional areas in need of service. The Consultant will propose additional facility improvements, as needed. The participants will develop a final list of facility improvements for the Consultant to analyze.

For each option, the Consultant will develop general engineering details required to implement the option, provide an estimate of probable cost, and an estimate of the cost of the option to customers in dollars per thousand gallons. The consultant will also estimate the reduction in groundwater demand and the number of OSSF systems eliminated by each option.

Task 600 – Report Preparation

The Consultant will develop a complete report documenting the assumptions, analyses, and recommendations of facility improvements of the study. The report will be written in such a manner that the contents may be used to develop the administrative provisions, such as CCN expansions and discharge permits that may be necessary to secure the interests of the participants.

The Consultant will prepare a draft report for review by each planning participant and then incorporate review comments from the single review into the final report. Five (5) hard copies of the final report will be provided to Hays County and one to each of the other study participants.

Exhibit 3
Proposed Study Budget
Regional Water Supply and Wastewater Facilities Planning Grant Application

Task	Budget
Task 100 – Project Management	\$20,000
Task 200 – Information Gathering	\$20,000
Task 300 – Growth Prediction	\$20,000
Task 400 – Analysis of Deficiencies and Impact	\$30,000
Task 500 – Evaluation of Facility Improvements	\$80,000
Task 600 – Report Preparation	\$30,000
Total	\$200,000

Expense	Budget
Travel	\$1,500
Tech / Computer	\$6,600
Reproduction	\$3,000
Postage / Courier	\$500
Subcontractor	\$0
Salaries	\$65,500
Fringe	\$29,500
Profit	\$10,000
Overhead	\$83,400
Total	200,000

EXHIBIT B

SCOPE OF WORK

Task 1 - Project Management

Hays County will provide project management and quality control throughout the project, with assistance from the Consultant. The Consultant will organize and schedule deliverables, meetings, and site visits working in conjunction with Hays County and other project participants. The Consultant will provide quality control reviews of all calculations and modeling runs and provide quality assurance of reported results.

Task 2 - Information Gathering

With assistance from Hays County staff and project participants, the Consultant will compile information on:

- Existing water rights, utility systems, pumping capacity, and treatment capacity.
- Wastewater conveyance and treatment capacity.
- Water storage, metering systems, and distribution mains.
- Wastewater treatment facilities, pumping facilities, and collection mains.
- Existing water system demands, demand patterns, delivery points, and operational characteristics.
- Existing wastewater production, production patterns, and operational characteristics.

From the information gathered, a summary of the existing conditions of water and wastewater service will be developed in maps and figures for use in the study report.

Task 3 - Growth Prediction

With assistance from Hays County staff and project participants, the Consultant will develop a growth projection of the planning area. Growth will be analyzed for the years 2010, 2020, and 2050.

A projection of population growth will be developed using existing reports, as well as input from Hays County staff and project participants. Water demand and wastewater production rates will be established, using the information gathered in Task 2. This information will then be used to predict water and wastewater demand in the study years.

The Consultant will analyze the potential effects of proposed OSSF permitting and development regulations and apply these factors to the growth prediction.

The growth prediction will be developed in maps and figures for use in the study report.

Task 4 – Analysis of Deficiencies and Impact

Using information gathered in Task 2 and Task 3, the Consultant will identify areas whose water and wastewater needs cannot be met by existing and currently proposed facilities, and the difference between demands and supply and capacity will be quantified.

The Consultant will quantify the resultant well water demand and number of OSSF systems that will be required to meet the future conditions if the participating entities cannot meet the demand, to be used as a baseline for measuring the effectiveness of proposed facility options.

Task 5 – Evaluation of Facility Improvements

When Task 4 is complete, the plan participants will propose facility improvements to meet the deficiencies identified in Task 4. The Consultant will provide guidance on the general feasibility of the proposed options.

The study participants will meet to discuss their plans and develop additional facility improvements to serve additional areas in need of service. The Consultant will propose additional facility improvements, as needed. The participants will develop a final list of facility improvements for the Consultant to analyze.

For each option, the Consultant will develop general engineering details required to implement the option, provide an estimate of probable cost, and an estimate of the cost of the option to customers in dollars per thousand gallons. The consultant will also estimate the reduction in groundwater demand and the number of OSSF systems eliminated by each option.

Task 6 - Report Preparation

The Consultant will develop a complete report documenting the assumptions, analyses, and recommendations of facility improvements of the study. The report will be written in such a manner that the contents may be used to develop the administrative provisions, such as CCN expansions and discharge permits that may be necessary to secure the interests of the participants.

The Consultant will prepare a draft report for review by each planning participant and then incorporate review comments from the single review into the final report. Five (5) hard copies of the final report will be provided to Hays County and one to each of the other study participants.

EXHIBIT C

TASK BUDGET

TASK	DESCRIPTION	AMOUNT
Task 100	Project Definition and Funding Acquisition	\$20,000.00
Task 200	Project Management	\$20,000.00
Task 300	Population and Flow Projections	\$20,000.00
Task 400	Identify Transmission, Treatment, and Collection System Alternatives	\$30,000.00
Task 500	Develop Recommendations	\$80,000.00
Task 600	Draft and Final Report	\$30,000.00
Total		\$200,000.00

EXPENSE BUDGET

CATEGORY	TOTAL BUDGET
Salaries and Wages ¹	\$65,500.00
Fringe ²	\$29,500.00
Travel	\$1,500.00
Tech/Computer	\$6,600.00
Communications (Postage/Courier)	\$500.00
Reproduction	\$3,000.00
Overhead ³	\$83,400.00
Profit	\$10,000.00
Total	\$200,000.00

¹ Salaries and Wages is defined as the cost of salaries of engineers, draftsmen, stenographers, surveymen, clerks, laborers, etc., for time directly chargeable to this contract.

² Fringe is defined as the cost of social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

³ Overhead is defined as the costs incurred in maintaining a place of business and performing professional services similar to those specified in this contract. These costs shall include the following:

- Indirect salaries, including that portion of the salary of principals and executives that is allocable to general supervision;
- Indirect salary fringe benefits;
- Accounting and legal services related to normal management and business operations;
- Travel costs incurred in the normal course of overall administration of the business;
- Equipment rental;
- Depreciation of furniture, fixtures, equipment, and vehicles;
- Dues, subscriptions, and fees associated with trade, business, technical, and professional organizations;
- Other insurance; Rent and utilities; and Repairs and maintenance of furniture, fixtures, and equipment

Exhibit D

SUBCHAPTER A. GENERAL RESEARCH AND PLANNING **Texas Administrative Code Sections 355.1 - 355.11**

These rules are adopted under the authority of Texas Water Code, Sections 6.101 and the Texas Water Code, Chapter 15, Subchapter F, which require the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.1. General. This subchapter shall govern the board's use of the research and planning fund to provide money for water research, flood control planning and regional facility planning.

Adopted effective October 11, 1991

Amended effective February 11, 1999

§355.2. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the applicable provisions of the Texas Water Code, Chapter 15, and not defined here shall have the meanings provided by such chapter.

- (1) **Flood protection planning** - The process of developing the means of providing protection from flooding through structural and non-structural measures.
 - (A) **Planning for flood protection** includes studies and analyses to:
 - (i) determine and describe problems resulting from or relating to flooding;
 - (ii) determine the views and needs of the affected public relating to flooding problems;
 - (iii) identify potential solutions;
 - (iv) estimate benefits and costs of potential solutions, including structural and non-structural measures;
 - (v) recommend feasible solutions to flood protection problems; and
 - (vi) determine that any proposed solutions are consistent with appropriate regional or statewide plans and relevant laws and regulations.
 - (B) **Planning**, as herein defined, does not include those activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, nor preparation of engineering plans and specifications.
- (2) **Regional facility planning for water resources** - The process of identifying existing and potential problems, problem solutions and their relative costs and benefits, and recommending the most feasible solution(s) for regional water supply or wastewater facilities, except to the extent that such matters are being or have been studied under Texas water Code, §16.053.

Planning, as herein defined, does not include those activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, nor preparation of engineering plans and specifications.

- (3) Research - Scientific activities that are undertaken to address practical problems rather than to expand the frontiers of knowledge. Research can include development, which refers to activities undertaken to solve the technical problems involved in bringing a new product or process into production. Research may include regional water quality assessments performed by river authorities pursuant to the provisions of the Texas Water Code, §26.0135 and §26.178.

Adopted effective October 11, 1991	Amended effective February 11, 1999
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§355.3. Legal and Fiscal Information. As funds become available, and needs are identified, the executive administrator will publish notice in the Texas Register requesting applications from eligible applicants for grants in one or more of the three categories. Applicants shall submit application(s) in the form and in the manner prescribed by the executive administrator. The executive administrator may request additional information needed to evaluate the application, and may return any incomplete applications. Applicants may also submit and the executive administrator may also consider applications at any time, depending on availability of funds and demonstrated need.

Adopted effective October 11, 1991	Amended effective February 11, 1999
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§355.4. Eligibility. Any person may apply for research grants, but only political subdivisions may apply for flood control and regional facility planning grants. Funding of projects shall be at the discretion of the board from funds in the research and planning fund.

Adopted effective October 11, 1991	Amended effective February 11, 1999
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§355.5. Criteria. Applications will be evaluated by the executive administrator, considering, at a minimum, the following criteria.

- (1) Research project evaluation criteria for unsolicited applications:
 - (A) relationship of project to current needs for water resource research;
 - (B) description of the proposed research project;
 - (C) approach to organizing and managing the research project;
 - (D) estimated time required to complete the research project;
 - (E) ability to perform the research and complete the project;
 - (F) potential economic impact; and
 - (G) environmental enhancement and conservation impact.
- (2) Research project evaluation criteria for solicited applications:
 - (A) description of the proposed research project;

- (B) responsiveness of the application to the request for proposals for requests for qualifications;
 - (C) approach to organizing and managing the research project;
 - (D) estimated time required to complete the research project; and
 - (E) ability to perform the research and complete the project.
- (3) Flood control planning project criteria:
- (A) degree to which proposed planning duplicates previous or ongoing flood plans;
 - (B) project service area is regional versus local;
 - (C) history of flooding in project area;
 - (D) participation in National Flood Insurance Program;
 - (E) project organization and budget; and
 - (F) scope and potential benefits of project.
- (4) Regional facility planning project criteria:
- (A) degree to which proposed planning duplicates previous or ongoing plans;
 - (B) regional nature of project;
 - (C) conformance to certified water quality management plans;
 - (D) adequacy of water conservation plan and commitment to water conservation;
 - (E) project organization and budget;
 - (F) scope and potential benefits of project;
 - (G) the degree to which the regional facility planning is consistent with an approved regional water plan for the area in which the political subdivision is located.

Adopted effective October 11, 1991	
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Amended effective February 18, 2008

§355.6. Board Consideration of Projects. The executive administrator will submit recommended projects to the board, to be scheduled on the agenda for board consideration at the earliest practical date. The applicant and other interested parties known to the board shall be notified of the time and place of such meeting.

Adopted effective October 11, 1991	
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§355.7. Action of the Board on Projects. At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of the application. Approval action shall include specification of a commitment period during which applicant must enter into a contract, and demonstrate matching funds availability, after which time the commitment shall expire, unless a time extension is granted by the board.

Adopted effective October 11, 1991	
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§355.8. Notice Requirements. For flood protection and regional facility planning projects, applicants must notify all cities, counties, non-profit water supply corporations, regional planning agencies, regional water planning groups and all districts and authorities created under the Texas Constitution, Article III, Chapter 52, or Article XVI, Chapter 59, in the planning area by certified

mail that an application for planning assistance is being filed with the board. The notice shall include the name and address of the applicant and the name of the applicant's manager or official representative; and brief description of the planning area; the purposes of the planning project; the board's name, address, and the name of a contact person with the board; a statement that any comments must be filed with the executive administrator and the applicant within 30 days of the date on which the notice is mailed. Prior to action by the board, the applicant must provide one copy of the notice sent to affected political subdivisions, a list of the political subdivisions to which notice was sent, and the date on which the notice was sent. The board may not act on such application before the end of the 30-day notice period unless all political subdivisions to which notice is required to be sent agree in writing to waive the notice period.

Adopted effective October 11, 1991	Amended effective February 11, 1999
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§355.9. Contracts. The board may authorize the executive administrator or his designee to enter into contracts with persons or political subdivisions, within available funds. Such contracts shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) the total amount of money to be paid from the research and planning fund under the contract;
- (3) the time for completion; and
- (4) any other terms and conditions required by the executive administrator or agreed to by the contracting parties.

Adopted effective October 11, 1991	Amended effective February 11, 1999
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§355.10. Funding Limitations.

- (a) Grants for regional facility planning and flood control planning shall be limited to 50% of the total cost of the project, except that the board may supply up to 75% of the total cost to political subdivisions which have unemployment rates exceeding the state average by 50% or more, and which have per capita income which is 65% or less of the state average for the last reporting period available.
- (b) In-kind services may be substituted for any part of the local share, if such services are directly in support of the planning effort, are properly documented, and approved in advance by the board.
- (c) Up to 100% of the cost of research projects may be provided by the board.
- (d) Funds will be released only as reimbursement of costs actually incurred for approved activities.
- (e) Grants in excess of 75% for regional facility planning or flood control planning will be provided if authorized by specific legislation or legislative appropriation language.

Adopted effective October 11, 1991

Amended effective February 18, 2008

§355.11 Availability of Reports and Planning Documents. All reports, planning documents and any other work products resulting from projects receiving board funding assistance must be made available to state agencies and political subdivisions as required by the executive administrator or as agreed to by the contracting parties.

Adopted effective October 11, 1991

Amended effective February 18, 2008

Agenda Item Request Form

**Hays County Commissioners' Court
9:00 a.m. Every Tuesday
Request forms are due in the County Judge's Office
no later than 2:00 p.m. on WEDNESDAY.
Phone (512) 393-2205 Fax (512) 393-2282**

AGENDA ITEM: Presentation by Loomis Partners on the final Application Draft of the Hays County Regional Habitat Conservation Plan. Discussion and possible action to approve the Application for the Hays County RHCP for submittal to US Fish and Wildlife.

**TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-
WORKSHOP**

PREFERRED MEETING DATE REQUESTED: March 10, 2009; 3pm

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: Ford

SUMMARY:

Attached are the Executive Summary and a Comment/Response summary for the feedback consultants received on the Third Draft RHCP (including comments from the USFWS).

The full text of the RHCP is posted to the RHCP website (www.hayscountyhcp.com/documents <<http://www.hayscountyhcp.com/documents>>) Loomis will also burn the documents to disk and send court members a copy in the mail.

Additional discussion will cover the EIS (environmental impact statement) to be submitted to USFW by mid-March.



MEMORANDUM

DATE: March 4, 2009

TO: Hays County RHCP

FROM: Amanda Aurora and Clifton Ladd

SUBJECT: Application Draft Hays County RHCP - Summary of Major Edits and Response to Comments from the Third Draft

The Hays County RHCP project achieved a significant milestone in November 2008, with the approval of the November 3, 2008 Third Draft Hays County RHCP by the CAC and the BAT. In December, the Commissioners held a work session to receive an update on the project and prepare for the next steps leading toward submission of the draft RHCP to the U.S. Fish and Wildlife Service (USFWS) in early 2009. To help ensure that the draft RHCP is processed smoothly, the consultant teams solicited early comments on the Third Draft RHCP from the USFWS and others with experience preparing and implementing regional HCPs, with the intention of incorporating these comments into the Application Draft for submittal.

Below, we have summarized the major changes to this version of the document, as compared to the Third Draft RHCP. We have also summarized the written comments that we received on the Third Draft RHCP and provide individual responses to each of these comments.

SUMMARY OF MAJOR RHCP REVISIONS

- 1) **TERMINOLOGY** – We received several comments indicating that the terminology used to describe the conservation strategy in the RHCP was unclear and confusing. As such, we have modified the document to clarify that the RHCP conservation strategy uses a “phased” conservation banking approach, instead of a “rolling” conservation banking approach. The strategy itself remains the same, whereby the County will assemble a preserve system on a phased basis over time to create mitigation credits that it can use or sell to mitigate for impacts to the covered species, up to the limit of incidental take authorized by the Permit. At no time will the acres of take authorization used or sold by the County exceed the number of mitigation credits created by preserve acquisitions.
- 2) **TAKE ASSESSMENT** – Several aspects of the incidental take assessment warranted reevaluation, including the contribution of public-sector projects to the total estimates of habitat loss over the duration of the plan, the estimated participation rate in the plan, and the rationale for a relatively large amount of extra take authorization above the level of anticipated need. We revised the assessment of incidental take and the amount of requested take authorization (see Section 5.2) to incorporate more realistic assumptions of the amount of public-sector development, participation rates, and need for take authorization during the duration of the plan. We also generalized the overall estimates of habitat loss and mitigation needs to avoid creating the impression of inappropriate precision concerning these long-term projections.
- 3) **TARGET PRESERVE SIZE** – Related to revisions of the take assessment, we generalized the estimates of the target preserve size by introducing a range of between 10,000 and 15,000 acres (instead of a specific and inappropriately precise target of 11,287 acres). Reporting a range for the target preserve size is more in line with uncertainty regarding the ultimate mix of habitat and non-habitat areas within the preserves and helps to emphasize the flexibility of the phased conservation bank approach.



- 4) **FUNDING PLAN** – Following from a desire to generalize the long-term estimates of habitat loss and mitigation under the plan and a need to emphasize the illustrative nature of the funding plan presented in Section 8.0, we changed the target preserve size modeled in the annual RHCP budget (Appendix E) from 11,287 acres to 12,000 acres. Other aspects of the budget model in Appendix F were also generalized, such as evening the distribution of credit need and acres purchased over the duration of the plan, and some preserve management costs were remodeled based on smaller acquisition increments. An error in the County tax rate was also corrected in Appendix G.
- 5) **PRESERVE MANAGEMENT AND MONITORING** – We received several comments regarding the lack of specificity in the management and monitoring provisions described in the plan. We addressed these comments by adding more detail to these sections (see Section 6.4).
- 6) **PUBLIC ACCESS** – We received comments that the public access considerations were too vague and somewhat confusing. Therefore, we revised Section 6.4.7 to clarify the types of public access that could be allowed within habitat areas and measures needed to address more active public uses of non-habitat areas.
- 7) **AVOIDANCE AND MINIMIZATION MEASURES** – Similar to comments on preserve management and public access provisions, we also received comments regarding the lack of specificity with respect to many of the avoidance and minimization measures in Section 6.2. We also received questions regarding how these measures will be enforced. As such, we revised this section to add clarity and to propose that the Hays County development inspector assist with identifying instances of non-compliance with the terms and conditions of Participation Agreements between the County and RHCP participants.
- 8) **MITIGATION RATIOS** – The USFWS requested more consistency between the Hays County RHCP and the Comal County RHCP, particularly with respect to how mitigation will be assessed for plan participants. In consultation with the team developing the Comal County RHCP, we have made some changes to the habitat determinations and mitigation assessment. Under the new process, direct impacts to potential habitat will be assessed at a standard ratio of 1:1 and indirect impacts will be assessed at a ratio of 0.5 : 1. Most projects will be subject to these standard ratios; however, the County may assess modified ratios to account for existing impacts on a project site or when impacted habitat is of particularly high quality or high importance. Indirect impacts will also be assessed out to 300 feet from a direct impact, even if this extends outside of the project area boundary. This approach is consistent with how the USFWS currently determines mitigation needs for individual projects.
- 9) **CUMULATIVE IMPACTS** – The USFWS requested additional detail and analysis regarding cumulative impacts. We expanded the cumulative impacts section to provide this detail.

SUMMARY AND RESPONSE TO INDIVIDUAL COMMENTS

The consultant teams received comments on the Third Draft RHCP from the USFWS (Austin Ecological Services office, Regional Office, and the Regional Solicitor's Office) on February 4, 2009. We also solicited and received personal comments from Scott Rowin (City of Austin Program Manager for the Balcones Canyonlands Preserve and former USFWS employee) and Kevin Connally (Travis County Senior Environmental Resource Management Specialist).

USFWS AUSTIN AND REGIONAL OFFICES

COMMENT 1: Although the process to develop an RHCP incorporates State law, please clarify when State law applies and when it does not apply. For example, on pages 9 and 11, you reference State law. Either remove the references to State law or qualify them by clearly indicating that issuance of the permit is not contingent upon State law. Further, we request that you state clearly that all participants of this RHCP, if implemented, will be required to adhere to all existing laws.

**RESPONSE 1:**

- Compliance with state law is an important factor for the development of the RHCP. Therefore, references to state law have been left in the document.
- We have clarified that permit issuance is not contingent upon state law.

COMMENT 2: You have requested 15,000 acres of take coverage over the life of the permit (30 years), however, you commit to preserve 664 acres with guaranteed funding. Service mitigation policy mandates that mitigation be commensurate with take. Mitigating 664 acres is not commensurate with 15,000 acres of take. We would appreciate your consideration of either a higher up-front guaranteed commitment of mitigation or a significant reduction in the amount of take you have requested. We are also open to a phased approach of authorizing take commensurate with mitigation commitments arranged in such a way that a major amendment may not be necessary to revise the calculations.

RESPONSE 2:

- Take request reduced to 9,000 acres for GCW and 1,300 acres for BCV.
- Target preserve size is 10,000 -15,000 acres (funding plan models a preserve of 12,000 acres); but there is no pre-determined preserve commitment.
- County attempting to acquire some preserve land prior to permit issuance, but there is no commitment to do so.
- "Rolling" conservation bank is now termed a "phased" conservation bank to help avoid confusion with other approaches, but the strategy remains the same.
- Preserves will be acquired on a phased basis and mitigation credits are created based on the amount of potential habitat for the covered species protected.
- Banking of mitigation credits allows an equivalent amount of take authorization to be used; mitigation will always be provided before an equivalent amount of take authorization can be used.
- Mitigation ratios ensure that mitigation is commensurate with take. Ratios are typically 1:1 for direct impacts and 0.5:1 for indirect impacts (although higher ratios may be assessed under appropriate circumstances).

COMMENT 3: On page 45, you suggest that habitat loss will occur in association with the development of "new structures". Please define "new structures" and please list specifically the activities that will be covered under the permit, if issued.

RESPONSE 3: Text removed; covered activities are described in Section 5.1.

COMMENT 4: Throughout the document, you use soft language such as "aspire" or "intend to". Unfortunately, we cannot complete an analysis of impacts on this type of language unless we assume the worst case scenario. Please consider using concrete language more committed to an action with measurable impacts.

RESPONSE 4:

- "Aspirational" or intentional measures have been removed from the text and placed in an appendix as "additional guidance."
- Additional guidance may or may not be practicable for the County to implement as circumstances evolve over the term of the permit.
- This additional guidance is not necessary to meet the permit issuance criteria.

COMMENT 5: Throughout the document, acreage estimates appear to bounce around. Please go through your figures and be consistent and clear about the acreage estimates and what each estimate specifically represents. Please provide a table reflecting the acreages and their respective meanings.

RESPONSE 5: Table provided in the Executive Summary; clarifications to text throughout document.



COMMENT 6: Please incorporate the legal definition of “harass” per the Act.

RESPONSE 6: Added to legal framework (Section 1.4).

COMMENT 7: Please qualify habitat commensurate with the Texas Parks and Wildlife guidelines for golden-cheeked warblers and black-capped vireos.

RESPONSE 7:

- RHCP habitat determinations are based on TPWD descriptions of GCW and BCV habitat.
- TPWD guidelines do not specifically address the characteristics that may influence habitat quality.

COMMENT 8: Please add community names to Census Tract numbers. This can be accomplished by a table or with a map indicating the communities and the CT number.

RESPONSE 8: Figure 4-1 includes this information.

COMMENT 9: Please clarify that all land management plans, landowner agreements, conservation easements, and any other plans or agreements developed pursuant to the permit are subject to approval by the Service prior to implementation of any plan.

RESPONSE 9: RHCP clarified to state that all plans and agreements developed under the RHCP will be subject to Service approval prior to implementation.

COMMENT 10: Regarding compliance, please provide more details on how Hays County will assure that the RHCP is accomplishing its goal i.e. annual reports, monitoring, enforcement, etc.

RESPONSE 10:

- Additional detail added to avoidance and minimization measures; preserve management and monitoring program; and reporting requirements for preserve managers and Hays County.
- Details identify responsibility and roles, minimum requirements, methods and protocols, schedules, and reporting.

COMMENT 11: We would appreciate more emphasis on proposed education and outreach efforts that may be accomplished through implementation of the RHCP. Please provide more details on how these efforts will be designed and implemented to achieve specific goals.

RESPONSE 11: Detail added to better identify goals and objectives and schedules for implementation.

COMMENT 12: Although Hays County will aspire to achieve a preserve system to include over 11,000 acres, there are no assurances that this will actually occur. How will Hays County assure that habitat will exist throughout the life of the permit (30 years) or that it will be available or economically feasible to acquire? It is impossible to analyze potential impacts based on what may be available later in time because there is no way of knowing what habitat, if any, may be available or what quality it may represent.

RESPONSE 12:

- Pre-determined processes for habitat determinations and mitigation assessments, and defined mitigation ratios, provide the basis for ensuring that mitigation is commensurate with impacts.



- These pre-determined processes apply to the creation of mitigation credits for preserve acquisitions and for determining mitigation needs for participating projects.
- Under phased conservation bank approach, preserves create mitigation credits at the time they are acquired based on the amount of habitat protected. Only after credits are banked may a corresponding amount of take authorization be accessed (i.e., used by the County or sold to participants).
- County will evaluate potential preserve acquisitions on an on-going basis, as parcels become available and as needed to maintain a non-negative credit balance in the bank. If preserves are not acquired, then credits are not created and the take authorization can not be used.

COMMENT 13: We suggest that Hays County provide plat applicants and potential developers with habitat information and inform such applicants of the potential for occupancy of listed species on their property.

RESPONSE 13:

- Habitat maps used in the development of the RHCP will be made available to the public, including subdivision/development applicants.
- County is revising subdivision/development applications to request that project proponents consider endangered species issues when planning projects (similar to other resources, like aquifer zones).
- State law prohibits County from conditioning approval of permits/plans/services on ESA compliance.

COMMENT 14: Please clarify what you mean by "additional conservation actions" on page 51.

RESPONSE 14: To avoid confusion, this text has been removed.

COMMENT 15: Please clearly define the "Plan area". For example, is the plan area the entire area within Hays County? Or will it cover areas with habitat i.e. west of IH 35? Please be specific.

RESPONSE 15:

- Plan Area is described in Section 1.5 and shown on Figure 1-1.
- Plan Area includes all of Hays County.

COMMENT 16: Please clarify what "clearing activities" will be covered and which may already be authorized by existing authorizations. If there are some that will be covered by existing authorizations, please include the authority under which they are covered.

RESPONSE 16: Reference added to the 2004 USDA NRCS brush clearing BO (USFWS Consultation Number 2-12-05-F-021).

COMMENT 17: Please define what "public access" means, how it would occur, and under what conditions. Further, please stipulate that each instance will be analyzed on a case-by-case basis and must be approved by the Service prior to such access being granted near a preserve.

RESPONSE 17: Detail added to public access section to describe the conditions under which public access may be allowed in the preserves.

COMMENT 18: Please clearly define what a "rolling conservation bank" is. This concept is new to the Service and the conservation community at large and will be heavily scrutinized. If you have any



examples of this strategy, please provide them. Our interpretation is that this is a pay-as-you-go conservation strategy. This strategy will require significant analysis prior to granting the proposed permit.

RESPONSE 18:

- "Rolling conservation bank" is now termed a "phased conservation bank," to help avoid confusion with other approaches. Conservation banking, being a relatively new approach for endangered species conservation, is still rapidly evolving. Several conservation banks using a phased approach have recently been approved by the Service (e.g. Gill Ranch, Crestridge).
- Also see response to Comment 2.

COMMENT 19: Please specifically define what conditions will be required of a preserve. Please consider that we prefer preserves to be larger than 500 acres of a contiguous block of unfragmented likely to be occupied habitat where the edge-area ratio is sufficiently minimized. Further, please keep in mind that preserves should be based on recovery criteria and "open space" does not necessarily achieve movement toward recovery.

RESPONSE 19:

- Preserve blocks will typically contain at least 500 acres; USFWS may allow smaller blocks on a case-by-case basis.
- All preserve acquisitions require USFWS approval prior to banking mitigation credits.
- Only areas of potential habitat within preserves create mitigation credits.

COMMENT 20: Please clearly define, perhaps in a table, the proposed mitigation ratios and calculations. As mentioned above, estimates tend to bounce around in the document and the mitigation strategy, specifically as it pertains to mitigation ratios and calculations, is difficult to follow. Please provide more detail on participation fees as well.

RESPONSE 20:

- Take assessment and preserve sizing has been simplified (requesting 9,000 acres of GCW take and 1,300 acres of BCV take; target preserve size is 10,000 – 15,000 acres; funding plan based on preserve of 12,000 acres).
- Mitigation ratios for credits are typically: 1 acre of potential habitat creates 1 mitigation credit.
- Mitigation ratios for impacts are typically: 1 credit to mitigate for each acre of direct impact and 0.5 credit to mitigate for each acre of indirect impact.
- Typical ratios may be adjusted by the County or the Service on a case-by-case basis to account for exceptional habitat conditions.
- Per credit mitigation fees are set by the County at its discretion; funding plan assumes starting fee of \$7,500 per credit.

COMMENT 21: Please itemize your proposed baseline data information gathering methodology. Since the up-front commitment is so small (664 acres) it is difficult to understand how Hays County will measure the effectiveness of future preserves and therefore it is difficult to analyze the potential impacts of the proposed take estimate (15,000 acres).

RESPONSE 21: Detail added to preserve management and monitoring provisions, including required content for baseline preserve evaluations and monitoring protocols.

COMMENT 22: Regarding the monitoring requirements, please distinguish between the County's responsibilities and the preserve manager's responsibilities. We prefer that the County provide the required monitoring information in the annual reports.



RESPONSE 22:

- Preserve managers have responsibility for implementing management and monitoring.
- Preserve managers may be the County or some other entity that is approved by the USFWS.
- Preserve managers are required to submit management and monitoring reports to County for summary and submittal with the RHCP annual report.

COMMENT 23: What is the County proposing to do if a preserve area, once occupied by listed species, becomes vacated by that listed species? Is the County willing to acquire more occupied habitat?

RESPONSE 23:

- Impacts and mitigation are based on acres of potential habitat; demonstration of occupancy is not required for assessing impacts or creating mitigation credits.
- Unoccupied preserves are addressed by Adaptive Management and Changed Circumstances.
- County commits to working with the USFWS to alter preserve criteria for future acquisitions or adjust management strategies (within the extent of the resources dedicated to preserve management activities) as appropriate to address these situations.

USFWS – JUSTIN TADE (SOUTHWEST REGION 2 SOLICITOR'S OFFICE; *additional comments*)

COMMENT: Remove references to state law related to HCPs. HCPs and incidental take permits are not governed by state law.

RESPONSE: State law is relevant to the development and implementation of regional HCPs by local governments in Texas. However, we have clarified that issuance of the Permit is not contingent upon state law.

COMMENT: Take assessment does not include estimates for county infrastructure, roads, bridges, etc.

RESPONSE: The take assessment has been modified to explicitly consider potential take from County and other public-sector projects.

COMMENT: Does not understand how target preserve size relates to credit need.

RESPONSE: This relationship, including the rationale for the target preserve size, has been clarified.

COMMENT: If the USFWS gives the County maps of habitat, why would the USFWS trust private developers to identify potential habitat, for which they probably do not have the expertise, or if they did why would they tell the County about it? This is a questionable practice.

RESPONSE: The USFWS has not given the County maps of potential habitat for the covered species; the County developed its own estimates of potential habitat to aid the planning process. The County is making those maps available to the public, but is not basing RHCP participation on the results of the map (on-site habitat determinations by County staff or County-contracted consultants are required for participation). As a way to increase awareness of endangered species issues and potentially increase ESA compliance, the County will request that subdivision applicants indicate whether their project area may contain potential habitat for listed species, for which they may use the County's habitat maps. The County currently requests similar information from subdivision applicants regarding aquifer recharge



zones. However, as required by state law, participation in the RHCP is voluntary and the County may not condition approval of plats, permits, or other services on RHCP participation or ESA compliance.

COMMENT: The preserve acquisitions sound like a good idea, but how will the County do this? When will acquisitions occur? Where will the funds come from? Are their maps of preserve acquisition targets? Does not recommend that the USFWS issue a permit until there is a reasonably certainty that the land acquisition program will occur.

RESPONSE: This RHCP uses a phased conservation bank approach with a target preserve size. There is no pre-determined preserve system design and identifying specific preserve targets would trigger highly restrictive conditions of state law. The RHCP will have an upper take limit, but the County would not be able to draw on any of the take authorization until preserve acquisitions create an adequate number of mitigation credits to offset any requested take authorization.

COMMENT: With respect to vireo mitigation credits, is the County getting credit for both acquisition and management? How do you create a mitigation bank out of management activities?

RESPONSE: The County is not proposing to create separate credits for management activities. Vireo credits are created upon designating certain areas of the preserve system as specifically for vireo management. These areas will either have vegetation that is consistent with potential vireo habitat or have characteristics that indicate a potential to become habitat with proper management. Vireo habitat requires periodic management to maintain the early-successional stage vegetation used by the species.

COMMENT: Are the mitigation ratios in this RHCP similar to other approved HCPs?

RESPONSE: Yes, the mitigation ratios, including the process for creating credits and calculating impacts, are similar to other approved RHCPs (i.e., Williamson County RHCP) and other approved conservation banks (i.e., Hickory Pass Ranch Conservation Bank).

COMMENT: What happens if the species abandon or fail to populate a preserve? Does the County still get credit?

RESPONSE: The creation of mitigation credits and the assessment of impacts in the RHCP are based on acres of potential habitat. There is no requirement in the RHCP to demonstrate occupancy for either end of the process. The adaptive management provisions in the RHCP deal with absence of the species from the preserve system.

COMMENT: What evidence is there for the 664 acre preserve acquisition?

RESPONSE: The County is not required to make a pre-issuance preserve acquisition, but is highly encouraged to do so for the benefit of the RHCP. Nevertheless, the County has considered funds from their 2006 Parks and Open Space bond to make such a purchase, but has not dedicated any portion of these funds specifically for that purpose.

COMMENT: Where is the funding plan?



RESPONSE: The funding plan is described in Section 8.0 of the document, including Appendix F (an illustrative annual budget) and Appendix G (projected County General Maintenance and Operations fund revenues).

COMMENT: If past compliance with the ESA has been lackluster in Hays County, how is the USFWS supposed to find funding to be adequate when the County is relying on participation fees?

RESPONSE: As described in Section 8.0, there are two primary sources of funding for this RHCP: participation fees and tax revenues from the County General M&O Fund. County tax revenues are intended to fill any gaps in the RHCP budget and provide the funds to ensure preserve management in perpetuity. Even so, the RHCP is based on a phased bank approach and, as such, the RHCP is scalable. The estimated participation rates are just a basis for approximating a realistic upper limit on the take authorization, since we know that not all projects needing take authorization will seek to comply through the RHCP. The participation rate is not really a key factor in the conservation program or the funding plan. If we don't see much participation, then not much take authorization is used and not much mitigation is needed. It is possible that the counties will not use all of the take that they will be authorized. If it turns out that more take authorization is needed than is allowed under the permit, then the County may seek a permit amendment.

COMMENT: A variety of minor typo's and clarifications. RESPONSE: Thank you!

SCOTT ROWIN (BALCONES CANYONLANDS PRESERVE PROGRAM MANAGER, *personal comments*)

COMMENT: How will enforcement of the minimization measures added to Participation Certificates occur – specifically for oak wilt?

RESPONSE: The Participation Agreements will be a contract between the County and a RHCP participant and will include a variety of terms and conditions, including those that implement the avoidance and minimization measures described in the RHCP. Section 6.2 describes those measures, and has been clarified to add more specificity and a provision whereby the County's development inspectors may inspect for compliance with the terms of the Participation Agreements.

COMMENT: Who will do habitat determinations?

RESPONSE: County staff or County-contracted consultants will perform all habitat determinations for the RHCP.

COMMENT: What mechanism will be used to protect and manage preserve land held by other entities (specifically private landowners)?

RESPONSE: Conservation easements (particularly for private landowners) or interlocal agreements with other jurisdictions may be used to protect and manage preserve lands not owned by the County. Other types of agreements may also be possible, with the approval of the Service.

COMMENT: Regarding non-GCW habitat managed for the BCV... when do you actually count it towards mitigation for the Plan? When it is occupied?



RESPONSE: Vireo credits are created when portions of the preserve system that either contain potential vireo habitat or have the potential to develop into potential habitat with proper management are designated as "vireo management areas." The creation of mitigation credits and the assessment of impacts in the RHCP are based on acres of potential habitat. There is no requirement in the RHCP to demonstrate occupancy for either end of the process. The adaptive management provisions in the RHCP deal with absence of the species from the preserve system.

COMMENT: Avoid words like "typically", "aspire", "will seek to", and "encouraged" with respect to the preserve. The only thing that is actually required is to "typically" include at least 500 acres.

RESPONSE: The RHCP uses a phased conservation bank approach, instead of a more typical pre-determined preserve approach. As such, much of the plan is scalable. Therefore, there are few hard requirements for the preserve system, including size or configuration. The important components of an approach like this include the mitigation ratios and processes for establishing credits and debits.

COMMENT: What will be done with acreage within an acquired tract that USFWS determines is not habitat and no credit is given?

RESPONSE: Portions of the preserve system may be used for other purposes, such as public access, provided that the biological value of the credit-generating habitat areas is preserved.

COMMENT: How did you come up with 11,287 acres?

RESPONSE: The size of the preserve system is based on the number of mitigation credits that are expected to be needed over the term of the permit, plus extra acreage to account for the mix of habitat and non-habitat anticipated to be present within the preserves. This number has been generalized to emphasize that it is a goal or target based on a set of assumptions, and not a hard requirement.

COMMENT: Regarding previously protected land that contributes toward the minimum preserve block size (500 acres)... Clarify that these are only tracts that have perpetual protection and at least some level of endangered species management/preservation.

RESPONSE: Previously protected open spaces could contribute to the RHCP preserve system in two ways: 1) The County and the property owner could negotiate additional protections for endangered species on previously protected lands (including management and monitoring in accordance with the RHCP) that could allow for the creation of mitigation credit for habitat on those parcels; or 2) the County could acquire parcels adjacent to previously protected open space lands, in which case the combined acreage of RHCP preserve and the adjacent protected lands could be used to help demonstrate compliance with the 500-acre typical minimum area requirement for RHCP preserves (even if no additional endangered species protections were added to the previously protected open space lands).

COMMENT: Management practices... need to control deer, too.

RESPONSE: Deer control has been mentioned as a topic to address by the land management plans.

COMMENT: Much of the management monitoring is too vague. Avoid things like "regular monitoring;" be specific.

RESPONSE: The management and monitoring sections have been clarified to add more detail on specific requirements.



COMMENT: Will each tract have a land management plan or will there be a management plan for the whole preserve? This could flesh out the management and monitoring responsibilities.

RESPONSE: Land management plans could address specific parcels or multiple adjacent parcels, as appropriate.

COMMENT: Concerned with statement regarding County not being required to implement management practices that are designed to increase or enhance the mitigation value of a preserve block.

RESPONSE: The County will obtain mitigation credits based on the acreage and condition of potential habitat in the preserve system at the time of acquisition. Therefore, maintaining that level of habitat acreage/condition over time is the minimum standard to which management and monitoring will be required to address. We have provided additional guidance on management goals in an appendix to the RHCP, if the County desires to enhance the biological value of the preserve system.

COMMENT: How will management agreements be enforced?

RESPONSE: This will depend on the type of agreement in place and the specific terms and conditions of each agreement. The USFWS will have the opportunity to review and approve all such agreements before they are finalized to ensure that enforcement issues are addressed. The County anticipates that conservation easements will be the primary mechanism for acquisition of preserve parcels not owned by the County, but other types of agreements are possible.

COMMENT: Should provide some basic information on what should be included in each LMP.

RESPONSE: The required contents of a land management plan have been clarified.

COMMENT: Annual monitoring restricted to occupancy modeling methods – Why? COA is working on an assessment of BCP monitoring in conjunction with BCNWR and Ft Hood.

RESPONSE: Two types of species monitoring is required for the preserve system: territory mapping and habitat occupancy modeling. The protocols for and scheduling of management/monitoring activities has been clarified in this revision.

COMMENT: RHCP says oak wilt will be monitored. What about controlling oak wilt in preserves?

RESPONSE: Controlling oak wilt has been specifically mentioned in the criteria for land management plans. These types of issues will be resolved during the land management planning process.

COMMENT: Make sure management activities that result in take, but are necessary, are covered.

RESPONSE: We have added preserve management activities to the list of covered activities.

COMMENT: Preserve design is somewhat focused on monitoring that supports occupancy. Why not pairing success, breeding success, or some other variables that better identify its biological significance or viability?



RESPONSE: These variables do not directly address the preserve management objective of maintaining the biological value of the preserve system at the time of acquisition (which is measured in terms of acres of potential habitat and the general condition of that habitat). Therefore, they are not included as part of the required minimum monitoring protocols for the preserve system.

COMMENT: If monitoring demonstrates that an area is not occupied because of various reasons, it no longer is providing mitigation for impacts that occurred in habitat. Will this mitigation land be replaced with habitat that adequately mitigates the authorized impacts? RHCP currently does not suggest this.

RESPONSE: Both take and mitigation in this RHCP are based on acres of potential habitat. There is no requirement to demonstrate occupancy of either taken or preserved habitats. Rather, take and mitigation are measured in terms of acres of potential habitat. To help ensure the long-term viability of protected habitats, preserve parcels should typically be at least 500 acres.

COMMENT: It is not clear what "project area" means in relation to indirect effects. Is this the same as the property boundary, as direct effects suggest that it would be the property boundary?

RESPONSE: The "project area" boundary is the same for indirect effects and direct effects. It is the entire project area as would be indicated on site plans or plats, including lots, roads, drainage areas, utility easements, and similar areas.

COMMENT: Plan anticipates completion within 30 years. What are the growth projections and will the habitat be available over this timeframe?

RESPONSE: Mitigation under the RHCP always happens prior to authorized takings (i.e., the credits must be banked before they can be used/sold). There may be approximately 170,000 acres of potential warbler habitat and 24,000 acres of potential vireo habitat currently in Hays County. Projections of habitat loss over the next 30 years indicate that approximately 13 percent of this potential habitat could be lost to land development activities. Therefore, there should be ample opportunity to protect sufficient habitat over the duration of the plan.

KEVIN CONNALLY (TRAVIS COUNTY SENIOR ENVIRONMENTAL RESOURCE MANAGEMENT SPECIALIST, *personal comments*)

COMMENT: Use abbreviations for bird banding codes (i.e., GCWA and BCVI) instead of GCW and BCV.

RESPONSE: To maintain consistency across the project, we'll continue to use the three-letter abbreviations.

COMMENT: The Texas Natural Diversity Database is a poor authority for locality information on endangered species, since there is no requirement for entities to report this information to the Texas Parks and Wildlife Department.

RESPONSE: There is very little information of any sort on vireos in Hays County, and some of the only data available comes from this database. However, we added some language clarifying that the database is not a complete record of endangered species observations.



COMMENT: The distinction between habitat loss from land development and pre-development clearing is confusing. Why is this distinction being made?

RESPONSE: We have made substantial revisions to this text to clarify the take assessment. This confusing language has been removed.

COMMENT: The first biological goal references a target preserve size. Can you add language explaining how this figure was derived?

RESPONSE: As with the take assessment, the target preserve size has been replaced with a more general target range. Additional information on the target preserve size is in Section 6.3.

COMMENT: Avoid vague statements like "reasonably prompt and expedition manner," as found in the avoidance and minimization measures. Plan needs to explicitly state what is required and when.

RESPONSE: More specificity has been added, as practicable, throughout the conservation program in Section 6.0.

COMMENT: Plan should do more to encourage people to seek habitat determinations. Consider adding a provision to provide contact information for the USFWS to all development applicants.

RESPONSE: The plan includes a provision to collect endangered species information from subdivision applicants and the County will make available maps and other information to encourage participation, including contact information for the County RHCP staff and the USFWS.

COMMENT: The plan considers the use of conservation easements, but should not be written to prevent the use of other types of conservation mechanisms such as Purchase of Development Rights (PDR) programs.

RESPONSE: We do not believe that PDR programs are substantially different from conservation easements, but the plan anticipates that other types of agreements may be used to acquire preserve lands (see Section 7.2.2).

COMMENT: Make sure that all previously protected open spaces that are used to generate mitigation credit for the plan are managed in accordance with the RHCP and Permit, instead of other management priorities.

RESPONSE: This is the intention for all parcels included in the RHCP preserve and generating mitigation credit for the plan. The text has been clarified to emphasize this intention.

COMMENT: What is passive recreation? The plan needs to explicitly define this term.

RESPONSE: The public access section of the plan (Section 6.4.7) has been revised to clarify public access provisions, including more explicit definitions for passive recreation.

COMMENT: Be careful with references to the dates for breeding seasons for the covered species; watch for consistency.

RESPONSE: We've checked all references for consistency. Thank you!



COMMENT: What do you mean by "regular" monitoring? What are you going to monitor? How? Monitoring section needs more specificity. Look to the recovery plans for guidance on what to monitor.

RESPONSE: The preserve monitoring section has been revised to clarify monitoring protocols and schedules (Section 6.4.5 and Section 6.4.6). Required monitoring studies include territory mapping for the covered species, habitat occupancy studies for the covered species, and habitat condition monitoring for the covered species. Each of these studies will be repeated every five years.

COMMENT: Some communities have ordinances to help prevent the spread of oak wilt by prohibiting the planting of Spanish oaks. The plan includes guidance that encourages Spanish oaks to be planted or increased within the preserve system. Plan should reference Texas Forest Service guidance regarding tree planting.

RESPONSE: Spanish oaks are an important component of quality habitat for the warbler and the preserve management guidance retains recommendations for increasing the abundance of this tree within the preserve system.

COMMENT: What is a "karst management zone"? This term is evolving to have a specific meaning with respect to karst conservation.

RESPONSE: We do not intend to reference any particular set of criteria for karst management zones within the preserve system. Therefore, we generalized this term to avoid confusion.

COMMENT: Fire ant control should be accomplished by the least environmentally damaging methods practicable. For instance, most chemical controls harm other invertebrates and karst species. Comment also applies to other management activities.

RESPONSE: We clarified the objectives for preserve management activities to require the use management practices that minimize adverse impacts to the species addressed in the plan.

COMMENT: Emphasize adaptive management procedures in the preserve management program.

RESPONSE: We clarified the text in Section 6.4.1 to reference adaptive management.

COMMENT: The process for determining habitat quality in the context of the Baseline Preserve Evaluation is weak and poorly defined.

RESPONSE: This quality assessment is for management purposes only, and is not used to determine mitigation credits or for other regulatory purposes. Further, there are no published criteria for definitively determining habitat quality for the covered species. Therefore, the plan allows preserve managers to rely on the best professional judgment of the biologists doing the work to determine relative quality of habitats within the preserve, in order to inform management decisions.

COMMENT: The use of a presence/absence survey protocol is not sufficient to estimate numbers of birds using a preserve parcel.

RESPONSE: We believe that a slightly modified version of the USFWS standard presence/absence survey protocol for the covered species can provide estimates of territory numbers for these species.



We have revised Section 6.4.5 to provide detailed survey protocols that are sufficient to produce the required data.

COMMENT: Does the plan require that the covered species occupy the preserves?

RESPONSE: The plan does not explicitly require occupancy by the covered species to generate mitigation credit for the bank, since acres of habitat (not affected individuals) is used as the metric for determining take and mitigation. However, the preserve criteria and the adaptive management process are designed to help ensure that preserves are occupied.

COMMENT: Adjust the research funding for evaluation species with inflation, similar to other costs in the plan.

RESPONSE: We modified the funding plan and illustrative annual budget to adjust this figure over time.

COMMENT: Remove the discretionary authority to deny participation to certain applicants. The use of County tax dollars in this plan should provide certainty for all taxpayers. Arbitrarily denying participation to certain applicants goes against one of the stated purposes of the plan, which is to help provide regulatory certainty for landowners. This is a serious flaw in the plan.

RESPONSE: This provision was added at the strong recommendation of the CAC, who felt that the County should not be required to facilitate projects that it felt were contrary to the completion of the preserve system or the County's vision for the future. We have left this provision in the plan because of the strong response from the stakeholders involved in the RHCP development process.

COMMENT: Applicants should be required to submit final plats or site plans as the basis for RHCP participation, since preliminary or conceptual plans are often changed.

RESPONSE: We clarified the text in Section 7.4.3 to state that final plats or site plans are required for participation in the plan, unless allowed by the County on a case-by-case basis to deal with special circumstances.

COMMENT: Application fees should be better defined with a more certain amount.

RESPONSE: We clarified the text to state that County will determine the required application fee for each application on a case-by-case basis, depending on the size of the property, complexity of the proposed project, and the services requested (i.e., a habitat determination and/or site plan review/mitigation assessment). Since the scope of each application could vary substantially, we retained the provision that the County can adjust fees as needed to cover costs.

COMMENT: It seems like it will be difficult to get participation in the plan if simply applying for a certificate can cost \$5,000. The County should consider using the application fee as a down payment on the mitigation fee to encourage more participation.

RESPONSE: We believe that this is an interesting idea and certainly within the County's power to implement, if it wishes. However, since this would largely be a policy decision, we believe that it is not necessary to address it in the plan.



COMMENT: Are the TPWD habitat definitions for the covered species good enough to be used as the basis for habitat determinations in the plan?

RESPONSE: The TPWD habitat definitions are the only available, complete, published definitions of habitat for the covered species. The TPWD habitat definitions will help ensure consistency in the habitat determination process.

COMMENT: What is a "project area" for the purposes of RHCP participation?

RESPONSE: As defined in Section 7.4.3, a "project area" for the purpose of participation in the RHCP includes all areas subject to land development activities in connection with a single and complete project, as would be shown on a recorded plat or sealed site plan.

COMMENT: The plan only assesses indirect impacts within a project area, but in reality, indirect impacts may extend beyond project area boundaries. By not considering off-site impacts, isn't the plan authorizing take without providing mitigation?

RESPONSE: We have modified the mitigation assessment process to provide of off-site indirect impacts up to 300 feet from the edge of a direct disturbance.

COMMENT: Please clarify how long Determination Letters are valid.

RESPONSE: The text was clarified to state that habitat assessments and Determination Letters are valid for a period of three years or unless the site plan changes such that there will be an increase in the area of habitat impact.

COMMENT: The RHCP relies too much on input from the USFWS, particularly with respect to the terms and conditions for conservation easements. If the USFWS must "approve" certain documents, does that mean it has veto authority?

RESPONSE: As described in Section 7.2.3, all conservation easements will include provisions necessary to comply with all applicable terms and conditions of the Permit and the preserve management and monitoring program described in the RHCP. These agreements require USFWS approval before mitigation credits can be banked by the plan. If the USFWS deems that the terms and conditions of the easement are not sufficient to implement the Permit and the management and monitoring provisions described in the RHCP, then mitigation credit will not be created for the plan. The USFWS has also requested approval authority for all RHCP plans and agreements that may be developed after permit issuance.

COMMENT: Section 7.5 states that the USFWS will have the responsibility for verifying the data contained in annual reports submitted by Hays County. It is unlikely that the USFWS will do this.

RESPONSE: This statement has been removed. The USFWS will have the responsibility of enforcing the ESA and ensuring that Hays County complies with the terms and conditions of its Permit.

COMMENT: Clarify that the No Surprises policy only applies to the covered species.

RESPONSE: Section 9.0 states that this policy only applies to the covered species.

EXECUTIVE SUMMARY

The Hays County Regional Habitat Conservation Plan ("RHCP") was developed by the Hays County Commissioners' Court with the assistance of the Citizens' Advisory Committee, Biological Advisory Team, County staff, and a team of environmental, legal, and economic consultants. The RHCP was developed in connection with the County's application for an Endangered Species Act (ESA) Section 10(a)(1)(B) incidental take permit authorizing the take of two federally endangered songbirds, the golden-cheeked warbler and the black-capped vireo. The ESA requires that an applicant for an incidental take permit prepare a habitat conservation plan that describes, among other things, how the impacts caused by take authorized by the permit will be minimized and mitigated to the maximum extent practicable. Pursuant to ESA Section 10(a)(1)(B), the RHCP describes a locally controlled approach for compliance with the ESA. The County's permit would authorize incidental "take" of the golden-cheeked warbler and black-capped vireo, and the RHCP describes the mitigation provided for the impacts of such take. The RHCP is also designed to benefit a host of other wildlife species, water resources, and people. The conservation program of the RHCP is based on a phased conservation banking approach with a goal of assembling between 10,000 and 15,000 acres of preserve land over the 30-year duration of the RHCP. The RHCP will help the County serve the needs of its growing population and will promote responsible economic development, good public infrastructure, and open space preservation.

1.0 PURPOSE AND NEED FOR THE HAYS COUNTY RHCP

- The population of Hays County is expected to increase 150% to 300% over the next 30 years, making it one of the fastest growing populations in Texas. Population growth will drive new private land development and public infrastructure projects in the county.
- Projected development and infrastructure projects could cause the loss of approximately 22,000 acres of potential habitat for the federally endangered golden-cheeked warbler in Hays County over the next 30 years. Similarly, the county could lose approximately 3,300 acres of potential black-capped vireo habitat.
- The ESA prohibits the "taking" of federally endangered or threatened species. Take includes activities that result in significant habitat modification or degradation resulting in actual death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.
- The ESA allows for take of listed species that is incidental to otherwise lawful activities by issuance of an incidental take permit. Application to the U.S. Fish and Wildlife Service (USFWS) for such a permit requires the development of a habitat conservation plan. As

noted above, these plans describe the measures a permit applicant will take to minimize and mitigate the impacts to the listed species to the maximum extent practicable.

- The RHCP will allow the County and other public and private entities to obtain ESA incidental take authorization in a more efficient, streamlined, and timely manner. Processing individual incidental take authorizations (i.e., authorization where a RHCP is not available) typically take 1 to 2 years. Under the RHCP, incidental take authorization could be obtained within a matter of weeks and potentially at less cost than obtaining individual incidental take authorization.

2.0 BENEFITS TO HAYS COUNTY AND THE COMMUNITY

- Implementing the RHCP will benefit Hays County in the following ways:
 - The RHCP will provide a streamlined process for ESA compliance for County-sponsored projects, such as the construction or improvement of roads, bridges, and other County infrastructure. The RHCP was initiated in response to a need for ESA compliance during the planning and construction of Winters Mill Parkway near Wimberley. With the passage of the 2008 Road Bond program and the general obligation of the County to provide services to its growing population, other County projects are likely to require permitting through the ESA in the coming years. The RHCP will reduce the time and potentially the cost associated with obtaining incidental take authorization for future County projects by streamlining tasks such as assessing impacts and providing appropriate mitigation.
 - The RHCP is compatible with other County initiatives to protect open spaces, such as described in the Parks and Open Space Master Plan and envisioned by the 2006 Parks and Open Space bond program. The RHCP preserve system may create opportunities for compatible, nature-based recreational uses and will contribute to water quality protection by permanently protecting large blocks of open space.
 - The RHCP may give the County a means to secure other funding opportunities for land conservation, such as federal grants for endangered species habitat protection.
- Private landowners, business entities, organizations, and other municipalities may also benefit by implementation of the RHCP, including:
 - The RHCP provides a locally created solution to endangered species issues that incorporates stakeholder concerns and gives long-term ESA permitting assurances to the County and RHCP participants.

- The RHCP offers a new, voluntary option for ESA compliance that would be available to private landowners, businesses, and other entities in Hays County. This new compliance option would reduce the time and cost associated with obtaining incidental take authorization under the ESA, particularly with respect to developing individual HCPs, waiting for applications to be processed by the USFWS, and obtaining appropriate mitigation for project impacts.
 - The RHCP will facilitate the protection of open spaces that represent the rural tradition of Hays County and contribute to a high quality of life for all citizens.
- The RHCP is a conservation plan for endangered species, but is anticipated to have broader environmental benefits such as:
 - Coordinated conservation planning with a long-term focus over a regional scale to take better advantage of conservation opportunities in a rapidly changing landscape.
 - Long-term protection and management of natural resources vital to the health of the region's Hill Country ecosystems, including wildlife, woodlands, and water.

3.0 BASIC ELEMENTS OF THE RHCP

- The "permit area" for the RHCP includes all of Hays County, and the County's Permit will have a term of 30 years (i.e., 2010 through 2039).
- The RHCP and Permit will cover incidental take of the endangered golden-cheeked warbler and endangered black-capped vireo (the warbler and vireo are the "covered species" in the RHCP). The RHCP may also intended to benefit 56 other potentially rare or sensitive species in Hays County and will provide funding to study one or more of these species.
- Activities that could cause take of the covered species and that would be covered by the Permit include construction, operation, and maintenance of public projects and infrastructure and residential, commercial, and industrial development.
- The RHCP will cover up to 9,000 acres of habitat loss for the warbler and up to 3,300 acres of habitat loss for the vireo resulting from participating projects over 30 years. The 10,300 acres of take authorization will be sufficient to provide ESA compliance for the amount of anticipated participation in the RHCP.
- To mitigate for take of the covered species authorized by the Permit, Hays County will create a preserve system and operate a "phased" conservation bank. Under the phased conservation bank approach, habitat protection would always occur in advance of authorized impacts through the RHCP.

- The preserve system will be assembled on a phased basis as needed to create mitigation credits for the conservation bank and as potential preserve parcels become available from willing partners.
 - The ultimate goal is to preserve between 10,000 and 15,000 acres by the end of the 30-year permit duration; however, there is no pre-determined preserve system size, location, or configuration.
 - Habitat for the covered species protected within the preserve system will create mitigation credits for the conservation bank.
 - Banking mitigation credits allows an equivalent amount of take authorization to be accessed. Therefore, mitigation will always be provided before an equivalent amount of take authorization can be used by the County or issued to RHCP participants.
 - Defined processes for habitat determinations and mitigation assessments, and defined mitigation ratios, provide the basis for ensuring that mitigation is commensurate with impacts.
- Preserve system acquisitions may include fee simple land purchases, conservation easements with landowners, or similar agreements.
 - Hays County will be committed to manage and monitor the preserve system for the benefit of the covered species, in accordance with the RHCP and terms of the Permit, in perpetuity.
 - The County will implement various measures to avoid or minimize impacts to the covered species, including disseminating maps of potential habitat for the covered species, requesting subdivision or development applicants to provide information about endangered species within their project areas, requiring RHCP participants to implement measures that help prevent the spread of oak wilt and to observe seasonal restrictions on clearing and construction in or near habitat for the covered species, and implementing a public education and outreach program.

Summary of RHCP Elements

Category	Criteria/ Amount	Notes
Environmental Baseline		
Potential GCW Habitat	170,355 acres	estimated from Loomis GCW habitat model (all quality classes)
Potential BCV Habitat	23,855 acres	estimate reported in Wilkins et al. (2006)

Summary of RHCP Elements

Category	Criteria/Amount	Notes
Projected Land Development		
Private-sector Projects	48,095 acres	estimated by TXP and CMR (2008)
Public-sector Projects	9,600 acres	estimated as 20% of projected private-sector development, based on current distribution of public tax exempt lands vs. residential and commercial lands
Estimated Habitat Loss/Impact		
GCW	22,000 acres	estimates based on projections of land development and distribution of potential habitat across census tracts
BCV	3,300 acres	
Estimated RHCP Participation Rates		
Private-sector	33%	
Public-sector	75%	
Authorized Incidental Take		
GCW	9,000 acres	expressed as acres of impact to potential habitat; calculated from estimates of habitat loss and participation rates
BCV	1,300 acres	
Preserve System Goal	10,000 to 15,000 acres	assumes preserves will include some areas of non-habitat
Minimum Preserve Block Size (typical)	500 acres	smaller preserves may be allowed with USFWS approval
Mitigation Credit Creation (typical)		
GCW	1 acre of potential GCW habitat = 1 GCW mitigation credit	actual number of credits created by an acquisition determined by consultation with USFWS
BCV	1 acre of dedicated BCV management area = 1 BCV mitigation credit	
Standard Mitigation Ratios		
(actual mitigation ratios may be adjusted to account for existing impacts or exceptional habitat quality/importance)		
Direct Impacts	1 acre of direct impact = purchase of 1 mitigation credit	only assessed within project area boundaries
Indirect Impacts	1 acre of indirect impact = purchase of 0.5 mitigation credit	assessed out to 300 feet from edge of direct impact and may extend outside of project area boundary; may also be assessed on isolated remnant patches of habitat

Summary of RHCP Elements

Category	Criteria/Amount	Notes
Participation Fees (as illustrated in the Funding Plan)		
Application Fees	\$500 to \$5,000 per application	actual fee depending on level of service required to process application
Mitigation Fees	\$7,500 per mitigation credit	estimated starting fee; may be adjusted at discretion of County

4.0 PRESERVE SYSTEM MANAGEMENT AND MONITORING

- All RHCP preserve lands will be managed in perpetuity in accordance with the terms of the Permit and the RHCP.
- The objectives of the RHCP preserve management and monitoring program are to maintain the biological value of the preserve system in perpetuity.
- The RHCP preserve management and monitoring program involves a cyclical, adaptive process including describing baseline conditions, evaluating threats, planning management activities to address threats, and monitoring management targets to evaluate results.
- The major tasks involved with the preserve system management and monitoring program include completing Baseline Preserve Evaluations and Land Management Plans and conducting surveys of the covered species and their habitats. Each of these major tasks will be repeated and/or updated at least once every five years.
- The County will submit annual reports to the USFWS documenting compliance with the terms and conditions of the Permit and the results of the management and monitoring activities within the preserve system.

5.0 PARTICIPATION PROCESS

- Participation in the RHCP by other public or private entities would be voluntary. A potential participant will have no obligation to pay mitigation fees or provide other compensation to Hays County related to the RHCP, unless incidental take authorization under the Permit is sought.
- The County may elect to withhold mitigation credits from sale to participants for its own use or if such participation would not comport with the goals and provisions of the RHCP.
- Potential participants may use habitat maps developed for the RHCP to provide a preliminary indication of whether mitigation may be needed.

- The County would determine the specific amount of mitigation needed to participate in the RHCP through an on-site habitat determination and project-specific impact assessment.
- Typically, each acre of potential habitat for the covered species that would be directly impacted by a participating project would require the purchase of one mitigation credit from the County. Indirect impacts to potential habitat would require the purchase of 0.5 mitigation credit.
- Potential RHCP participants would obtain incidental take authorization under the RHCP through the purchase of the required number of mitigation credits or (on a case-by-case basis at the discretion of the County) by providing preserve land in lieu of mitigation fees.
- Participation in the RHCP would be formalized by the execution of a Participation Agreement between Hays County and the applicant and the issuance of a Certificate of Participation by Hays County.
- Participants in the RHCP would be authorized to take covered species up to the amount specified by their Participation Agreement. Participants would also be required to abide by all other terms of the Participation Agreement, which will include minimization measures such as seasonal clearing and construction restrictions.

6.0 RHCP FUNDING PLAN

- The funding plan presented in the RHCP is based on a set of primary assumptions, including:
 - The RHCP will bank and either use or sell approximately 9,000 warbler mitigation credits and 1,300 vireo mitigation credits during the duration of the plan.
 - Parcels comprising the preserve system will include some areas that are not habitat for the covered species. The funding plan assumes that approximately 12,000 acres of preserve land will be acquired to create the needed 10,300 mitigation credits.
 - The cost to purchase potential preserve land in fee simple is approximately \$11,500 per acre. The cost to purchase a conservation easement is approximately 50 percent of the fee simple cost.
 - Approximately 75 percent of the preserve system will be acquired via conservation easement and approximately 25 percent of the preserve system will be purchased by the County fee simple.
 - Mitigation fees begin at \$7,500 per credit, and increase by \$1,000 every 5 years.

- The County will annually budget up to 10 percent of the taxable value created by new development within the County after Permit issuance to help fund RHCP implementation.
- The County will contribute approximately 664 acres of preserve land to the RHCP prior to permit issuance, funded from the 2006 Parks and Open Space Bond, to create a positive initial mitigation credit balance for the RHCP.
- Hays County will fund or otherwise provide for the RHCP conservation program using three types of resources: 1) participation fees charged to RHCP participants; 2) annual contributions from County tax revenues; and 3) conservation investments from the County or other sources. Other funding sources, such as grants or debt financing may be available, but are not modeled in the funding plan.
- The County will evaluate and adjust the RHCP budget annually to adequately implement the program, fund preserve acquisitions, and manage the preserve system in accordance with the terms of the Permit.
- The funding plan demonstrates that sufficient funding is available to acquire the target preserve system under the phased conservation bank approach, to provide for the perpetual management and monitoring of the preserve system, and to supply the necessary staff, equipment, and materials to administer the RHCP. The funding plan is an illustration of the resources that would be needed to implement the RHCP as anticipated, based on the stated assumptions.

Approximate RHCP Budget Summary¹.

	Years 0 – 10	Years 11 – 20	Years 21 – 30	Term Total	Average Annual
Preserve Land	3,914 acres	4,040 acres	4,046 acres	12,000 acres	400 ac/yr
<u>RHCP Costs</u>					
Land Acquisition	\$34.1 million	\$48.2 million	\$65.0 million	\$147.5 million	\$4.9 million/yr
Staffing & Administration	\$1.9 million	\$6.2 million	\$14.6 million	\$22.8 million	\$0.8 million/yr
Preserve Management	\$1.1 million	\$3.1 million	\$6.7 million	\$11.0 million	\$0.4 million/yr
Outreach & Research	\$0.3 million	\$0.1 million	\$0.2 million	\$0.6 million	\$19,000/yr
Contingency	\$0.1 million	\$0.2 million	\$0.4 million	\$0.8 million	\$27,000/yr
Total Costs	\$37.6 million	\$58.0 million	\$87.0 million	\$182.6 million	\$6.1 million/yr
<u>RHCP Revenue</u>					
Application Fees	\$0.1 million	\$0.2 million	\$0.2 million	\$0.5 million	\$17,000/yr
Mitigation Fees	\$26.1 million	\$32.6 million	\$39.2 million	\$97.9 million	\$3.3 million/yr
Allocated Tax Revenue	\$6.4 million	\$25.2 million	\$47.5 million	\$79.2 million	\$2.6 million/yr
County Conservation Investments	\$5.0 million	\$0	\$0	\$5.0 million	n/a
Total Revenues	\$37.6 million	\$58.0 million	\$87.0 million	\$182.6 million	\$6.1 million/yr
Net Cost & Revenue	\$0	\$0	\$0	\$0	\$0

¹All dollar figures include 3 percent annual inflation.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Executive Session pursuant to §551.071 of the Texas Government Code, regarding the application for an amended permit by WCID#1 with the Texas Commission on Environmental Quality and pending litigation related thereto. Possible action to follow in open Court.

TYPE OF ITEM: EXECUTIVE SESSION

PREFERRED MEETING DATE REQUESTED: March 10, 2009

AMOUNT REQUIRED: n/a

LINE ITEM NUMBER OF FUNDS REQUIRED: n/a

REQUESTED BY: FORD

SPONSORED BY: FORD

SUMMARY:

Summary to be provided by Chief of District Attorney-Civil Division in Executive Session.