

**Commissioners Court -August 18, 2009
NOTICE OF A MEETING OF THE
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS**



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNONS TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **18TH day of August, 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		
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. <u>Please Complete the Public Participation/ Witness Form in its Entirety.</u> 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		
1	4	Approve payments of county invoices. HERZOG
2	5-9	Approve Commissioner Court Minutes of August 5 TH & 6 TH 2009. SUMTER/FRITSCH
3	10-11	Accept donation of funds in the amount of \$200 to the Hays County Sheriffs Office and amend the budget accordingly (Crime Prevention Program). SUMTER/RATLIFF
4	12	Approve renewal of the Immunization Grant between the Hays County Personal Health Department and the Texas Department of State Health Services (DSHS) for \$192,341.00. SUMTER/HARGRAVES
5	13-17	Authorize the County Judge to submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment for the Hays County Community Response Team, in the amount of \$28,624.00. SUMTER/TURNER/HAUFF
6	18-23	Approve the June 2009 Treasurers Report and Investments Report. SUMTER/TUTTLE
7	24-25	Approve out of state travel for Cora Furr RN, FNP-bc to attend "Stages in Women's Health" conference in Las Vegas, Nevada on October 16-18, 2009 and amend the budget accordingly. SUMTER/HARGRAVES
8	26-37	Authorize the County Judge to submit a grant application for up to \$61,000 to the Texas Department of Transportation, Section 5310 program to replace the County Veterans Affairs Bus. SUMTER/TVRDIK/HAUFF
9	38-45	Authorize the County Judge to renew an Interlocal Agreement with the Capital Area Council of Governments for PSAP Maintenance, Equipment Upgrade and Training Contract, in the amount of \$1,250.00. SUMTER/HAUFF
10	46-48	Approve award of Bid #2009-B17 "Five Mile Dam Park Phase 2 (Building) to Harris Road Company Inc. INGALSBE/HERZOG/MAIORLA/HAUFF
11	49-53	Authorize the County Judge to submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment for the Law Enforcement Strike Team, in the amount of \$6,620.00. SUMTER/RATLIFF/TURNER/HAUFF
12	54	Authorize Legal Counsel to negotiate and execute the termination of the current Agreement for Architectural Services related to the Government Center project. INGALSBE
13	55-59	Authorize the County Judge to submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment in the amount of \$486,386.00. SUMTER/TURNER/HAUFF

ACTION ITEMS		
ROADS		
14	60-64	Discussion and possible action to consider the release of the maintenance bond and accept

		for maintenance all road and drainage improvements within County ROW for Meadows at Buda Commercial. BARTON/BORCHERDING
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SUBDIVISIONS

15	65-68	08-3-34 Mustang Valley Subdivision Section 2 (5 Lots); Consider approval of Final Plat and Accept Construction Fiscal Surety in the amount of \$100,476.10, for street and drainage improvements. CONLEY/GARZA
16	69-70	09-4-23 Re-plat of Lots 9 & 10, Madrone Canyon Ranch. Discussion and possible action to consider waiver of preliminary plan, public notice, and approval of final plat. FORD/GARZA
17	71-73	09-4-20 Re-division of Tract 4 and 5 Block "B", Sycamore Valley II. Discussion and possible action to consider waiver of preliminary plan and public notice, and to approve final plat. FORD/GARZA
18	74-77	09-3-26 Re-division of Lot 63, Woodcreek Section 6A, and Lot 77, Woodcreek Section 6-B. Discussion and possible action to consider waiver of preliminary plan, public notice, and approval of final plat. Consider approval of a variance to minimum lot size standards in Hays County OSSF Rules Section 10.1. CONLEY/GARZA

MISCELLANEOUS

19	78	Discussion and possible action to adopt the Findings of the proposed Hays County Development Regulations, adopt the proposed Hays County Development Regulations (August 11, 2009 version) in response to the Findings, and adopt the updated Response to Public Comments (August 12, 2009 version). FORD
20	79-87	Discussion and possible action to publish notice of a public hearing and call for a public hearing on September 14, 2009 on a proposed new fee for Preservation and Restoration of Archived Records. SUMTER/ADAIR
21	88-90	Discussion and possible action to approve November 3, 2009 Polling Locations. SUMTER/COWAN
22	91-92	Discussion and possible action to approve the Purchase Agreement with Tyler Technologies for conversion of data from Guadalupe and Comal County. SUMTER/CARAWAY
23	93	Discussion and possible action to approve work authorization and contract for Loomis Austin for safety improvements on FM 2325. CONLEY Back-up is in your last weeks packet 8/11/09
24	94-99	Discussion and possible action to authorize the County Judge to execute an Interlocal Agreement between Hays County and the City of Kyle for improvements to FM150. BARTON
25	100-163	Discussion and possible action to approve a standard Utility Relocation Agreement. SUMTER
26	164-165	Discussion and possible action to authorize Legal Counsel to obtain an appraisal on the property Hays County will receive under the MOU between Hays County and Cedar Valley Investments, LLC for the realignment of Oak Branch Drive. FORD
27	166-167	Discussion and possible action to authorize the County Judge to execute a professional services agreement, for the performance of insurance – related consulting per the recommendations of the Insurance Committee. INGALSBE/BAEN
28	168-174	Discussion and possible action to approve the 'Contractual Agreement for Right-of-Way Procurement – Local Government' for RM 12 from RM 32 to proposed FM 3407 and adopt the resolution. SUMTER
29	175-176	Discussion and possible action to authorize the County Auditor to pay for the right of way on RR 12 not to exceed the amounts approved by the Commissioner's Court and to authorize the Treasurer to release the check to the property owners upon execution of the possession and use agreement. CONLEY
30	177	Discussion and possible action to confirm the existing board members of the Hays County Park Foundation, Inc.; and to request that the board members draft and execute a document stating that the 50+ acre tract of land be donated to the City of Kyle from Hays County. BARTON
31	178-189	Discussion and possible action to authorize the County Judge to execute the Advanced Funding Agreement for IH 35 at FM 2001 (1776-02-014) and adopt the resolution. SUMTER
32	190-211	Discussion and possible action to authorize the County Judge to execute the Advance Funding Agreement for IH35 at Kyle Crossing (0016-02-107) and adopt the resolution. SUMTER
33	212-257	Discussion and possible action to Consideration and approval an order by the Commissioners Court of Hays County, Texas authorizing the issuance of "Hays County, Texas Unlimited Tax Road Bonds, Series 2009"; levying an annual ad valorem tax, without

		limit as to rate or amount, upon all taxable property in the County for the payment of the bonds; prescribing the form, terms, conditions, and resolving other matters incident and related to the issuance, sale, and delivery of the bonds, including the approval and distribution of an official statement pertaining thereto; authorizing the execution of a paying agent/registrar agreement and a purchase contract; complying with the letter of representations on file with the depository trust company; and providing an effective date. SUMTER
34	258-262	Discussion and possible action to Consideration and approval an order authorizing the issuance of "Hays County, Texas Combination Tax and Limited Pledge Revenue Certificates of Obligation, Series 2009"; providing for the payment of said certificates by the levy of an ad valorem tax upon all taxable property within the County and further securing said certificates by a lien on and pledge of the pledged revenues of the solid waste management system; providing the terms and conditions of said certificates and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said certificates, including the approval and distribution of an official statement; authorizing the execution of a paying agent/registrar agreement and a purchase contract; complying with the requirements imposed by the letter of representations previously executed with the depository trust company; and providing an effective date. SUMTER
35	263-267	Discussion and possible action to Consideration and approval of an order by the Commissioners Court of Hays County, Texas authorizing the issuance of "Hays County, Texas Pass-Through Toll Revenue and Limited Tax Bonds, Series 2009"; levying an annual ad valorem tax, within the limitations prescribed by law, for the payment of the bonds and further securing said bonds by a lien on and pledge of certain pledged revenues; prescribing the form, terms, conditions, and resolving other matters incident and related to the issuance, sale, and delivery of the bonds, including the approval and distribution of an official statement pertaining thereto; authorizing the execution of a paying agent/registrar agreement and a purchase contract; complying with the provisions of the depository trust company's letter of representations; and providing an effective date. SUMTER
36	268-271	Discussion and possible action to approve the transfer of funds from line item 01-419-5235 Law Enforcement Supply to 01-419-5719 Misc. Equipment in order to purchase Band-it Prisoner Transport and Courtroom Control System. The total amount of funds requested is \$1,820.00; adequate funds are available in the Misc. Equipment line item. INGALSBE/BRODBECK
37	272-273	Discussion and possible action to replace 4 exit doors, install 3 additional exit doors and purchase fire extinguishers and signage for the Hays County Civic Center and Courthouse. INGALSBE/VELASQUEZ/NELSON
38	274-275	Discussion and possible action to authorize the purchase of a time/date stamp for Constable Pct. 1 and amend the budget accordingly, not to exceed \$515.00. INGALSBE/PETERSON
39	276-277	Discussion and possible action to allow the purchase of 14 Bushmaster Carbine BCWA3F1M4 Rifles for the Constable's Offices and amend the budget accordingly. INGALSBE/PETERSON/AYERS/HOOD/MANCILLAS
40	278-179	Discussion and possible action to implement position changes in the Sheriff's Office and to amend the budget accordingly. CONLEY/RATLIFF

WORKSHOP

41	280	11AM Discussion and possible action on particular FY10 budget line items may follow as well as possible adoption of a proposed FY10 budget. Further possible action to vote on a proposed tax rate and schedule public hearings on the tax rate and the budget. SUMTER
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ADJOURNMENT

Posted by 5:00 o'clock P.M. on the 14TH day of August, 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

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: 8/18/09

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 AUGUST 5 & 6, 2009

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

PREFERRED MEETING DATE REQUESTED: AUGUST 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: FRITSCHÉ

SPONSORED BY: SUMTER

SUMMARY:

HAYS COUNTY COMMISSIONERS' COURT MINUTES



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AUGUST 5, 2009

STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 5TH DAY OF AUGUST A.D., 2009, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN SPECIAL 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. FRITSCH	COUNTY CLERK

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

BUDGET WORKSHOP FY09-10

SHERIFF'S DEPT.

Sheriff Tommy Ratliff spoke of vehicles that were requested. Commissioner Barton spoke of City of Buda indicating that they will be terminating their contract and creating their own police department. There are currently four deputies and one supervisor assigned to the City of Buda with four more deputies to be added. The County will have to absorb these deputies, vehicles, and equipment which will impact the budget because Buda will no longer be paying for these services, etc. Adjustments will have to be made to the budget request in order to absorb the Buda Deputies. Discussion was had regarding number of laptops requested and recommended. IT Director Jeff Magill spoke of computers being requested to replace current laptops. Deputy Dennis Gutierrez spoke of need for CAD Tyler Technology software to integrate into 911 system. Discussed handling of emergency calls (Fire & EMS). Deputy Mike Davenport spoke of uniform expense. Crime Analyst position, if grant is approved, will need equipment (computer, etc.). Sheriff Ratliff spoke of need for an AR-15 rifle for the School Resource Officer. He spoke of need for an Administrative Assistance I to answer phone calls coming into the office or some type of system that would handle those calls. \$160,000 will be needed to pay for 4% merit increase for law enforcement.

CONSTABLE PCT. 4 [T1-1779]

Constable Ron Hood spoke of postage requested and fuel costs needed – a new deputy was recently added to his department. Other items covered were: staff salary, law enforcement equipment & supplies, membership fees, and vehicle maintenance. Constable Hood reduced request for law enforcement supplies from \$5,715 to \$3,608 and law enforcement equipment from \$9,351 to \$5,512. He spoke of AR15 rifle being requested.

JUVENILE CENTER [T1-2540]

Juvenile Center Director Brett Littlejohn spoke of need for a Nurse (LVN = \$29,204) position and a new vehicle (Dodge Charger = \$17,500). He spoke of programs offered an increase in the fees for those programs.

EXTENSION OFFICE [T1-2838]

Susan Schramm spoke of fuel line item and educational requirements for new extension agent. She spoke of travel required to various stock shows that the youth attend. Susan spoke of need for a new countertop – requested funds for this in the misc. building improvements line item.

JUVENILE PROBATION [T1-3096]

Chief Juvenile Probation Officer Ed Cooper spoke of need for a replacement vehicle (F150 Ford 4 door Pickup).

RPTP DEPARTMENT [T1-3218]

Jerry Borcharding, RPTP Director, spoke of trying to keep the budget flat with the addition of \$800,000 for the road department building. Discussed Line Item #5217 – requested \$16,000 to continue the safety program and replace rain gear as required by federal mandate, #5262 – the federal government is requiring that all regulatory signs be replaced with prismatic reflective material within seven years, #5321 - \$2,000 is needed for education/certifications, #5331 – if funding is cut he will have to cut training of equipment operators, #5421 – deals with new employees, #5438 - \$40,000 is the maintenance fee and does not include installation of new units (low water crossing monitors), #5450 & 5451 were added by the County Judge, #5452 – trash hauling expense has increased, #5454 – dam maintenance has been brought up to date and should not require additional maintenance this coming year, #5711 – Furniture for the Yarrington Road building was included in this line item, and #5741 cost of the addition was included in this line item (roll over funds). Line Item #5413 – he feels like vehicle equipment maintenance & repairs will need the \$200,000. Line Item #5271 Fuel & Lubes request is for \$500,000 and recommended amount is \$330,000. Line Item #5443 consultant expense request was for \$931,000 - was cut to \$140,000. Discussion was had regarding Fisher Store Road and other road projects. Line Item #5448 contract road work – requested \$2,683,408 which was reduced to \$600,000 – this line item is used for costs of using contract labor and services used on county roadways and rights-of-way for reconstruction and maintenance activities. Line Item #5386 ROW Expense – requesting \$780,000 – reduced to \$220,000. [T2-1592] Jerry Borcharding spoke of staff positions that have not been filled and have been deleted from the budget – he spoke of need for the Administrative Assistant III and Construction Coordinator positions and he has two scheduled interviews for the Construction Coordinator position. He spoke of salary being offered is too low at \$60,000 – he spoke of possible promotions within his department and leave the lower positions vacant. Discussed \$120,000 for furniture and \$891,000 for additional building costs.

HAYS COUNTY COMMISSIONERS' COURT MINUTES



AUGUST 5, 2009

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Line Item #5213 Books & Periodicals - \$4,000 requested - \$250 recommended - Jerry Borcharding spoke of needed publications = \$3875. Some publications can be found on the internet. Line Item#5473 Equipment Rent/Lease - \$4,000 requested \$3000 recommended. Discussed travel to bring deposits/mail to the courthouse, membership fees & bonds, continuing education for Sanitarians, Environmental Investigators/law enforcement officer, and Planner - requesting \$13,550.

CONSTABLE PCT. 1 [T2-2008]

Constable David Peterson requested \$1200 for #5211 office supplies and \$1200 for #5212 postage - law enforcement equipment repairs - \$400 needed - \$650 needed from printing - requesting funds for a time/date stamper and paper shredder.

Court was adjourned.

I, LINDA C. FRITSCHÉ, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on AUGUST 5, 2009.



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



STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 6TH DAY OF AUGUST A.D., 2009, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN SPECIAL 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 Ford was not present when meeting was called to order.

BUDGET WORKSHOP FY09-10

LIBRARIES

Jeff Hauff spoke of Social Services budget requests that were reviewed by the County Committee. He spoke of library requests – he spoke of looking at the number of customers served in each library. He also spoke of EMS budget requests *Commissioner Ford came to the meeting at this time.*

EMS

Discussed capital improvement funds held by various social/community services and income sources.

SAN MARCOS YOUTH SERVICES BUREAU

Discussed number of children being served and discussed other services being provided to youth. Schedule them to come before the court.

HAYS TRINITY GROUNDWATER CONSERVATION

Commissioner Conley spoke of need for an independent professional study. Schedule them to come in for a presentation on how money is to be spent.

BUDA LIBRARY

Discussion was had regarding services provided and funds being requested. Discussed giving all the libraries a lump sum and let them divide it as they see fit. Discussed funding: \$196,570 is current funding – recommended amount was \$190,000 – suggested amount is \$200,000.

[T1-1922] Judge Sumter spoke of goals: not raising the operations side of the tax rate, adequately fund our social services, put aside as much of the tax rate for future capital improvement projects as possible, and fiscally restraining our re-occurring expenditures to only market driven adjustments and essential additional personnel. Discussed effective tax rate (45.33¢), proposed tax rate (47¢), rollback rate (51.21¢). The proposed tax rate represents a 3.7% increase in the effective rate and a 3.3% increase in the current rate of 45.5. The increase is mostly due to the increase in the debt rate to pay for voter approved general obligation bonds. Also discussed was new personnel requests and Buda Patrol contract. Court went through the Revenue Estimate Worksheet by funds.

DISTRICT ATTORNEY [T2-244]

Sherri Tibbe spoke of compensating lawyers for their years of service in their specific area of work. Discussion was had regarding supplements that are being paid to some employees. She also spoke of travel allowance requested for her and her Chief at \$2500 each.

BUDGET WORKSHOP CALENDAR/SCHEDULE [T2-1776]

August 12 @ 2 p.m. - Wednesday - for Transportation & budget workshop

August 18 @ 11 a.m. - Tuesday - budget workshop



AUGUST 6, 2009

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BUDGET PRIORITIES

Commissioner Conley spoke of not providing merit increases this year – he would like to ask departments to go back and look at possible 2-5% in cuts – no new hires. Commissioner Barton spoke of honoring step increases in law enforcement. Commissioner Ingalsbe spoke of need to find cuts in the Sheriff's budget in order to honor those step increases. Commissioner Barton requested that all Commissioners get the same for continuing education and staffing (1 fulltime and part-time help). Court discussed use of funds for special projects. Discussion was had regarding 4% step increase for law enforcement and additional personnel being requested. Discussion was had regarding 4% step increase for law enforcement, additional personnel being requested, and absorption of Buda Patrol (9 Deputies). 3 main priorities: (1) roads, (2) 4% step for law enforcement, and (3) cut all new positions [except for grant positions]. Discussion was had regarding a tax rate of 47 cents (1.5 cents of that is voter approved). Discussed LCRA Service fees and membership fees/dues.

Court was adjourned.

I, LINDA C. FRITSCHÉ, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on AUGUST 6, 2009.



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

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

AGENDA ITEM: Approve donated funds in the amount of \$200 to the Hays County Sheriffs Office to be deposited into line item 28-467-5222 (Crime Prevention Program)

CHECK ONE: X CONSENT ☐ ACTION ☐ EXECUTIVE SESSION

☐ WORKSHOP ☐ PROCLAMATION ☐ PRESENTATION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: \$

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: SHERIFF RATLIFF

SPONSORED BY: JUDGE SUMTER

SUMMARY:

4039

PETER A. STERN 07-94
DOLORES R. STERN

P.O. BOX 316
DRIFTWOOD, TX 78619-0316

Date 8/1/2009 95-32/1070 NM
3811

Pay Hays County Sheriff \$200 ~~00~~
to the order of Two hundred \$ Dollars ☒ Check

Bank of America.

ACH REF 107000327



Memo yearly contribution PA

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:

Review and sign the renewal of the Immunization Grant between the Hays County Personal Health Department and the Texas Department of State Health Services (DSHS) for \$192,341.00.

CHECK ONE: ☒ X CONSENT ACTION ☐ EXECUTIVE SESSION

☐ WORKSHOP ☐ PROCLAMATION ☐ PRESENTATION

PREFERRED MEETING DATE REQUESTED: 8/18/09

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Priscilla Hargraves

SPONSORED BY: Judge Sumter

SUMMARY:

This is a renewal application between Hays County Personal Health Department and DSHS to fund the immunization program for FY 2010. The funding is for September 1, 2009 through August 31, 2010.

Agenda Item Request Form

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 Fax (512) 393-2282

AGENDA ITEM: Authorize the County Judge to submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment for the Hays County Community Response Team, in the amount of \$28,624.00.

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

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: Undetermined – may require 20-25% matching funds – see summary

LINE ITEM NUMBER OF FUNDS REQUIRED: TBD

REQUESTED BY: Turner/Hauff

SPONSORED BY: Sumter

SUMMARY:

This grant would provide for the purchase of equipment and supplies for the Hays County Community Response Team (CERT), to enhance the capabilities of this group. It is not know at this time if matching funds will be required, but possible funding can be identified by the Commissioners Court if the grant is awarded and acceptance is determined. The attached grant worksheet provides detail of the project.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the County Judge to submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment for the Hays County Community Response Team, in the amount of \$28,624.00.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$ undetermined, may require 20-25% matching funds

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ N/A ____

PAYMENT TERMS ACCEPTABLE: ____ N/A ____

COMMENTS: Funds will need to be set identified if a match is required.

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: _____



Capital Area Council of Governments Grant Project Worksheet—FY 2010

NOTE: This worksheet is saved and protected as a form; areas are navigated by tabbing from one text field to the next. To tab back to a previous field, press Shift + Tab. The boxes for text fields will expand if necessary as you type.

Applicant/Jurisdiction: Hays County

Point of Contact: Jeff Turner

Title: EMC

Phone: 512-393-7301

Email: jeff.turner@co.hays.tx.us

1. **Project Name**

Hays Co. Community Response Team, CERT

2. **Needs to be addressed by this project** *(Why is this project needed?)*

Continuation and Expansion of Hays County CERT's response capabilities and responder membership.

3. **Project Description** *(How will the needs be met?)*

These grant funds will be utilized in the overall program of Hays Co. CERT. A newly obtained van is being converted into a support vehicle which will be utilized in the performance of all phases of CERT activities. Portions of these funds will be for the continued development of this support vehicle project.

Portions of these funds will also be utilized in the continuation of programs which have been the backbone of the citizen corp. Expectations of a recruitment program which will be underway will be the obtainment of an additional 50 plus new members and we will train and outfit these new members.

4. **New or Existing project?**

- ☐ New project
- ☒ Existing project (Describe how this is an enhancement, expansion, addition, etc. of an existing project in "Notes" field.)
- ☐ Emergency (Describe circumstances in "Notes" field.)

Notes

This project will enhance the capabilities of the Hays County CERT through expanded membership and improved technology.

5. **Regional Impact** *(Identify the investment strategies addressed by the project. How does this project enhance regional preparedness?)*

The Hays Co. CERT program will be available to assist region wide upon request. The capabilities that this team can bring to any incident includes high level of rehab capabilities to initial first responders, a trained and experienced wildland search and rescue team, aerial reconnaissance for all hazard situations

throughout the use of an UAV/UAS (unmanned aerial system), and a well staffer and trained resource tracking unit.

6. Project Scalability (Explain whether this project is being done as a single component or in phases)

☐ One-time project

☒ Phased project (Describe previous funding in "Notes" field.)

Notes:

This project is an ongoing project where items are obtained over the life of the performance period.

7. Project Sustainability (Explain your jurisdiction's plan for sustaining this project—maintenance, upgrades, calibration, etc.)

Continued operational budget from Hays County fund the day to day operations of the CERT team.

8. Local Matching Funds (It is likely that matching funds—non-federal—may be required for FY2010. This match could be 20%-25% of the award. Check the box to affirm that your jurisdiction understands that this grant may be contingent upon your ability to provide matching funds, and, to the extent possible, indicate the source of these matching funds in the box below.) ☒

Hays County is aware of the potential match for this grant project.

9. Budget (Include as much detail as possible):

The expenditure categories are Equipment, Planning, Organization, Training, and Exercises. These may be chosen from the drop-down list (the default is "Equipment.")

Management and Administration (M&A) Limits – a maximum of up to 3% of project funds requested may be retained and used solely for the management and administration purposes associated with the grant.

Item	Category (Select from list)	Quantity	Unit cost	Total (Calculated)
Admin supplies	Organization	1	1000	\$1,000.00
Uniform/ID/Shirts	Organization	60	9.00	\$ 540.00
Uniform/Cold Weather Response	Organization	50	15.00	\$ 750.00
Training and Exerise	Training	10	175	\$1,750.00
Uniform/Senior Staff/Presentation	Organization	50	30	\$1,500.00
Initial CERT Member Kits	Equipment	50	50	\$2,500.00
Uniform/Team Leaders ID	Organization	60	25	\$1,500.00
18" Mist Fan & Acc.	Equipment	2	650	\$1,300.00
UAS Communication System	Equipment	1	1200	\$1,200.00
Lease of Space for Equipment	Equipment	1	650	\$ 650.00
CPR Micromaks	Equipment	50	15	\$ 750.00
Compass for SAR	Equipment	10	30	\$ 300.00
Sat Comm unit (Support vehicle)	Equipment	1	9950	\$9,950.00
Hoshizaki AM-150BAF Ice machine	Equipment	1	4100	\$4,100.00
M&A (if applicable, not to exceed 3%)				\$834.00

Total (Right click \$ field. Select "Update Field.")

\$28,624.00

10. Is this project part of a multi-jurisdiction project? (Check box if "Yes.") ☐

If "Yes," list the other participating jurisdictions.

Jurisdiction

11. Disciplines Involved in the Project (Please indicate the percentage of funds expected to be allocated in each discipline. Use all disciplines that apply):

Discipline	Percentage of Project \$
Agriculture	0.00%
Law Enforcement	0.00%
Emergency Medical Services - Non-Fire Based	0.00%
Emergency Medical Services - Fire Based	0.00%
Fire Service	0.00%
Hazardous Materials	0.00%
Public Works	0.00%
Public Safety Communications	0.00%
Health Care	0.00%
Emergency Management Agency	100.0%
Public Health	0.00%
Governmental Administrative	0.00%
Cyber Security	0.00%
Not for Profit/Non-Profit	0.00%
Regional Transit System	0.00%

Signature of Authorizing Chief Official

This signature certifies that the requestor understands the requirements, procedures, and deliverables, **including any requirement for matching funds**, coinciding with this request for funding and has the authority to represent the governing body of this organization.

Authorizing Chief Official

Date

Printed Name

Title

Signature of Project Manager

The following person is authorized to receive direction, manage work performed, complete and sign required reports, and otherwise act on behalf of the jurisdiction for this project.

Project Manager

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: Approve the June 2009 Treasurer's Report and Investment Report

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

PREFERRED MEETING DATE REQUESTED: 8/18/09

AMOUNT REQUIRED: None

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Michele Tuttle, Hays County Treasurer

SPONSORED BY: Liz Sumter, Hays County Judge

SUMMARY: Approve the June 2009 Treasurer's Report and Investment Report

HAYS COUNTY TREASURER'S REPORT

FOR THE MONTH OF JUNE 2009

CHECKING

OPERATING FUNDS:										
	BEGINNING BALANCE	Interest	Revenues	Deposits From Investments	Disbursements	Transfer to Investments	ENDING BALANCE	Total Investments	TOTAL FUND	
General	\$ 52,059.53	\$ 72.98	\$ 1,521,738.10	\$ 3,743,900.00	\$ 4,984,277.73	\$ -	\$ 333,492.88	\$ 25,014,955.79	\$ 25,348,448.67	
Road and Bridge General	\$ 16.27	\$ 45.63	\$ 609,467.57	\$ 246,756.27	\$ 792,321.10	\$ -	\$ 63,964.64	\$ 7,683,232.26	\$ 7,747,196.90	
Medical and Dental Fund	\$ 456.53	\$ 1.49	\$ 691,427.17	\$ -	\$ 691,882.70	\$ -	\$ 2.49	\$ 53,294.51	\$ 53,297.00	
Sheriff's Drug Forfeiture	\$ 4,735.92	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,735.92	\$ 53,239.24	\$ 57,975.16	
District Attorney Drug Forfeiture	\$ 2,029.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,029.99	\$ 3,111.67	\$ 5,141.66	
Health Services Grants	\$ 1,465.42	\$ 5.32	\$ 104,979.70	\$ -	\$ 102,777.01	\$ -	\$ 3,673.43	\$ 39.33	\$ 3,712.76	
Family Health Services	\$ 1,036.79	\$ 3.15	\$ 81,194.37	\$ -	\$ 75,231.20	\$ -	\$ 7,003.11	\$ 20.08	\$ 7,023.19	
Juvenile Detention Center	\$ 8,687.22	\$ 26.65	\$ 562,773.13	\$ 500,000.00	\$ 750,548.78	\$ -	\$ 320,938.22	\$ 14,180.48	\$ 335,118.70	
Tobacco Settlement Fund	\$ 170,418.50	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 170,418.50	\$ 429,386.23	\$ 599,804.73	
Historical Commission Trust Fund	\$ 311.00	\$ -	\$ 70.00	\$ 1,335.80	\$ 1,716.80	\$ -	\$ -	\$ 18,973.67	\$ 18,973.67	
CONSTRUCTION FUNDS:										
Certificates of Obligation 1997	\$ 0.01	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.01	\$ -	\$ 0.01	
Certificates of Obligation 2005	\$ 1.00	\$ -	\$ -	\$ 6,593.16	\$ 6,594.16	\$ -	\$ -	\$ -	\$ -	
Road Construction Bond 2006	\$ 1.00	\$ -	\$ -	\$ 18,429.51	\$ 18,429.51	\$ -	\$ 1.00	\$ 3,824,026.35	\$ 3,824,027.35	
Parks Bond 2007	\$ 1.00	\$ -	\$ -	\$ 298,039.83	\$ 298,039.83	\$ -	\$ 1.00	\$ 4,435,733.28	\$ 4,435,734.28	
Parks Bond 2008	\$ -	\$ -	\$ -	\$ 18,813.71	\$ 18,812.71	\$ -	\$ 1.00	\$ 7,502,828.18	\$ 7,502,829.18	
TCDP Disaster Relief Blanco	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
LCRA Service Fee Fund	\$ 576.19	\$ -	\$ 4,000.00	\$ 5,423.81	\$ 10,000.00	\$ -	\$ 0.00	\$ 400,929.00	\$ 400,929.00	
Cedar Oaks Mesa	\$ 15,000.00	\$ -	\$ 4,000.00	\$ -	\$ 9,500.00	\$ -	\$ 9,500.00	\$ -	\$ 9,500.00	
INTEREST AND SINKING FUNDS:										
Hays County I & S	\$ 116,142.96	\$ 29.45	\$ -	\$ -	\$ 100.00	\$ -	\$ 116,072.41	\$ 7,644,353.33	\$ 7,760,425.74	
GRAND TOTALS:	\$ 372,939.33	\$ 184.67	\$ 3,579,650.04	\$ 4,839,292.09	\$ 7,760,231.53	\$ -	\$ 1,031,834.60	\$ 57,078,303.40	\$ 58,110,138.00	
Transfers Outstanding:										

Hays County Treasurer's Investment Report

For June 2009

PAGE 1

AMERICAN NATIONAL BANK CHECKING

Description	5/31/09 Balance	Interest	Deposits	Debits	6/30/09 Balance
All Funds (see Page 1)	\$ 372,939.33	184.67	8,418,942.13	7,760,231.53	1,031,834.60

TEXPOOL 0.3939% 1.000560

Description	5/31/09 Balance	Interest	Deposits	Debits	6/30/09 Balance
General	\$ 11,943,997.72	3,774.65	381,974.27	3,743,900.00	8,585,846.64
Road and Bridge General	\$ 6,099,910.94	1,975.87	82,024.29	246,756.27	5,937,154.83
Medical and Dental Fund	\$ 51,894.05	16.82	-	-	51,910.87
Sheriff's Drug Forfeiture	\$ 53,222.02	17.22	-	-	53,239.24
D.A. Drug Forfeiture	\$ 3,048.48	0.95	-	-	3,049.43
Health Services Grants	\$ 2.91	-	-	-	2.91
Juvenile Center	\$ 514,023.21	157.27	-	500,000.00	14,180.48
Tobacco Settlement Fund	\$ 429,247.26	138.97	-	-	429,386.23
Historical Commission Trust	\$ 13,116.32	4.16	-	1,335.80	11,784.68
Certificates of Obligation '05	\$ 6,592.95	0.21	-	6,593.16	-
Road Construction 2006	\$ 3,841,212.96	1,242.90	-	18,429.51	3,824,026.35
Parks Bond 2007	\$ 4,732,250.12	1,522.99	-	298,039.83	4,435,733.28
Parks Bond 2008	\$ 7,519,208.54	2,433.35	-	18,813.71	7,502,828.18
LCRA Service Fee Fund	\$ 406,221.66	131.15	-	5,423.81	400,929.00
Hays County 1 & S	\$ 5,396,336.69	1,760.65	70,451.98	-	5,468,549.32
All Funds	41,010,285.83	13,177.16	534,450.54	4,839,292.09	36,718,621.44

ICT Funds Management 0.2200%

Description	5/31/09 Balance	Interest	Deposits	Debits	6/30/09 Balance
General	\$ 11,240,826.53	2,309.04	-	-	11,243,135.57

CLASS - MBIA 0.4000% NAV 1.00

Description	5/31/09 Balance	Interest	Deposits	Debits	6/30/09 Balance
General	\$ 3,731,737.98	1,238.45	-	-	3,732,976.43

Description	5/31/09 Balance	Interest	Deposits	Debits	6/30/09 Balance
General	\$ 497,336.16	218.48	-	-	497,554.64
Road and Bridge General	\$ 1,745,310.71	766.72	-	-	1,746,077.43
Medical and Dental Fund	\$ 1,383.03	0.61	-	-	1,383.64
D.A. Drug Forfeiture	\$ 62.21	0.03	-	-	62.24
Health Services Grants	\$ 36.40	0.02	-	-	36.42
Family Health Services	\$ 20.07	0.01	-	-	20.08
Historical Commission Trust	\$ 7,185.83	3.16	-	-	7,188.99
Hays County I & S	\$ 1,925,043.64	845.68	-	-	1,925,889.32
All Funds	4,176,378.05	1,834.71	-	-	4,178,212.76

TREASURY BILLS AND NOTES

Description	Price	Yield/ Maturity	Par Value	Balances 5/31/09 Book Value	Market Value	Purchases	Maturities	Balances 6/30/09 Book Value	Market Value
912795629	99.9292	.0284% 08/04/09	200,000.00	199,858.44	199,997.33	-	200,000.00	249,914.69	249,984.67
912795N31	99.9859	.135% 7/23/09	250,000.00	249,914.69	249,961.36	-	200,000.00	249,914.69	249,984.67
912795695	99.9859	.137% 7/30/09	500,000.00	499,829.38	499,908.34	-	-	499,829.38	499,933.34
912795S28	99.9558	.178% 08/27/09	100,000.00	99,955.76	99,969.44	-	-	99,955.76	99,997.91
912795N98	99.9621	.152% 09/03/09	100,000.00	99,955.76	99,969.44	200,000.00	200,000.00	199,924.17	199,995.31
TOTAL			1,050,000.00	1,049,558.27	1,049,836.47	200,000.00	200,000.00	1,049,624.00	1,049,911.23

LINKED DEPOSIT PROGRAM CERTIFICATES OF DEPOSITS

Description	Fund	Yield/ Maturity	Par Value	Balances 5/31/09 Book Value	Market Value	Purchases	Maturities	Balances 6/30/09 Book Value	Market Value
Security State Bank	General	2.72% 11/7/09	4,022.27	4,022.27	4,022.27	-	-	4,022.27	4,022.27
Security State Bank	General	3.06% 6/14/10	13,686.22	13,686.22	13,686.22	-	-	13,686.22	13,686.22
Security State Bank	General	3.14% 6/14/12	21,030.03	21,030.03	21,030.03	-	-	21,030.03	21,030.03
Security State Bank	General	2.94% 7/10/10	16,721.09	16,721.09	16,721.09	-	-	16,721.09	16,721.09
Security State Bank	General	2.99% 7/10/12	12,628.08	12,628.08	12,628.08	-	-	12,628.08	12,628.08
Security State Bank	General	2.56% 1/4/13	9,168.58	9,168.58	9,168.58	-	-	9,168.58	9,168.58
Security State Bank	General	2.99% 1/4/13	13,813.14	13,813.14	13,813.14	-	-	13,813.14	13,813.14
Security State Bank	General	2.99% 1/4/13	11,230.35	11,230.35	11,230.35	-	-	11,230.35	11,230.35
Security State Bank	General	2.99% 1/4/13	14,065.75	14,065.75	14,065.75	-	-	14,065.75	14,065.75
Franklin Bank	General	2.64% 8/8/12	31,206.58	31,206.58	31,206.58	-	-	31,401.54	31,401.54
Franklin Bank	General	1.91% 10/19/11	7,929.71	7,929.71	7,929.71	-	-	7,966.15	7,966.15
TOTAL			155,501.80	155,501.80	155,501.80	-	-	155,733.20	155,733.20

TOTAL Fund Balances

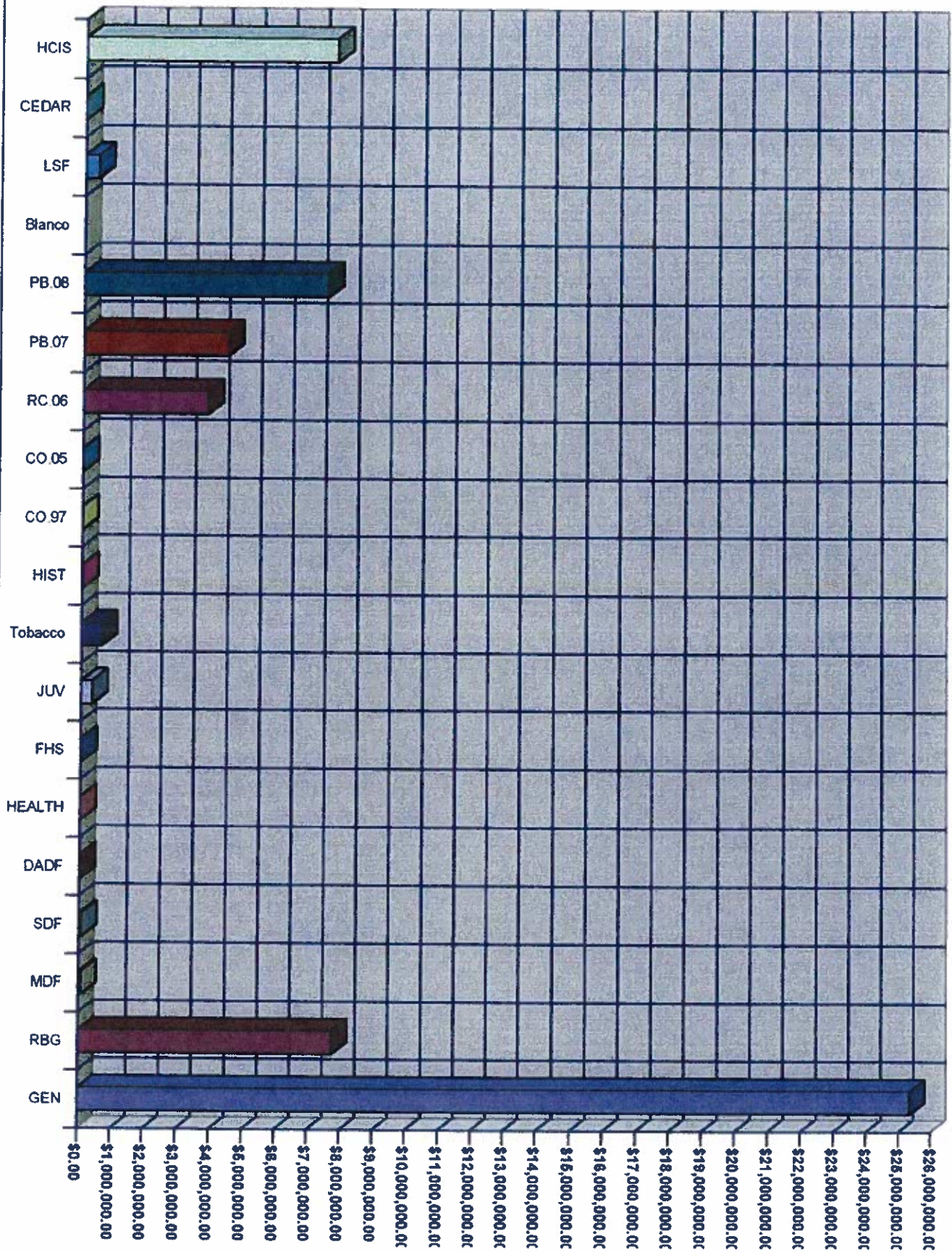
61,737,227.79

58,110,138.00

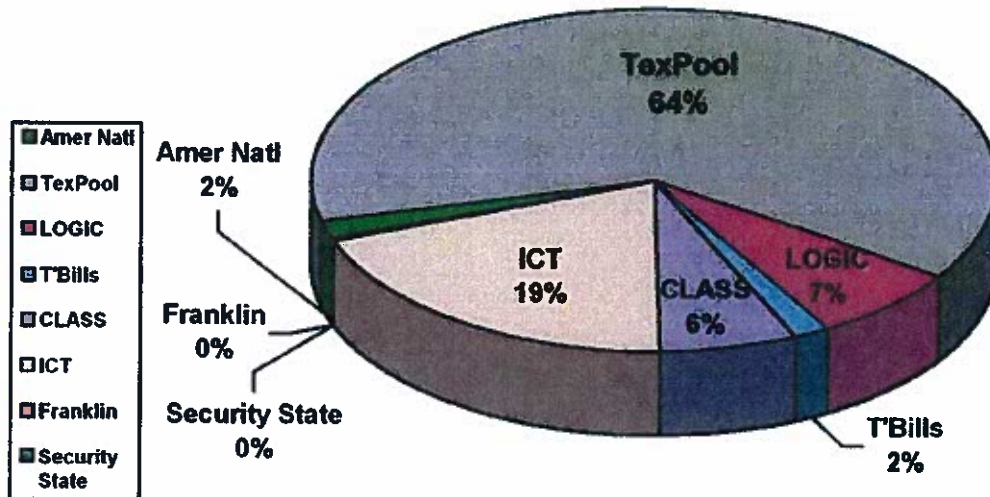
BENCHMARK

CURRENT 90 DAY TREASURY BILL YIELDING .157%

Fund balances for 6/30/09



INVESTMENT ALLOCATION TOTALS JUNE 2009



All maturity dates are less than 180 days. The Treasurer's Office invests with prudence to keep security and liquidity as the primary goals. The strategy used for each fund is based on the terms described in the Hays County Investment Policy. The Treasurer's Office strictly adheres to all laws and statutes concerning the investment of public funds.

Bill Herzog

Bill Herzog, Hays County Auditor

Michele Tuttle

Michele Tuttle, Hays County Treasurer

Britney Richey

Britney Richey, Accountant, Hays County

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 out of state travel for Cora Furr RN, FNP-bc to attend "Stages in Women's Health" conference in Las Vegas, Nevada on October 16-18, 2009.

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

☐ **WORKSHOP**

☐ **PROCLAMATION**

☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: 8/18/09

AMOUNT REQUIRED: \$932.00

LINE ITEM NUMBER OF FUNDS REQUIRED: 10-469-5391*

REQUESTED BY: Priscilla Hargraves

SPONSORED BY: Sumter

SUMMARY:

This Conference is a three day event which will focus on clinical conditions and diseases affecting women throughout their lifespan and will address treatment, diagnosis and prevention strategies.

This conference offers a wide selection of topics, lectures, open discussion, problem solving and best practice strategies for the Women's Health practitioner. (See attached Program Schedule.)

It is both advantageous and fiscally responsible to send her to one all-inclusive conference. This will eliminate the added future expenses of sending her to a variety of conferences throughout the year. Furthermore, this conference also fulfills her mandated licensing requirements to complete her CEU's in continuing education. Funds for this conference would be utilized from FY2010 .

***\$432.00 will be transferred from 10-469-5219(supplies) to line item 10-469-5391 to total the amount available at \$932.00.** *Back-up in Aug. 11th AGENDA PACKET.*

Agenda Item Routing Form

DESCRIPTION OF Item:

Approve out of state travel for Cora Furr RN, FNP-bc to attend "Stages in Women's Health" conference in Las Vegas, Nevada on October 16-18, 2009.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$932.00 10-469-5391

COUNTY PURCHASING GUIDELINES FOLLOWED: N/A

PAYMENT TERMS ACCEPTABLE: Yes

COMMENTS: Budget amendment is required from 10-469-5219 to 10-469-5391 for \$432

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: Authorize the County Judge to submit a grant application for up to \$61,000 to the Texas Department of Transportation, Section 5310 program to replace the County Veterans Affairs Bus.

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

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: 20 % County match \$12,148.60 – may be waived

LINE ITEM NUMBER OF FUNDS REQUIRED: TBD

REQUESTED BY: Tom Tvrdik/ Jeff Hauff

SPONSORED BY: Judge Sumter

SUMMARY:

This grant application requests funds not to exceed \$61,000 for the purchase of a new 25' passenger bus. Hays County is normally required to provide a 20% match, although the match may be waived by the Texas Department of Transportation through a Transportation Development Credit program. The Texas Department of Transportation will advertise for bids and make an award for the purchase. See attached application for details.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the County Judge to submit a grant application for up to \$61,000 to the Texas Department of Transportation, Section 5310 program to replace the County Veterans Affairs Bus.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: 20% County match \$12,148.60- may be waived. TBD

COUNTY PURCHASING GUIDELINES FOLLOWED: ___ N/A ___

PAYMENT TERMS ACCEPTABLE: ___ N/A ___

COMMENTS: Funds will need to be identified in the FY2010 budget if a match is required.

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: _____



Hays County
(Name of Agency)

**Fiscal Year 2010
Grant Application Part I
For Transit Providers and Service Agencies**



**Texas Department of Transportation
Public Transportation Division**

Introduction

The application for public transportation funds includes the following elements:

Grant Application Part I - Applicant and Project Information

Grant Application Part II - Federal Requirements (if applicable)

New Applicant information (if applicable)

Attach additional sheets as needed, for forms, tables and/or charts.

This Fiscal Year 2010 Grant Application Part I (Part I) will be used by all entities applying and/or requesting Public Transportation Formula Program Funding: e.g. Local Governmental Entities, Metropolitan Planning Organizations, Rural Transit Districts, Urban Transit Districts, and Native American Tribes or Indian Tribal Organizations.

By submission of this application, the applicant will be certifying that the proposed public transportation project is consistent with the continuing, cooperating, and comprehensive regional transportation planning requirements. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

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B: PROGRAM MANAGEMENT	1
C: INTELLIGENT TRANSPORTATION SYSTEM (ITS) PROJECT	1
D: CIVIL RIGHTS	1
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F: PUBLIC INVOLVEMENT	10
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AGENCY SIGNATURE WARRANTY AND ASSURANCE	10
TXDOT DISTRICT REVIEW	10

Section I: Information

A: Agency Information

Name of Agency: Hays County	Legal Name on Grant Agreement (if different): Hays County VA
Street: 102 N. LBJ City: San Marcos County: Hays State: Texas (change if different) Zip: 78666	Mailing Address (if different): Address: 102 N. LBJ City: San Marcos County: Hays State: Texas (change if different) Zip: 78666
Agency Telephone: 512-392-8387	Email: tom.tvrdik@co.hays.tx.us
Agency Fax: 512-393-7718	Website: www.co.hays.tx.us
Payee Identification (PIN) Number (14 digits): 17460022415029	
Primary Agency Contact Person	Secondary (Backup) Contact
Name: Jeff Hauff	Name: Vicki Wilhelm
Title: Grants Administrator	Title: Accountant
Telephone #: 512-393-2209	Telephone #: 512-393-2275
Email: jeff.hauff@co.hays.tx.us	Email: vickie_wilhelm@co.hays.tx.us
Other (pager, etc.):	Other (pager, etc.):

B. Emergency Operations Contact

Enter the name of the primary and secondary person to contact in the event of an emergency.

A 24 hour access phone number must be provided.

Primary Contact	Secondary Contact
Name: Jeff Hauff	Name: Vickie Wilhelm
Office Telephone #: 512-393-2209	Office Telephone #: 512-393-2275
Home or Cell Telephone #	Home or Cell Telephone #
Email: jeff.hauff@co.hays.tx.us	Email: Vickie_wilhelm@co.hays.tx.us
Other (pager, etc.):	Other (pager, etc.):

C: Signature Authority

Enter the name of the designated official representative(s) of the agency who can legally sign applications, contracts and commit resources.

Name: Elizabeth 'Liz' Sumter	Name: Bill Herzog
Title: Hays County Judge	Title: Hays County Auditor
Address: 111 E. San Antonio St., Ste. 300, San Marcos, TX 78666	Address: 111 E. San Antonio St., Ste. 100, San Marcos, TX 78666
Telephone: 512-393-2205	Telephone: 512-393-2283

D: Subcontractor(s)

If a subcontractor provides transit services, provide the information below. If there is more than one subcontractor provide this information for each one.

Is any part of the agency's service subcontracted to another agency? ☐ Yes ☒ No If Yes, provide the following information:

Name of Agency:	Name of Parent Agency (if different):
Physical Address:	Mailing Address (if different):
Agency Contact Person:	Telephone:
Title:	Fax:
Email:	Website:
What type of service is provided?	

[Return to Table of Contents](#)

[End of Section I](#)

Section II: Funding

A: Eligibility

Eligibility for the following programs is contingent on agency type. Check all the appropriate box(es) to identify agency type.

Existing Agency	New Agency
<input type="checkbox"/> Rural Transit District	<input type="checkbox"/> Rural Transit District
<input type="checkbox"/> Urban Transit District	<input type="checkbox"/> Urban Transit District
<input type="checkbox"/> Metropolitan Planning Organization	<input type="checkbox"/> Metropolitan Planning Organization
<input type="checkbox"/> Metropolitan Transit Authority	<input type="checkbox"/> Metropolitan Transit Authority
<input checked="" type="checkbox"/> Governmental Entity	<input type="checkbox"/> Governmental Entity
<input type="checkbox"/> Native American Tribes or Indian Tribal Organization	<input type="checkbox"/> Native American Tribe or Indian Tribal Organization
<input type="checkbox"/> Non-Profit Agency	<input type="checkbox"/> Non-Profit Agency
<input type="checkbox"/> Private For-Profit Agency	<input type="checkbox"/> Private For-Profit Agency

New Recipients are required to provide additional information regarding eligibility (such as a copy of Non-Profit Status - I.R.S. Form # 501(c)(3)). Contact the TxDOT District Public Transportation Coordinator (PTC) in your area for assistance.

B. Programs

Indicate the different funding sources the applicant **will apply** for with this TxDOT application, include a description and/or explanation for each program selected:

☐ **§5304 Statewide Planning**

The Federal Transit Act, codified at 49 USC §5304, provides grants for planning activities

Describe/explain what funds will be used for: _____

☐ **§5307 State - Small Urbanized Area** (CFDA Number 20.507)

State public transportation funds are allocated to municipalities that are designated recipients or transit providers in urbanized areas. (TAC 43 Rule §31.11)

Describe/explain what funds will be used for: _____

☐ **§5309 Vehicle Capital Replacement (VCR)** (CFDA Number 20.500)

The Federal Transit Act, codified at 49 USC §5309, provides capital investment grants. Section 5309 funds are available to local public bodies. (TAC 43 Rule §31.16)

Describe/explain what funds will be used for: _____

☒ **§5310 Elderly and Persons with Disabilities (E&D)** (CFDA Number 20.513)

The Federal Transit Act, codified at 49 USC §5310(a)(2), provides capital grants to meet the special needs of the elderly and persons with disabilities. (TAC 43 Rule §31.31)

Describe/explain what funds will be used for: **Grant funds will be utilized for the purchase of a passenger bus**

☐ **§5311 State - Non-Urbanized Area**

Transportation Code, Chapter 456 provides grant funds for public transportation projects in non-urbanized areas (TAC 43 Rule §31.11)

Describe/explain what funds will be used for: _____

☐ **§5311 Federal - Non-Urbanized Area** (CFDA Number 20.509)

The Federal Transit Act, codified at 49 USC §5311, provides grants for public transportation projects in non-urbanized areas. (TAC 43 Rule §31.11)

Describe/explain what funds will be used for: _____

☐ **Other:** _____

Describe/explain what funds will be used for: _____

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End of Section II

Section III: Identification of Needs

A: Project Need

1. Describe the current need for service/equipment in your area. All applicants, non-profit and public entities, are to provide current documentation supporting the stated transportation needs must be attached as an appendix and its relevance discussed within the narrative (e.g., testimonies, hearings Regional Service Plans etc.) Section 5310 projects should explain in detail, how the project supports special facilities, special planning or design so as to utilize mass transportation facilities and services as effectively as persons who are not so affected.

There is a need for the service that Hays County VA provides for the elderly and people with disabilities to transport them to their doctor appointments to receive necessary medical treatment. Without this service, they would not have transportation to and from their appointments. The service allows the people of Hays County to keep their appointments no matter what time of day. Prior to this service, patients had to schedule their appointments between 9:30 a.m. and 3:00 p.m. to allow the driver enough time to be back at the office at a certain time. Trips are now scheduled to leave in time for the first appointment and return after the last appointment. If a patient has an appointment at a different location, we will drive them there and pick them up after their appointment.

Section 5310 only

Mark the appropriate box below as applicable. **One box must be checked.**

Unavailable

There is no existing public transportation

☒ **Insufficient**

Available mass transportation services are insufficient to meet the needs of the target population or equipment needs replacement to ensure continuance of service. (Examples: capacity, routes, hours, paratransit eligibility and/or trip criteria, projected future need, vehicles inaccessible, etc.)

☒ **Inappropriate**

Target population has unique or special needs, which are difficult or impossible to serve on available mass transportation.

Describe how existing public transit do not serve the population in your service area. **CARTS provides service to San Antonio from San Marcos only twice per month, and on a very limited schedule. It does not provide pickup from other Hays County locations, which is inconvenient or inaccessible for those served.**

SPECIFICATION AND ESTIMATED BUDGET FOR TRANSPORTATION CAPITAL PROJECTS

The table represents the estimated net project cost, the amount of the requested Federal grant (80 percent of net project cost), and the amount of local contribution (20 percent of net project cost).

ITEM DESCRIPTION	COST
Elkhart Coach Bus – 25' Type 3 Floor Plan – Flat Floor	\$ 60,743
	\$
NET PROJECT COST:	\$ 60,743
LOCAL SHARE (Itemize by Source Type & Amount)	AMOUNT
TDC credits	\$ 12,148.60
TOTAL LOCAL SHARE* = Allowable Percentage 20%	\$ TDC credits of \$12,148.60
TOTAL FEDERAL SHARE* = Allowable Percentage 80%	\$ 48,594.40

Section IV: Utilization of Services

A. Vehicle Availability and Capacity

- How many vehicles are: ☒ Available for passenger service? 2
☒ Required in peak periods? 2
- Can all requests for service be accommodated with the existing fleet? ☒ Yes ☐ No If No, explain _____

B. Service Changes

- If the agency is proposing to change services (changing routes, increasing or decreasing service), describe the changes and why they are proposed, or enter N/A for not applicable. **N/A**

C. Vehicle Replacement / Service Expansion

- Will vehicle(s) be used for: ☐ service expansion
☒ vehicle replacement
- For the proposed replacement / expansion vehicle
☐ What is the estimated total vehicle mileage (1 year)? 31,000
☐ What is the estimated total passengers (1 year)? 1500

D. Total Fleet - Vehicle Inventory and Condition

- Attach the most current agency inventory list or attach a copy of the most recent PTMS.

Year	Make	Mileage
2008	Chevrolet Up Lander	24,000 miles
2003	Ford Van	105,000 miles

E. Demographics

Please complete the following demographic information for your service area. Exact counts are preferred, but estimates are acceptable. For this section, you are describing the same group of people two different ways, so your total number of clients by ethnicity should equal the total number of clients by elderly or disabled status.

Category	# of Clients	%
American Indian or Alaska Native	5	
Asian or Pacific Islander	2	
Black	145	
American Indian or Alaskan Native	0	
White (including Hispanic)	482	
Other		
	634	

%	# of Clients	Category
	339	Elderly (non-disabled)
	275	Persons with disabilities (including elderly)
	20	Other (everyone else)

= TOTAL * =

634

* These totals should equal.

- Describe the process for determining demographic of the service area. Mostly by word of mouth and occasionally a social worker from Audie Murphy Veterans Memorial Hospital in San Antonio will call to let me know that someone needs our transportation to and from their Doctor appointment.
- Describe how the current service meets the needs of the targeting population. The current service meets the needs of the elderly & people with disabilities by providing transportation to and from their Doctor/medical appointments.
- Does your Agency provide equivalent levels of service for disabled and non-disabled passengers?
☒ Yes ☐ No If No, explain: _____

F. Fare Structure

1. Enter the Fare for each of the following services.

Fare Type	Amount	Comments:
Regular Fare:	_____	
Senior Fare:	_____	
Persons with Disabilities (non-Paratransit):	_____	
Personal Care Attendant	_____	
Paratransit:	_____	
Student Fare:	_____	
Monthly Pass:	_____	
Tickets or Tokens:	_____	
No Fare Charged:	xxx	
Other: _____	_____	

2. Does the agency prioritize service? ☐ Yes ☒ No If Yes, explain _____
3. Are requested trips or reservations denied? ☐ Yes ☒ No If Yes, describe why denied and how tracked: _____

G. Incidental Services

1. Does the agency provide incidental transit services, such as charter service, school tripper service, meal delivery, or special services such as sight-seeing? ☐ Yes ☒ No If Yes, describe the services. _____

H. Complementary Paratransit Information

1. Is the agency a Rural Transit District that operates a fixed route service? ☐ Yes ☒ No If Yes, attach the most recent Complementary Paratransit Plan.

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[End of Section IV](#)

Section V: Coordination of Efforts

A. Coordination of Service

1. What human service agencies, employment / training programs, or other transportation providers has the agency met with in the last year to discuss transit service coordination? Explain the outcomes. **Meet frequently with CARTS, use CARTS maintenance and propane fueling facility, and procure vehicles under CARTS contracts. Coordinate with and make daily weekday trips to VA hospital in San Antonio.**
2. Check the statements below for which the agency presently coordinates or shares services or vehicles with other agencies and those which the agency is willing to consider in an effort to increase coordination.

	Currently Do	Would Consider
Sending drivers to training held by others	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Inviting other drivers to attend training	<input type="checkbox"/>	<input type="checkbox"/>
Sharing back-up vehicles with other agencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Providing information to riders/patrons on other available services.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Working with other agencies to identify when there is space available on their vehicles.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Purchasing rides from other agencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Selling rides to other agencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other: _____		

3. Describe the agency's role in the regional public transportation coordination planning efforts? **Coordination with CARTS in maintenance and use of propane fueling facility given as an example of existing coordination in the RTCC Plan. Joint acquisition of vehicles with CARTS meets five of the eight RTCC Plan goals.**
4. How will these funds address gaps and / or barriers identified in the regional public transportation coordination plan? **Preventative Maintenance supports four of the eight RTCC Plan goals.**
5. Describe any special efforts made to provide information about the agency's service to human service agencies, the Work Force Center, or other activity centers. **The Veterans Affairs Office is a Hays County Office, supported by the entire county staff including human services and other offices. Information of the service is provided through all of the offices as applicable.**

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[End of Section V](#)

Section VI: Financial Management / Grant Capability

A. Fiscal / Managerial Capabilities

1. Has the agency expended \$500,000 or more in federal awards in a year? ☒ Yes ☐ No **If Yes**, were annual audits completed in accordance with OMB Circular A-133 and submitted to the TxDOT district? ☒ Yes ☐ No **If Yes**, attach copy **Copy previously submitted to TxDOT**
2. Were there any unresolved audit findings? ☐ Yes ☒ No **If Yes**, explain _____
3. Describe the experience your agency has in managing grants and/or other governmental grant programs. The Hays County Grants Department has been working with the Texas Department of Transportation for 11 years and has managed other State and Federal grants. The County Auditor's office is well organized and is fully capable of managing the financial reporting and budgets for all county grants.

➤ Cost Allocation Plans

4. Will indirect costs be charged to the proposed grant? ☐ Yes ☒ No Indirect costs are defined as those costs that cannot be identified readily and specifically with a particular transit grant. Examples of indirect costs include, but not limited to taxes, administration, personnel and security costs. **If Yes**, are costs supported by a cost allocation plan in accordance with OMB Circular A-87 and approved by the cognizant agency?
☐ Yes ☐ No **If Yes**, attach the Cost Allocation Plan Certification.
If No, explain _____

B. Program Management

➤ General

1. In the last fiscal year has the agency requested a contract extension(s) from TxDOT for a Public Transportation grant? ☒ Yes ☐ No **If Yes**, explain Extension granted for PM funds since these were less than expected.

➤ Procurement

2. Does the agency have written procurement policies and procedures? ☒ Yes ☐ No

➤ Maintenance

3. Does the agency's have a vehicle preventive maintenance program?
☒ Yes ☐ No

C. Intelligent Transportation System (ITS) Project

1. Will ITS equipment (such as computer software, communications equipment, etc) be purchased during the fiscal year covered by this application? Yes ☐ No ☒ **If Yes**, list the ITS equipment funded by this application. _____
2. Identify the Regional ITS Architecture and Deployment Plan(s) that includes this agency. N/A

D. Civil Rights

1. Subrecipient must describe any lawsuits or complaints that have been received or acted on in the last year relating to Title VI or other relevant civil rights requirements; and subrecipient must provide a status of lawsuits or an explanation of how complaints were resolved including corrective actions taken.

☒ The applicant has no lawsuits or complaints received in the last year relating to Title VI or other Civil Rights requirements.

The applicant had lawsuits and/or complaints that were received in the last year relating to Title VI or other Civil Rights requirements. The applicant acted upon these as described below. _____

2. Does the agency have an Equal Employment Opportunity Policy? ☒ Yes ☐ No

3. Number of transit-related employees: 2 (An employee is considered a transit-related employee if they are classified as such (full or part-time) or if part of their salary is paid with transit funds.)

E. Local Support

1. Describe the local support received by the agency (such as resolutions by local governing bodies, and endorsement letters from other organizations or individuals). **Documents on file from various veterans organizations and individuals.**

F. Public Involvement

1. How has the agency engaged the public to provide input for agency service planning and project selection (e.g. route changes, fare structure, new service and capital expenses). **All actions are subject to approval of the Commissioners' Court after receiving public input.**

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[End of Section VI](#)

Section VII: WARRANTIES AND ASSURANCES

Agency Signature Warranty and Assurance

The undersigned signatory for the Agency hereby represents and warrants that the information provided in this Application is accurate to the best of my knowledge. The undersigned signatory for the Agency hereby represents and warrants that he/she is an officer of the organization for which he/she has executed this agreement and that he/she has full and complete authority to enter into an agreement on behalf of the organization. The undersigned signatory for the Agency further represents and warrants the Agency is in compliance with all statutory requirements and regulations.

Hays County
Agency Name

Signature

Date

Elizabeth 'Liz' Sumter
Typed or Printed Name and Title

TxDOT District Review

The undersigned signatory hereby represents and warrants that the information provided in this Application has been reviewed, and is complete and accurate to the best of my knowledge

Joe Holland
Typed / Printed Name of TxDOT District PTC

Austin, Texas
District

Signature

Date

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[End of Section](#)

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 an Interlocal Agreement with the Capital Area Council of Governments for PSAP Maintenance, Equipment Upgrade and Training Contract, in the amount of \$1,250.00

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Hauff

SPONSORED BY: Sumter

SUMMARY:

This is a renewal of an Interlocal contract between CAPCOG and Hays County. CAPCOG agrees to pay Hays County \$1,250 for the purchase of supplies and to maintain its PSAPs, upgrade its equipment, and train personnel to participate in the enhanced 9-1-1 emergency telephone system in the Region.

CAPITAL AREA COUNCIL OF GOVERNMENTS

INTERLOCAL CONTRACT FOR PSAP MAINTENANCE, EQUIPMENT UPGRADE, AND TRAINING

Sec. 1. Parties and Purpose

1.1. The Capital Area Council of Governments ("CAPCOG") is a regional planning commission and political subdivision of the State of Texas organized and operating under the Texas Regional Planning Act of 1965, as amended, chapter 391 of the Local Government Code. CAPCOG has developed a *Strategic Plan* to establish and maintain 9-1-1 emergency telephone service in State Planning Region 12, and the Texas Advisory Commission on State Emergency Communications has approved its current *Plan*.

1.2. Hays County ("Public Agency") is a Texas county that operates one or more Public Service Answering Points (PSAPs) that assist in implementing the *Strategic Plan* as authorized by chapter 771 of the Health and Safety Code.

1.3. This contract is entered into between CAPCOG and Public Agency under chapter 791 of the Government Code so that Public Agency can maintain its PSAP(s), upgrade its equipment, and train its personnel to participate in the enhanced 9-1-1 emergency telephone system in the Region.

Sec. 2. Goods and Services

2.1. Public Agency agrees to:

- (1) purchase supplies such as printer paper, printer ribbons, cleaning materials, etc. necessary for the continuous operation of its PSAP(s);
- (2) upgrade its PSAP equipment and software, as authorized in the current *Strategic Plan*, by requesting CAPCOG to purchase new equipment and software;
- (3) protect the PSAP equipment and secure the premises of its PSAP(s) against unauthorized entrance or use;
- (4) practice preventive maintenance for the PSAP equipment;
- (5) provide emergency communications training to call-takers/dispatchers as described in CAPCOG's current *Strategic Plan*.
- (6) protect the confidentiality of 9-1-1 database information and of information furnished by telecommunications providers, and notify CAPCOG's Emergency Communications Department in writing within two business days of the receipt of a request for 9-1-1 database information, or for information furnished by telecommunications providers, made under the Texas Public Information Act;

(7) use the Emergency Notification Services database information only to warn or alert citizens of an emergency situation where property or human life is in jeopardy, and protect the database information from unauthorized use.

Sec. 3. Contract Price and Payment Terms

3.1. CAPCOG agrees to compensate Public Agency in the total amount of not to exceed \$ 1,250.00 for its performance of this contract.

3.2. Within 30 calendar days after the effective date of this contract, CAPCOG agrees to pay Public Agency \$ 1,250.00 for the purchase of supplies authorized by the current *Strategic Plan*. Public Agency agrees to certify in writing to CAPCOG, by October 15, 2010 and by October 15, 2011, or within 30 calendar days after this contract is terminated early, that it expended all or a specified portion of the amount received to purchase supplies, and to refund to CAPCOG any unexpended portion

3.3. If Public Agency made expenditures under this contract in violation of applicable law or policy described in Sec. 6, Public Agency agrees to repay CAPCOG for those expenditures within 60 calendar days from the date CAPCOG notifies Public Agency of the repayment amount due and the reason repayment is required. If Public Agency does not repay the reimbursement when required, CAPCOG may refuse to purchase 9-1-1 equipment on Public Agency's behalf and may withhold all or part of the unpaid reimbursement from Public Agency's future entitlement to reimbursement under this or future interlocal contracts between the parties for PSAP maintenance, equipment upgrade, and training.

3.4. (a) Before the 60-day repayment period expires, Public Agency may appeal in writing to CAPCOG its determination that Public Agency repay the reimbursement, explaining why it believes the determination is wrong, or Public Agency may request CAPCOG in writing to extend the 60-day repayment period, proposing an alternative period and justifying its need, or it may both appeal and propose an extension. CAPCOG agrees to submit the appeal or proposal or both to the Texas Commission on State Emergency Communications with its recommendation and to furnish Public Agency with a copy of its recommendation. The Commission's decision on Public Agency's appeal or proposal or both is final.

(b) The appeal authorized by Sec. 3.4 (a) is the only mechanism for challenging CAPCOG's determination under Sec. 3.3 that Public Agency repay the reimbursement. The early termination provisions of Sec. 10 and dispute resolution process of Sec. 11 are not available to challenge CAPCOG's determination.

Sec. 4. Effective Date and Term of Contract

4.1. This contract takes effect September 1, 2009 and it ends, unless sooner terminated under Sec. 10, on August 31, 2011.

Sec. 5. Performance Reports

5.1. Public Agency agrees to report quarterly to CAPCOG on its performance of this contract using the CAPCOG reporting tool located at www.psap.capcog.org or at the latest URL address provided by CAPCOG.

5.2. The first report for Fiscal Year 2010 is due December 15, 2009, the second March 15, 2010, the third June 15, 2010, and the last report is due September 15, 2010. The first report for Fiscal Year 2011 is due December 15, 2010, the second March 15, 2011, the third June 15, 2011, and the last report is due September 15, 2011.

Sec. 6. Compliance with Applicable Law and Policy

6.1. Public Agency agrees to comply with all applicable law and policy in carrying out this contract. Applicable law and policy include but are not limited to the State Administration of Emergency Communications Act, chapter 771, Texas Health and Safety Code; rules implementing the Act contained in title I, part XII, Texas Administrative Code; the current *Uniform Grant Management Standards* (Governor's Office of Budget and Planning); Texas Commission on State Emergency Communications, *9-1-1 PROGRAMS Policies and Procedures* and *Program Policy Statements*; the current CAPCOG *Strategic Plan*; and CAPCOG's *9-1-1 Policies and Procedures Manual* and *ENS Policies & Procedures*.

Sec. 7. Independent Contractor, Assignment and Subcontracting

7.1. Public Agency is not an employee or agent of CAPCOG, but furnishes goods and services under this contract solely as an independent contractor.

7.2. Public Agency may not assign its rights or subcontract its duties under this contract without the prior written consent of CAPCOG. An attempted assignment or subcontract in violation of this Sec. 7.2 is void.

7.3. If CAPCOG consents to subcontracting, each subcontract is subject to all of the terms and conditions of this contract, and Public Agency agrees to furnish a copy of this contract to each of its subcontractors.

Sec. 8. Records and Monitoring

8.1. Public Agency agrees to maintain financial, statistical, and ANI/ALI records adequate to document its performance, costs, and receipts under this contract. Public Agency agrees to maintain these records at Public Agency's offices.

8.2. Subject to the additional requirement of Sec. 8.3, Public Agency agrees to preserve the records for three state fiscal years after receiving its final payment under this contract.

8.3. If an audit of or information in the records is disputed or the subject of litigation, Public Agency agrees to preserve the records until the dispute or litigation is finally concluded, regardless of the expiration or early termination of this contract.

8.4. CAPCOG is entitled to inspect and copy, during normal business hours at Public Agency's offices where they are maintained, the records maintained under this contract for as long as they are preserved. CAPCOG is also entitled to visit Public Agency's offices, talk to its personnel, and audit its records, all during normal business hours, to assist in evaluating its performance under this contract.

8.5. CAPCOG will at least once per year visit Public Agency's offices and monitor its performance of this contract to ensure compliance with applicable law and policy described in Sec. 6. CAPCOG will provide Public Agency a written monitoring report within 30 calendar days of the visit. The report will describe any compliance issues and schedule a follow-up visit if necessary.

8.6. CAPCOG agrees to notify Public Agency at least 24 hours in advance of any intended visit under this Sec. 8. Upon receipt of CAPCOG's notice, Public Agency agrees to notify the appropriate department(s) specified in the notice.

8.7. The Texas Commission on State Emergency Communications and the Texas State Auditor have the same inspection, copying, and visitation rights as CAPCOG.

Sec. 9. Nondiscrimination and Equal Opportunity

9.1. Public Agency shall not exclude anyone from participating under this contract, deny anyone benefits under this contract, or otherwise unlawfully discriminate against anyone in carrying out this contract because of race, color, religion, sex, age, disability, handicap, veteran status, or national origin.

9.2. If Public Agency procures goods or services with funds made available under this contract, Public Agency agrees to comply with CAPCOG's affirmative action procurement policy, which is set out in CAPCOG's *9-1-1 Policies and Procedures Manual*.

Sec. 10. Suspension and Early Termination of Contract

10.1. Public Agency acknowledges that CAPCOG's sole source of funding for this contract is a legislative appropriation distributed under contract between CAPCOG and the Texas Commission on State Emergency Communications. If the Commission does not make timely payments to CAPCOG under its contract, CAPCOG may suspend payment to Public Agency under this contract by giving Public Agency notice of the suspension. The suspension is effective five business days after Public Agency's receipt of the notice. Upon suspension of payment, Public Agency's obligations under this contract are also suspended until CAPCOG resumes payment. If the suspension continues for a cumulative total of 30 or more calendar days, or if the Commission terminates its contract with CAPCOG, CAPCOG or Public Agency

may terminate this contract by giving the other notice of termination, and this contract terminates five business days after the receipt of notice.

10.2. Except as provided in Secs. 3.3 and 3.4, if CAPCOG or Public Agency breaches a material provision of this contract, the other may notify the breaching party describing the breach and demanding corrective action. The breaching party has five business days from its receipt of the notice to correct the breach, or to begin and continue with reasonable diligence and in good faith to correct the breach. If the breach cannot be corrected within a reasonable time, despite the breaching party's reasonable diligence and good faith effort to do so, the parties may agree to terminate the contract or either party may invoke the dispute resolution process of Sec. 11.

10.3. If CAPCOG suspends payment to Public Agency under Sec. 10.1, or if this contract is terminated under Sec. 10.1 or 10.2, CAPCOG and Public Agency are each entitled to compensation for goods and services each provided the other before receiving notice of the suspension or termination. However, neither CAPCOG nor Public Agency is liable to the other for costs it paid or incurred under this contract after or in anticipation of its receipt of notice of suspension or termination.

10.4. Termination for breach under Sec. 10.2 does not waive either party's claim for damages resulting from the breach, and both CAPCOG and Public Agency among other remedies may withhold from compensation owed the other an amount necessary to satisfy its claim against the other.

10.5. The ending of this contract under Sec. 4 or its early termination under this Sec. 10 does not affect Public Agency's duty:

(1) to repay CAPCOG for expenditures made in violation of applicable law or policy in accordance with paragraphs 3.3 and 3.4;

(2) to preserve its records and permit inspection, copying, and auditing of its records and visitation of its premises and personnel under Sec. 8.

Sec. 11. Dispute Resolution

11.1. The parties desire to resolve disputes arising under this contract without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this Sec. 11, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out in this Sec.

11.2. At the written request of either party, each party shall appoint one nonlawyer representative to negotiate informally and in good faith to resolve any dispute arising under this contract. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.

11.3. If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services.

11.4. The parties agree to continue performing their duties under this contract, which are unaffected by the dispute, during the negotiation and mediation process.

11.5. If mediation does not resolve the parties' dispute, the parties may pursue their legal and equitable remedies.

Sec. 12. Notice to Parties

12.1. Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in Sec. 12.2 and signed for on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in Sec. 12.2.

12.2. CAPCOG's address is 6800 Burleson Rd., Bldg. 310, Ste. 165, Austin, TX 78744, Attention: Executive Director. Public Agency's address is _____, Attention:_____.

12.3. A party may change its address by providing notice of the change in accordance with Sec. 12.1.

Sec. 13. Miscellaneous

13.1. Each individual signing this contract on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

13.2. This contract states the entire agreement of the parties, and an amendment to it is not effective unless in writing and signed by all parties.

13.3. This contract is binding on and inures to the benefit of the parties' successors in interest.

13.4. This contract is executed in duplicate originals.

[The next page is the signature page.]

Hays County

**CAPITAL AREA COUNCIL OF
GOVERNMENTS**

By _____

By _____

Betty Voights
Executive Director

Printed Name: _____

Date: _____

Title: _____

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: Approve award of Bid #2009-B17 "Five Mile Dam Park Phase 2 (Building) to Harris Road Company Inc.

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

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

PREFERRED MEETING DATE REQUESTED: August 11, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Herzog/Maiorka/Hauff

SPONSORED BY: Commissioner Ingalsbe

SUMMARY: This project is for Phase 2 of the Five Mile Dam Park for the construction of the Concessions/Pavilion/Restroom building. The project is being funded with funds from the City of San Marcos, Park Bond and local funds. The bid opening was held July 23, 2009 at 2:00 p.m. Purchasing received 14 bids. After reference check and evaluation, Harris Road Company provided the lowest and best bid for the project. The total contract price will be \$338,027.00 which consist of the base bid (\$316,172.00) and alternate #1 (\$21,855.00-concession exhaust hood with integral fire suppression). Alternates #2 & #3 will not be included. (see attached tabulation sheet)

FIVE MILE DAM PARK - PHASE 2

BID OPENING - JULY 23, 2009

BID PACKAGE #2 - BUILDING

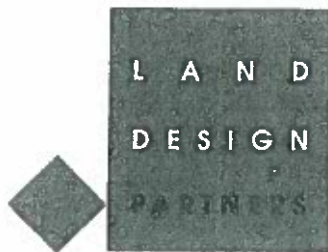
Contractor	Base Bid	Alternate #1	Base Bid plus Alt #1	Alternate #2	Alternate #3
Harris Road Company	\$316,172.00	\$21,855.00	\$338,027.00	\$8,500.00	\$15,800.00
Zapalac/Reed Construction	\$455,300.00	\$13,400.00	\$468,700.00	\$3,200.00	\$10,700.00
G. Creek	\$460,000.00	\$14,000.00	\$474,000.00	\$15,000.00	\$27,000.00
The Barr Company	\$486,000.00	\$11,440.00	\$497,440.00	\$3,390.00	\$11,205.00
Stokes Construction	\$487,784.00	\$12,910.00	\$500,694.00	\$4,306.00	\$17,432.00
VRW Construction	\$521,000.00	\$26,100.00	\$547,100.00	-\$800.00	\$30,700.00
CMA LLC	\$521,900.00	\$8,500.00	\$530,400.00	\$7,840.00	\$21,280.00
PBC, Inc.	\$524,720.56	\$7,707.00	\$532,427.56	\$7,999.69	\$21,433.13
Fazzone Construction	\$529,500.00	\$12,512.00	\$542,012.00	\$7,375.00	\$18,682.00
Barecky Construction Company	\$536,850.00	\$13,375.00	\$550,225.00	\$7,705.00	\$20,364.00
S+G Contracting	\$538,000.00	\$12,125.00	\$550,125.00	\$0.00	\$0.00
Journeyman Construction	\$539,000.00	\$11,375.00	\$550,375.00	\$12,720.00	\$16,956.00
Myers Concrete Construction	\$593,252.00	\$22,500.00	\$615,752.00	\$11,500.00	\$29,800.00
Lowden	\$599,144.10	\$4,560.00	\$603,704.10	\$3,123.60	\$10,539.87

Notes:

Alternate No. 1 - Concession Exhaust Hood with Integral Fire Suppression as noted on Drawings.

Alternate No. 2 - Remove additional 3'-6" of fill under building and re-compact excavated soil to geotech requirements.

Alternate No. 3 - Remove additional 3'-6" of fill under building and replace with select fill per geotech requirements and compact per geotech requirements.



August 12, 2009

Jeff Hauff
Hays County Grants Administrator
County of Hays
111 E. San Antonio Street
Suite 303
San Marcos, TX 78666

Re: Five-Mile Dam Park – Phase 2 (Bid Package #2 – Building)
July 23, 2009 Bid Opening Recommendations

Dear Mr. Hauff:

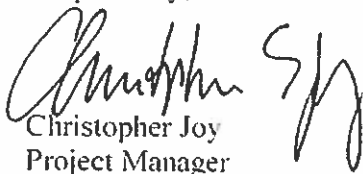
On July 23, 2009 Hays County received fourteen contractor bids in association with Five-Mile Dam Park – Phase 2 (Bid Package #2 – Building).

The apparent low bidder was Harris Road Construction, Inc. based out of Wimberley, Texas with a base bid of \$316,172. Upon including the first add alternate to the base bid, Harris Road Construction, Inc. was still the apparent low bidder with a total bid of \$338,027.

Based upon the City and County's experience and knowledge of Harris Road Construction, Inc. we recommend that the County award a contract to Harris Road Construction, Inc. for the Five-Mile Dam Park – Phase 2 (Bid Package #2 – Building) in the amount of \$338,027.

Please give us a call if you have any questions or comments.

Respectfully,


Christopher Joy
Project Manager

Land Design Partners, Inc.
221 West Sixth Street, Suite 300
Austin, Texas 78701
Ph 512/327-5500 512/328-1253 Fx

LANDSCAPE ARCHITECTS



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 submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment for the Law Enforcement Strike Team, in the amount of \$6,620.00.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: Undetermined – may require 20-25% matching funds – see summary

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Ratliff/Turner/Hauff

SPONSORED BY: Sumter

SUMMARY:

This grant would provide for equipment purchase for the Law Enforcement Strike Team to support and enhance Mobile Field Force capabilities across the region. The project is part of a regional effort of cooperating partners for homeland security operations and activities. It is not know at this time if matching funds will be required, and possible matching funds can be identified by the Commissioners Court if the grant is awarded and acceptance is determined. The attached grant worksheet provides detail of the project.



Capital Area Council of Governments Grant Project Worksheet—FY 2010

NOTE: This worksheet is saved and protected as a form; areas are navigated by tabbing from one text field to the next. To tab back to a previous field, press Shift + Tab. The boxes for text fields will expand if necessary as you type.

Applicant/Jurisdiction: Hays County Sheriff's Office

Point of Contact: Mark Cumberland

Title: Lieutenant

Phone: 512-738-1858

Email: mcumberland@co.hays.tx.us

1. **Project Name**

Regional Standardized Mobile Field Force & Law Enforcement Strike Team Initiative

2. **Needs to be addressed by this project** (Why is this project needed?)

To develop, practice and implement standardized equipment, training and response for regional events requiring Mobile Field Force intervention and/or Law Enforcement Strike Team response.

3. **Project Description** (How will the needs be met?)

This project is designed to provide and enhance Mobile Field Force (MFF) capabilities across the region by providing equipment to each of the LE Strike Team members. The MFF equipment will consist of protective gear, chemical agents, riot batons and shields.

Over the course of last year, the Law Enforcement Standards Education and Training (LESET) subcommittee has coordinated the development of approximately 35 LE Strike Teams (175 Police Officers) capable of responding to mutual aid situations throughout the region. MFF is an important aspect for of the LE Strike Teams.

Mobile Field Force is an LE tactic designed to address civil unrest and/or crowd management with the intent of minimizing injury and/or property loss during these critical incidents. LE Strike teams would implement MFF operations during planned and unplanned mass events such as protests or riots, evacuations and crowd/traffic control during natural disasters, perimeter and crowd control at large accident scenes, crowd control at large crime/terror scenes. LE Strike Teams cannot effectively fulfill this mutual aid function without the required equipment.

4. **New or Existing project?**

☒ New project

☐ Existing project (Describe how this is an enhancement, expansion, addition, etc. of an existing project in "Notes" field.)

☐ Emergency (Describe circumstances in "Notes" field.)

Notes

5. Regional Impact *(Identify the investment strategies addressed by the project. How does this project enhance regional preparedness?)*

This project and related equipment will enable law enforcement agencies within the region to respond to various crises (crowd control, natural disasters, large accident scenes, etc.) in a consistent and uniform manner with greater combined resources. This specific equipment will allow numerous agencies in the region to provide a mutual aid response capability which currently does not exist. As the LESET continues to build upon the LE Strike Team Regional Mutual Aid concept these assets will prove invaluable allowing for access to resources previously not considered nor present.

6. Project Scalability *(Explain whether this project is being done as a single component or in phases)*

☒ One-time project

☐ Phased project (Describe previous funding in "Notes" field.)

Notes:

The LESET committee has scheduled and completed several highly successful MFF training events. A large scale functional MFF practice exercise is planned at a large sporting complex within the region. This training will continue on a quarterly basis to sustain MFF skills.

The LESET group has identified military sources to provide approximately half of the required equipment, free of charge which is estimated to be \$3830.00 per LE Strike Team or \$766.00 per Officer. Having the required equipment provided free of charge will help LE agencies within the region to save costs and reduce the need to submit additional grant funding to accomplish this project.

7. Project Sustainability *(Explain your jurisdiction's plan for sustaining this project—maintenance, upgrades, calibration, etc.)*

Local Department's will assume responsibility for maintenance of this equipment through regular budgetary allotments.

8. Local Matching Funds *(It is likely that matching funds—non-federal—may be required for FY2010. This match could be 20%-25% of the award. Check the box to affirm that your jurisdiction understands that this grant may be contingent upon your ability to provide matching funds, and, to the extent possible, indicate the source of these matching funds in the box below.)* ☒

If required, matching funds will be determined by Hays County Commissioner Court.

9. Budget (Include as much detail as possible):

The expenditure categories are Equipment, Planning, Organization, Training, and Exercises. These may be chosen from the drop-down list (the default is "Equipment.")

Management and Administration (M&A) Limits – a maximum of up to 3% of project funds requested may be retained and used solely for the management and administration purposes associated with the grant.

Item	Category (Select from list)	Quantity	Unit cost	Total (Calculated)
Tactical Bag	Equipment	10	22.00	220.00
Shin Guard	Equipment	10	59.00	590.00
Gloves	Equipment	10	32.00	320.00
Gas Mask	Equipment	10	325.00	3250.00
Riot Baton	Equipment	10	29.00	290.00
Mark 9	Equipment	10	50.00	500.00
Mark 9 Pouch	Equipment	10	32.00	320.00
Baton Grommet	Equipment	10	3.00	30.00
Radio Pouch	Equipment	10	35.00	350.00
Earpiece & Adaptor	Equipment	10	75.00	750.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
M&A (if applicable, not to exceed 3%)				\$ 0.00
Total (Right click \$ field. Select "Update Field.")				\$6620.00

10. Is this project part of a multi-jurisdiction project? (Check box if "Yes.") ☒

If "Yes," list the other participating jurisdictions.

Jurisdiction
San Marcos Police Department, Austin Police Department, Travis County Sheriff's Office
Kyle Police Department, Georgetown Police Department, Round Rock Police Department
Williamson County Sheriff's Office, Bastrop County Sheriff's Office, UT Police Department

11. Disciplines Involved in the Project (Please indicate the percentage of funds expected to be allocated in each discipline. Use all disciplines that apply):

Discipline	Percentage of Project \$
Agriculture	0.00%

Law Enforcement	100.0%
Emergency Medical Services - Non-Fire Based	0.00%
Emergency Medical Services - Fire Based	0.00%
Fire Service	0.00%
Hazardous Materials	0.00%
Public Works	0.00%
Public Safety Communications	0.00%
Health Care	0.00%
Emergency Management Agency	0.00%
Public Health	0.00%
Governmental Administrative	0.00%
Cyber Security	0.00%
Not for Profit/Non-Profit	0.00%
Regional Transit System	0.00%

Signature of Authorizing Chief Official

This signature certifies that the requestor understands the requirements, procedures, and deliverables, **including any requirement for matching funds**, coinciding with this request for funding and has the authority to represent the governing body of this organization.

Authorizing Chief Official

Date

Elizabeth, 'Liz' Sumter

Printed Name

Hays County Judge

Title

Signature of Project Manager

The following person is authorized to receive direction, manage work performed, complete and sign required reports, and otherwise act on behalf of the jurisdiction for this project.

Project Manager

Date

Check box if letters of support are attached. ☐

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 Legal Counsel to negotiate and execute the termination of the current Agreement for Architectural Services related to the Government Center project.

TYPE OF ITEM: CONSENT

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: TBD

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: INGALSBE

SPONSORED BY: INGALSBE

SUMMARY: Upon recommendation from Broaddus and Associates, the Hays County Commissioners Court recently voted to make a Request for Qualifications for a Design/Build Contract on the proposed Government Center project. This method of product delivery does not comport with the current contract for Architectural Services between Hays County and PBS&J, which does not include a construction element. In order to avoid duplication of contracts, legal counsel is requesting authorization to go forward with the termination of the current architectural agreement in advance of securing the Design/Build contract.

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 submit a grant pre-application to the Capital Area Council of Governments, FY2010 Homeland Security Grant Program for equipment in the amount of \$486,386.00.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: Undetermined – may require 20-25% matching funds – see summary

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Turner/Hauff

SPONSORED BY: Sumter

SUMMARY: Hays County is partnering with LCRA system to enhance regional interoperable communications using the standard 700 MHZ system for emergency communications.

This is a potential new project that may or may not develop and may take up to 18 to 24 months until any grant funds become available. It is not know at this time if matching funds will be required, and possible matching funds can be identified by the Commissioners Court if the grant is awarded and acceptance is determined. The attached grant worksheet provides detail of the project.



Capital Area Council of Governments Grant Project Worksheet—FY 2010

NOTE: This worksheet is saved and protected as a form; areas are navigated by tabbing from one text field to the next. To tab back to a previous field, press Shift + Tab. The boxes for text fields will expand if necessary as you type.

Applicant/Jurisdiction: Hays County

Point of Contact: Jeff Turner

Title: Emergency Management Coordinator

Phone: 512-393-7301

Email: jeff.turner@co.hays.tx.us

1. **Project Name**

700 MHz Overlay for Hays County

2. **Needs to be addressed by this project** (*Why is this project needed?*)

Provide regional interoperability in the state authorized 700 MHz range for Hays County. This P25 compliant project will meet a minimum standard of overlay in the Hays County and outlying area.

3. **Project Description** (*How will the needs be met?*)

Specifically, the county is partnering with the LCRA system to enhance regional availability of the standard 700 MHz system for emergency communications. The PCIC requirements will eventually suspend "gateway" access between older systems. The goal of this project is to maintain interoperable communications through seamless interface the 700 MHz overlay of the radio system.

4. **New or Existing project?**

- ☒ New project
☐ Existing project (Describe how this is an enhancement, expansion, addition, etc. of an existing project in "Notes" field.)
☐ Emergency (Describe circumstances in "Notes" field.)

Notes

5. **Regional Impact** (*Identify the investment strategies addressed by the project. How does this project enhance regional preparedness?*)

The regional radio interoperability group has formulated long term objectives for almost every county in the region. To date, Hays County has participated in this plan and will strive for implementation of a 700 MHz overlay of the radio system. This is listed in the state and regional planning guide for CAPCOG.

6. **Project Scalability** (*Explain whether this project is being done as a single component or in phases*)

- ☐ One-time project
☒ Phased project (Describe previous funding in "Notes" field.)

Notes:

This one-time purchase should provide up to 20 years of service to the region. We are participating with other entities and local funding to facilitate this project.

7. Project Sustainability (Explain your jurisdiction's plan for sustaining this project—maintenance, upgrades, calibration, etc.)

The maintenance costs associated with the implementation of this program will come through regular budgetary allotments

8. Local Matching Funds (It is likely that matching funds—non-federal—may be required for FY2010. This match could be 20%-25% of the award. Check the box to affirm that your jurisdiction understands that this grant may be contingent upon your ability to provide matching funds, and, to the extent possible, indicate the source of these matching funds in the box below.) ☒

Local match TBD

9. Budget (Include as much detail as possible):

The expenditure categories are Equipment, Planning, Organization, Training, and Exercises. These may be chosen from the drop-down list (the default is "Equipment.")

Management and Administration (M&A) Limits – a maximum of up to 3% of project funds requested may be retained and used solely for the management and administration purposes associated with the grant.

Item	Category (Select from list)	Quantity	Unit cost	Total (Calculated)
700 MHz infrastructure channels	Equipment	10	47222	\$472,220.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
	Equipment			\$ 0.00
M&A (if applicable, not to exceed 3%)				14166

Total (Right click \$ field. Select "Update Field.")

\$486,386.00

10. Is this project part of a multi-jurisdiction project? (Check box if "Yes.") ☒

If "Yes," list the other participating jurisdictions.

Jurisdiction
City of San Marcos
City of Austin
Travis County - Williamson County

11. Disciplines Involved in the Project (Please indicate the percentage of funds expected to be allocated in each discipline. Use all disciplines that apply):

Discipline	Percentage of Project \$
Agriculture	0.00%
Law Enforcement	15.00%
Emergency Medical Services - Non-Fire Based	0.00%
Emergency Medical Services - Fire Based	0.00%
Fire Service	10.00%
Hazardous Materials	0.00%
Public Works	0.00%
Public Safety Communications	60.00%
Health Care	0.00%
Emergency Management Agency	10.00%
Public Health	0.00%
Governmental Administrative	0.00%
Cyber Security	5.00%
Not for Profit/Non-Profit	0.00%
Regional Transit System	0.00%

Signature of Authorizing Chief Official

This signature certifies that the requestor understands the requirements, procedures, and deliverables, **including any requirement for matching funds**, coinciding with this request for funding and has the authority to represent the governing body of this organization.

Authorizing Chief Official

Date

Printed Name

Title

Signature of Project Manager

The following person is authorized to receive direction, manage work performed, complete and sign required reports, and otherwise act on behalf of the jurisdiction for this project.

Project Manager

Date

Check box if letters of support are attached. ☐

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 12:00 noon on WEDNESDAY.

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

AGENDA ITEM: Discussion and possible action to consider the release of the maintenance bond and accept for maintenance all road and drainage improvements within County ROW for Meadows at Buda Commercial.

Consent, Action, Executive Session, Etc. –

MEETING DATE REQUESTED: August 18, 2009

REQUESTED BY: Commissioner Barton / Jerry Borcharding

FUNDS REQUIRED:

SUMMARY:

The maintenance bond for Meadows at Buda Commercial expired July 31, 2009. The Road Department has inspected and recommends its acceptance for maintenance. The road segment is Commerce Court and totals approximately 700 ft. in length.

COUNTY JUDGE

☐

COUNTY AUDITOR

☐

COMMISSIONER PCT. 1

☐

COMMISSIONER PCT. 2

☐

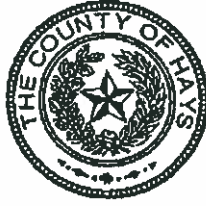
COMMISSIONER PCT. 3

☐

COMMISSIONER PCT. 4

☐

ACTION TAKEN / ACTION REQUIRED:



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

8/3/09

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

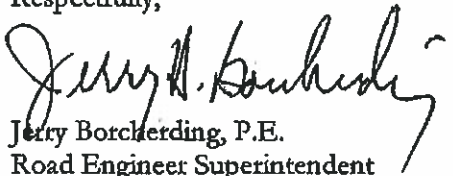
RE: Meadows @ Buda Commercial

Dear Commissioners and Judge:

Meadows at Buda, LTD., owners are requesting that Hays County release the maintenance bond and accept the maintenance of roads in Meadows at Buda Commercial. I have reviewed the file on this subdivision and find that all the requirements have been met per Hays County Subdivision Regulations. Stephen K. Collins, 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

**RESOURCE PROTECTION, TRANSPORTATION AND PLANNING DEPARTMENT**

P.O. BOX 906

512/393-7385 EXT 29

San Marcos, TX 78667

CELL:512/738-2555

<http://co.hays.tx.us>

FAX: 512/393-7391

INSPECTION REPORT

LOCATION:	Meadows @ Buda Commercial	DATE:	7/2/2009
OWNER:	Meadows @ Buda, LTD.	WEATHER:	Clear
CONTRACTOR:	Rodman Excavation	TIME:	
INSPECTOR:	Todd Spencer		

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

1. Seal all cracks in roadway
2. Kill and remove all revegetation growing in cracks prior to sealing cracks
3. Remove all temporary erosion controls

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

Todd Spencer, Construction Inspector

7/2/2009

Date

November 30, 2006

**ENGINEER'S CONCURRENCE
FOR
PROJECT ACCEPTANCE**

PROJECT: The Meadows at Buda Commercial
Water and Wastewater Improvements

Owner's Name and Address

Consultant Engineer's Name & Address

The Meadows at Buda Commercial, Ltd.

Gray + Jansing & Associates, Inc.

6836 Bee Cave Road, Suite 400

8217 Shoal Creek Blvd., Suite 200

Austin, TX 78746

Austin, Texas 78757

On this day, I, the undersigned professional engineer, or my representative, met with the Project Contractor and made a visual inspection of the above-referenced project. No discrepancies in approved construction plans or deficiencies in construction were visible or brought to my attention by the parties at the meeting except those listed below. I, therefore, recommend acceptance of this project by the City of Buda and So. Buda WCID No. 1 once the following listed items are corrected to the satisfaction of the Engineer.

Donald K. Bayes, P.E.

(Seal)

60657

Texas Registration Number

Todd Spencer

From: Stanley [SFees@ci.buda.tx.us]
Sent: Wednesday, July 29, 2009 5:28 PM
To: Todd Spencer
Subject: Meadows at Buda Commercial Cul-de-sac

Todd,

I do not have any issues with the roadway at this location.

Stanley R. Fees, P.E., CFM
sfees@ci.buda.tx.us
City Engineer
City of Buda
512-312-0084 Tel
512-312-1889 Fax

8/5/2009

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:

08-3-34 Mustang Valley Subdivision Section 2 (5 Lots); Consider approval of Final Plat and Accept Construction Fiscal Surety in the amount of \$100,476.10, for street and drainage improvements.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

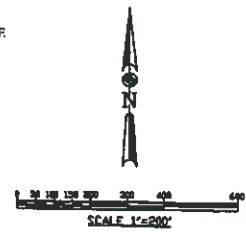
REQUESTED BY: Garza

SPONSORED BY: Conley

SUMMARY:

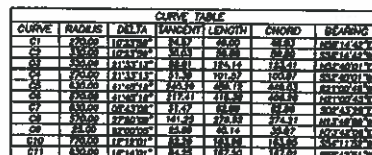
Mustang Valley consists of Seventy-Nine lots located between Fischer Store Rd. and FM 2325 in Wimberley. The developer has decided to continue the subdivision in phases. Section 2 consists of 5 lots just after Section 1 on Mustang Valley Trail. The total acreage of this section is 28 with all lots greater than 5 acres in size. All lots will be served by individual water wells and individual OSSF's. No portion lies within the boundaries of any ETJ. Preliminary Plan was approved on July 22, 2008.

A SUBDIVISION OF 26.60 ACRES OF LAND OUT OF THE JOHN INGRAM SURVEY No. 323, ABSTRACT No. 250,
BEING A PORTION OF THAT 453.620 ACRE TRACT RECORDED IN VOLUME 3270, PAGE 402 OF THE
OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (G.P.M.C.T.), SITUATED IN
HAYS COUNTY, TEXAS



LEGEND:

- -- 1/2" IRON ROD FOUND--UNLESS NOTED
- ⊙ -- 1/2" IRON ROD SET--DRIFTWOOD SURVEYING
- -- FENCE POST FOUND--UNLESS NOTED
- △ -- CALCULATED POINT



LINE TABLE-DRAINAGE EASEMENT		
LINE	LENGTH	BEARING
1	80.00'	S89°12'33"E
2	80.00'	S89°12'33"E
3	251.37'	S89°12'33"E
4	251.37'	S89°12'33"E
5	213.00'	S17°11'00"E
6	213.00'	S17°11'00"E
7	213.00'	S17°11'00"E
8	213.00'	S17°11'00"E
9	213.00'	S17°11'00"E
10	213.00'	S17°11'00"E
11	213.00'	S17°11'00"E
12	213.00'	S17°11'00"E



DATE:	08/25/09
FIELD OPER:	R/C DO-09/JH
DRAWING:	CAP
CHECKED:	RJP
PROJECT NO.:	HC17506
REVISIONS:	DATE
Page	2 of 2

**ENGINEERING
& SURVEYING**

CITY ENGINEERS SURVEYORS LAND PLANNERS CONSTRUCTION MANAGERS CONSULTANTS

Driftwood Surveying
Professional Land Surveyors - Surveying the Hill Country

P.O. Box 379
Windsor, TX 79679
PH. (812) 647-7222 FAX (812) 647-7372



Ozona National Bank

SINCE 1905

LETTER OF CREDIT

August 10, 2009

Re: Mustang Valley

To: The Hays County Judge

IRREVOCABLE LETTER OF CREDIT NUMBER 568

We hereby establish out irrevocable letter of credit in favor of the County of Hays in the account of **RINCON GROUP, LP**. This letter is effective up to the aggregate amount of **\$110,476.10** and will remain in effect until **OZONA NATIONAL BANK** is released or discharged by the County of Hays. This is your authority to draw drafts for any amount, or the full amount not to exceed **\$110,476.10**.

All drafts are to be marked "Drawn under Letter of Credit Number 568"

This letter of credit is given as assurance that all road construction in Mustang Valley will be completed to County of Hays specifications.

Bank Name: Ozona National Bank

By: *Kelly Barclay*

Name: Kelly Barclay
Title: Executive Vice President

Bank Address: P O Box 528
101 River Road
Wimberley, Texas 78676

Date: August 10, 2009

Each draft so drawn must be marked "Drawn under Ozona National Bank Letter of Credit Number 568"

and be accompanied by (1) the original letter of credit and (2) a signed statement from the Hays County Judge stating that:

"The roads in Mustang Valley were not completed as defined in the plans and specifications approved by the Hays County Commissioners Court."

www.ozonabank.com

8207 Callaghan Rd., Suite 430 • San Antonio, Texas 78230 • 210/979-6275
141 W. Hopkins • P.O. Box 728 • San Marcos, Texas 78667 • 512/754-2600
Ranch Road 12 at River Road • P.O. Box 528 • Wimberley, Texas 78676 • 512/847-8200

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:

09-4-23 Replat of Lots 9 & 10, Madrone Canyon Ranch. Discussion and possible action to consider waiver of preliminary plan, public notice, and approval of final plat.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009.

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Ford

SUMMARY:

Madrone Canyon Ranch is a 12 lot subdivision located off Fitzhugh Road at the Hays County/Blanco County Line in PCT. 4. Currently Lot 9 is 6.16 acres and Lot 10 is 25.76 acres in size. The proposed replat will move the lot line between the two lots resulting in a new 6.71 acre lot 9A and a 25.2 acre lot 10A. Each lot is to be served by individual wells and individual OSSF's. This action is only a revision of an existing lot line and since it is not an increase in density, does not require public participation. In addition to Hays County approval, this replat will be presented to Blanco County commissioners on August 18, 2009. There are no variances and the division is not located in any City's ETJ.

2) NO PORTION OF THIS PLAY LIES WITHIN THE BOUNDARIES OF THE CHANDLER AQUICLUD RESERVE ZONE.

3) THIS SUBDIVISION IS SUBJECT TO ALL EXISTING EASEMENTS AND MATTERS OF RECORD AFFECTING THESE LOTS THAT ARE NOT REFLECTED ON THIS PLAT.

MINIMUM CULVERT SIZE FOR DRIVEWAYS WITHIN TRAIL SUBDIVISION,
IF REQUIRED, SHALL BE 18" CIP.

THESE TRACTS DOES NOT LIE WITHIN THE C.T.D. OF ANY CITY
OR MUNICIPALITY.

AS REQUIRED ON ORIGINAL SUBDIVISION PLAT, RECORDS IN VOLUME 6, PAGE 100
RECORDS OF HAYS COUNTY, TEXAS - NOTE: ANY PORTION OF PLAT/SECTION IN THE
FLORISSA, TEXAS
D EROSION/SEEDING/CONTROL ARE REQUIRED ON ALL LOTS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 01-22-2009 BY 60322 UCBAW/STW

AND THERE UNTO DULY AUTHORIZED

IS ANY PERSONALLY APPEARED JOSH BLUMER,

ELECTRICITY SERVICE
TELEPHONE SERVICE
WATER

IN APPROVING THIS PLAY, _____
THAT THE BALANCE OF ALL
SIGN ON THE PLAY, AND
SUCH STREET, JENSEN, OR
COMMISSION EXPRESSES
RESPONSIBILITY OF THE D
BRIAN MALE

THE FOLLOWING IS A SUMMARY OF THE PROCEEDINGS OF THE BOARD OF SUPERVISORS OF THE COUNTY OF BLANCO, TEXAS, HELD AT THE COURT HOUSE IN THE CITY OF BELL, BELL COUNTY, TEXAS, ON THE 11TH DAY OF MARCH, 1914, AT 10 O'CLOCK A. M. AT THE REQUEST OF LOT 9 OF THE 36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-

TOM POPE
FLOODPLAIN ADMINISTRATOR

LEGEND

LOCATION MAP

SITE

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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STATE OF TEXAS

DEED REDCORDED IN VOLUME
OF HAYS COUNTY, TEXAS AND B
BLANCO COUNTY, TEXAS, D

AS CAUSED THESE PRESENTS TO
IS ____ DAY OF ____

STATE OF TEXAS
COUNTY OF

...ER CONCERNING GROUND WATER QUALITY, PROSPECTIVE PROBLEM AREAS MAY OFFER THE BEST STRUCTURE IN THIS SUBWASHTHED OR TO AN ON SITE WASTEWATER TREATMENT PLANT.

**RY BORCHERS
SOURCE PROTECTION**

1

1

10

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:

09-4-20 Re-division of Tract 4 and 5 Block "B", Sycamore Valley II. Discussion and possible action to consider waiver of preliminary plan and public notice, and to approve final plat.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Ford

SUMMARY:

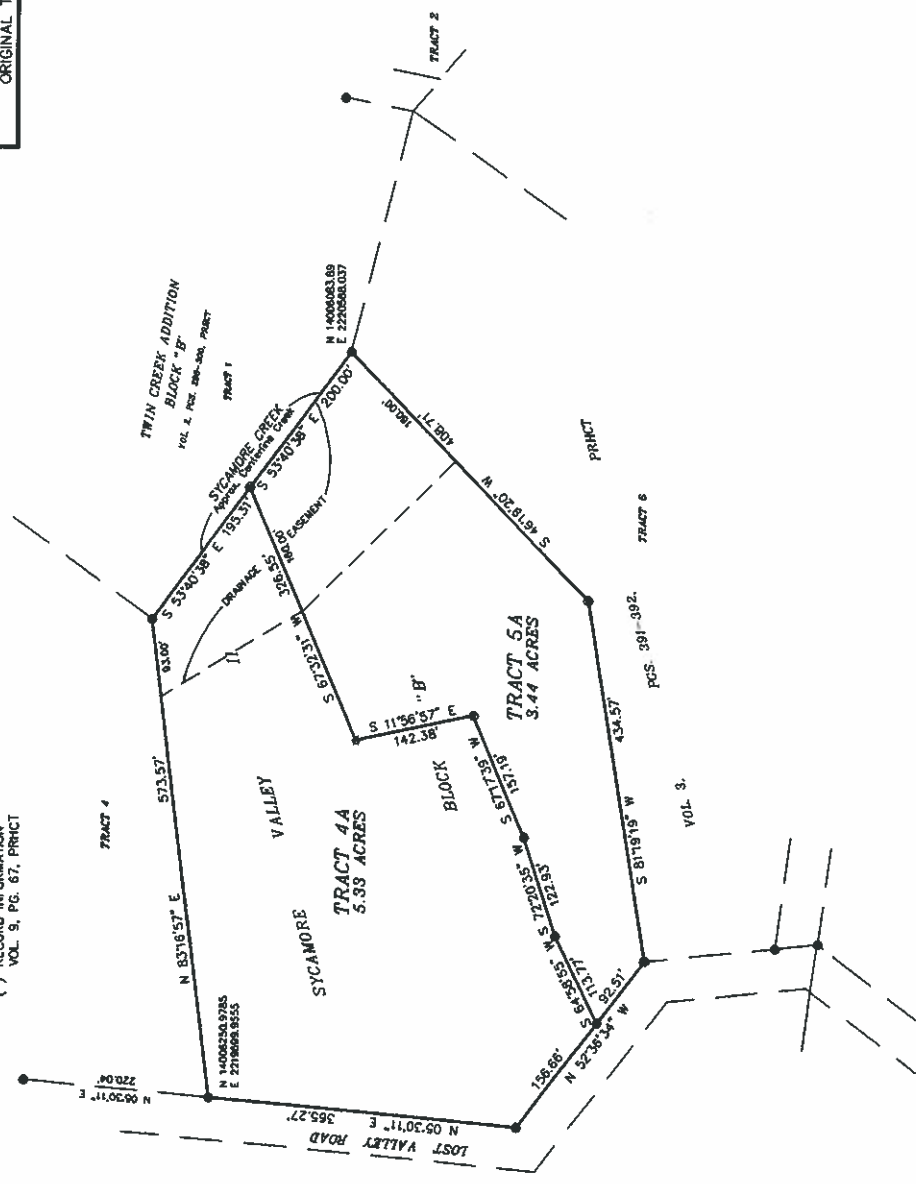
Sycamore Valley is a platted 35 lot subdivision located off Fitzhugh road near the Hays/Blanco County line. Currently Lot 4 is 3.93 acres and Lot 5 is 4.84 acres in size. The proposed replat will move the lot line between the two lots increasing Lot 4(a) to 5.33 acres and decreases Lot 5(a) to 3.44 acres. Each lot is currently served by an individual well and individual OSSF. This action is only a revision of an existing lot line and since it is not an increase in density, does not require public participation. There are no variances and the division is not located in any City's ETJ.

VICINITY MAP

ORIGINAL TRACTS

SCALE 1" = 500'

- LEGEND**
- 1/2" IRON ROD FOUND
 - IRSC
 - 5/8" IRON ROD SET W/CAP
 - STAUDT SURVEYING
 - COTTON SPINDLE SET
 - RECORD INFORMATION
 - () VOL. 9, PG. 67, PRCT



STAUDT SURVEYING, INC.
Thomas E. Staudt
RPLS # 3984
P.O. Box 1773
Dripping Springs, TX 78620
(512) 858-2236

PLAT SHOWING REDIVISION OF
TRACT 4 & TRACT 5
BLOCK "B"
SYCAMORE VALLEY II
HAYS COUNTY, TEXAS

DATE: JUNE 9, 2009

Dr. By: TES Job # S09090 DWG # S090900

Rev. 100 50 0 100 200

GRAPHIC SCALE & FEET

KNOW ALL MEN BY THESE PRESENTS, That we, Michael D. Anderson and Tino A. Amelon, owners of Tract 5, SYCAMORE VALLEY II, to subdivision of record in Volume 2, Page 391, of the Plat Records of 2000, and County, Texas, as conveyed to us by deed dated July 21, 2000, and recorded in Volume 2, Page 391, of the Official Public Records of said County, Texas, DO HEREBY SUBMIT TO THE RECORDS OF said County, Texas, for public use, the following:

Call of deed tract 5, Sycamore Valley II, to be known as the RESUBDIVISION OF DEED TRACT 5, Sycamore Valley II, in accordance with the plat shown hereon, subject to any and all easements or restrictions hereinafter granted, and do hereby dedicate to the owners of the property shown hereon the use of said streets and easements shown

Michael D. Amerson
219 Lost Valley Road
Wipping Springs, TX 78620

BEFORE ME, the undersigned authority, on this day personally appeared Michael D. Amerison, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein stated.

WITNESS UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____ A.D. 2009.

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein stated.

WITNESS MY HAND AND SEAL OF OFFICE this the _____ day of _____ A.D. 2009.

STATE OF TEXAS
COUNTY OF HAYS

Linda Friasche, County Clerk of Hays County, Texas, do hereby certify that on the _____ day of _____, 2008, the Commissioner's Court of Hays County, Texas, passed an order authorizing the filing for record of this plat, and said order has been duly entered in the minutes of the said court. Book _____ Page _____

WITNESS MY HAND AND SEAL OF OFFICE this 16th day of
A.D., 2009.

Elizabeth Sumter
County Judge
Harris County, Texas

Linda Frischie, County Clerk of Mays County, Texas, do hereby certify that the foregoing instrument of writing with its certificate of authentication was filed for record in my office on the _____ day of _____, A.D., 2009, at _____ o'clock _____ m., in the _____ Book _____ of the Prot Records of Mays County, Texas, in Book _____.

Linda Fritsche
 County Clerk
 Tarrant County, Texas

[illegible]

Stephen D. Thomas
101 Lost Valley Road
Dripping Springs, TX 78620

BEFORE ME, the undersigned authority, on this day personally appeared Stephen D. Thomas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this day of A.D. 2009.

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, the undersigned authority, on this day personally appeared _____ day of _____ AD, 2009, _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein stated.

SEWAGE DISPOSAL/INDIVIDUAL WATER SUPPLY CERTIFICATION. TO WH:

No structure in this subdivision shall be occupied until connected to an individual water supply or a state-approved community water system. Due to declining water supplies and diminishing water quality, prospective property owners are cautioned by Hays County to question the seller concerning ground water availability. Rain water collection is encouraged and in some areas may offer the best renewable water resource.

No structure in this subdivision shall be occupied until connected to a public sewer system or to an on-site wastewater system which has been approved and permitted by Hows County Environmental Health.

to construction or other development within this subdivision may begin until all Mayo County Development Permit requirements have been met.

**Terry Borcharding - Resource, Protection,
Transportation & Planning Director**

Tom Pope
Iowa County Floodplain Administrator

Linda Fritsche
 County Clerk
 Tarrant County, Texas

No portion of this subdivision lies within the boundaries of any municipality's corporate city limits or extra territorial jurisdiction.

EDWARDS AQUIFER NOTE
No portion of this subdivision lies within the Edwards Aquifer Recharge Zone. No portion of this subdivision lies within the boundaries of the Contributing Zone of the Barton Springs Segment of the Edwards Aquifer.

Total Area:	6.77 Acres	Number of Lots Over 10 Acres:	0
Total Number of Lots:	2	Number of Lots 5-10 Acres:	1
Number of Residential Lots:	2	Number of Lots 2-5 Acres:	1
Number of Commercial Lots:	0	Number of Lots 1-2 Acres:	0
Average Size of Lot:	4.38 Acres	Number of Lots Less than 1 Acre:	0

UTILITY INFORMATION
 Water: Individual water wells
 Sewer: Individual on-site sewage facilities
 Electricity: Pedernales Electric Cooperative
 Telephone: Verizon

20' Public Utility Easement is also reserved along road property lines
10' Public Utility Easement is also reserved along side property lines
15' Public Utility Easement is also reserved along all existing utility lines
7.5' on both sides of existing utility lines & utility poles

This subdivision lies within the Dripping Springs Independent School District.

FLOOD PLAIN NOTE
Zone A* on identified Special Flood Hazard portion of this tract lies within 100-Year Flood as identified by the Federal Emergency Management Agency, Flood Insurance Rate Map for Hays County, Texas, and Incorporated Areas, Map Number 482090C0025*, dated September 2, 2005. The 100-Year Flood Plain should be contained within the drainage easement shown on the plat.

*Flood Hazard Data derived from Flood Insurance Rate Map (FIRM) 482090C0025, 1996, and was Scaled from said report and Scaled from said FEMA Map.

In order to promote safe use of roadways and preserve the conditions of public roadways, no driveway constructed on dry lot within this subdivision shall be permitted to access onto a publicly dedicated roadway unless (a) a Driveway Permit has been issued by the Road Department of Noye County and (b) the driveway satisfies the minimum spacing requirement for driveways set forth in Section 7.4 and 7.5 of the Noye County Subdivision Regulations."

MINIMUM DRIVEWAY CULVERT SIZE

When required, lots shall have a minimum driveway culvert size of 18"

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, that I, Thomas E. Stoudt, a REGISTERED PROFESSIONAL LAND SURVEYOR in the State of Texas, do hereby certify that this plat complies with the survey related requirements of the Hays County subdivision Specifications and further certify that this plat is prepared from an actual survey of the property made under my supervision on the ground and that the corner monuments were properly placed under my supervision.

Preliminary, this document shall not be recorded for any purpose.

Thomas E. Staudt
Registered Professional Land Surveyor No. 3984



AUDT SURVEYING, INC.
Thomas E. Sloudt
RPLS # 3984
P.O. Box 1273
Drilling Springs, Texas 78620
(512) 656-2714

PLAT SHOWING REDIVISION OF
TRACT 4 & TRACT 5
BLOCK "B"
SYCAMORE VALLEY II

SHEET 1 OF 2

Rev:	Date: JUNE 9, 2009
Dr. Bx TES	Job #: S09090 DWG #: S09090D

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:

³⁻²⁶
~~09-4-20~~ Redivision of Lot 63, Woodcreek Section 6A, and Lot 77, Woodcreek Section 6-B.
Discussion and possible action to consider waiver of preliminary plan, public notice, and approval of final plat. Consider approval of a variance to minimum lot size standards in Hays County OSSF Rules Section 10.1.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Conley

SUMMARY:

Woodcreek is a platted subdivision located off 2325 in PCT 3. Lot 63 and 77 are located off of Brookhollow and Par Circle. Currently Lot 63 is .23 acres and Lot 77 is .415 acres in size. The proposed replat will move the lot line between the two lots which increases Lot 63 to .390 acres and decreases Lot 77 to .255 acres. Each lot is to be served by public groundwater supply (Aqua Texas) and Public Sewer(Aqua Texas). This action is only a revision of an existing lot line and since it is not an increase in density, does not require public participation. There is a variance from the minimum lot size requirement, OSSF Rules Table 10.1 which requires lots in this area to be .50 acres in size or greater. At the time these lots were platted they met minimum lot size requirements however a replat requires compliance with current regulations. The division is located in the City of Woodcreek and in the absence of a 1445 agreement, it must pass through both entities.

DRIFTWOOD SURVEYING



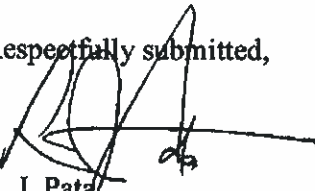
August 12, 2009

Clint Garza,
Subdivision Coordinator
Hays County Environmental Health Department

Pursuant to Hays County OSSF Rules, as set forth in Table 10.0 (effective 08/29/07), we are requesting a variance for the minimum lot size requirement pertaining to public water supply and organized sewer systems for the proposed "REPLAT OF LOT 63, WOODCREEK SECTION 6A, AND LOT 77, WOODCREEK SECTION 6-B".

We are requesting this variance based on the approval of public water supply and organized sewer for the recorded subdivisions where the original lot acreage is less than 0.50 acre.

Respectfully submitted,



R. J. Pata
Driftwood Surveying
512-847-7222

SUBDIVISIONS IN HAYS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HAYS

[illegible]

WITNESS MY HAND, this ____ day of _____, A.D. 2009

LAWRENCE A. BROWDER
2000 BROADVIEW DRIVE
CHICAGO, ILLINOIS 60618

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared, LAWRENCE A. BROWDER, known to me as the person whose name is subscribed to the foregoing instrument and acknowledged to me that he had executed the same for the purposes and consideration therein expressed. I, the County Clerk, do hereby certify.

SEEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____ A.D. 2009

IMMIGRANT PUBLIC IN need for Mass County Funds

I, Linda Pittman, Clerk of Hays County, Texas, do hereby certify that on the _____ day of _____, A.D. 2008, the Commissioner's Court of Hays County, Texas passed an order authorizing the filing for record of this plat and that said order has been duly entered in the minutes of said Court in Book _____, Page(s) _____.

Witness my hand and seal of Office of the County Clerk, this 15th day of _____, 19____.

Life Span 17, County Judge, New County, Texas

一、中華民國是中華之民國。

I, Under Officer, Clerk of Hays County, Texas, do hereby certify foregoing instrument of writing with its certificate of authentication was filed for record in my office on the ____ day of _____ A.D. 2020 at _____ o'clock _____ a.m. and duly recorded on the ____ day of _____ A.D. 2020 _____ at _____ o'clock _____ a.m. in the first records of said County and Book, in Part Book No. _____ Page(s) _____

Witness my hand and seal of office at the County Clerk, this 25th day of _____

Lincoln, County Clerk, Horse County, Texas

His attorneys in this suit claim that he was never notified of an on-site wastewater system which has been approved and permitted by Napa County Environmental Health. His attorneys in this suit claim that he was never notified of the fact that the wastewater treatment plant is not permitted to discharge effluent into the Napa River. His attorneys in this suit claim that he was never notified of the fact that the wastewater treatment plant is not permitted to discharge effluent into the Napa River. His attorneys in this suit claim that he was never notified of the fact that the wastewater treatment plant is not permitted to discharge effluent into the Napa River.

	Deals
Jeffery Gerdarling, Mayo County Resources Protection, Transportation, and Planning Director	1997-1998 1998-1999 1999-2000 2000-2001 2001-2002 2002-2003 2003-2004 2004-2005 2005-2006 2006-2007 2007-2008 2008-2009 2009-2010 2010-2011 2011-2012 2012-2013 2013-2014 2014-2015 2015-2016 2016-2017 2017-2018 2018-2019 2019-2020 2020-2021 2021-2022 2022-2023 2023-2024 2024-2025 2025-2026 2026-2027 2027-2028 2028-2029 2029-2030 2030-2031 2031-2032 2032-2033 2033-2034 2034-2035 2035-2036 2036-2037 2037-2038 2038-2039 2039-2040 2040-2041 2041-2042 2042-2043 2043-2044 2044-2045 2045-2046 2046-2047 2047-2048 2048-2049 2049-2050 2050-2051 2051-2052 2052-2053 2053-2054 2054-2055 2055-2056 2056-2057 2057-2058 2058-2059 2059-2060 2060-2061 2061-2062 2062-2063 2063-2064 2064-2065 2065-2066 2066-2067 2067-2068 2068-2069 2069-2070 2070-2071 2071-2072 2072-2073 2073-2074 2074-2075 2075-2076 2076-2077 2077-2078 2078-2079 2079-2080 2080-2081 2081-2082 2082-2083 2083-2084 2084-2085 2085-2086 2086-2087 2087-2088 2088-2089 2089-2090 2090-2091 2091-2092 2092-2093 2093-2094 2094-2095 2095-2096 2096-2097 2097-2098 2098-2099 2099-2100 2100-2101 2101-2102 2102-2103 2103-2104 2104-2105 2105-2106 2106-2107 2107-2108 2108-2109 2109-2110 2110-2111 2111-2112 2112-2113 2113-2114 2114-2115 2115-2116 2116-2117 2117-2118 2118-2119 2119-2120 2120-2121 2121-2122 2122-2123 2123-2124 2124-2125 2125-2126 2126-2127 2127-2128 2128-2129 2129-2130 2130-2131 2131-2132 2132-2133 2133-2134 2134-2135 2135-2136 2136-2137 2137-2138 2138-2139 2139-2140 2140-2141 2141-2142 2142-2143 2143-2144 2144-2145 2145-2146 2146-2147 2147-2148 2148-2149 2149-2150 2150-2151 2151-2152 2152-2153 2153-2154 2154-2155 2155-2156 2156-2157 2157-2158 2158-2159 2159-2160 2160-2161 2161-2162 2162-2163 2163-2164 2164-2165 2165-2166 2166-2167 2167-2168 2168-2169 2169-2170 2170-2171 2171-2172 2172-2173 2173-2174 2174-2175 2175-2176 2176-2177 2177-2178 2178-2179 2179-2180 2180-2181 2181-2182 2182-2183 2183-2184 2184-2185 2185-2186 2186-2187 2187-2188 2188-2189 2189-2190 2190-2191 2191-2192 2192-2193 2193-2194 2194-2195 2195-2196 2196-2197 2197-2198 2198-2199 2199-2200 2200-2201 2201-2202 2202-2203 2203-2204 2204-2205 2205-2206 2206-2207 2207-2208 2208-2209 2209-2210 2210-2211 2211-2212 2212-2213 2213-2214 2214-2215 2215-2216 2216-2217 2217-2218 2218-2219 2219-2220 2220-2221 2221-2222 2222-2223 2223-2224 2224-2225 2225-2226 2226-2227 2227-2228 2228-2229 2229-2230 2230-2231 2231-2232 2232-2233 2233-2234 2234-2235 2235-2236 2236-2237 2237-2238 2238-2239 2239-2240 2240-2241 2241-2242 2242-2243 2243-2244 2244-2245 2245-2246 2246-2247 2247-2248 2248-2249 2249-2250 2250-2251 2251-2252 2252-2253 2253-2254 2254-2255 2255-2256 2256-2257 2257-2258 2258-2259 2259-2260 2260-2261 2261-2262 2262-2263 2263-2264 2264-2265 2265-2266 2266-2267 2267-2268 2268-2269 2269-2270 2270-2271 2271-2272 2272-2273 2273-2274 2274-2275 2275-2276 2276-2277 2277-2278 2278-2279 2279-2280 2280-2281 2281-2282 2282-2283 2283-2284

THE UNIVERSITY OF CHICAGO PRESS

This parcel located within the City of Woodstock, located on TRAIL OF LOT A3, WOODMONT SECTION 64, AND LOT 77, WOODMONT SECTION 64-67, has been reviewed and approved for being farmland according to the minutes of the meeting of the City of Woodstock Council on the _____ day of _____ A.D. 2000.

References

City of Washington, D.C.

[illegible]

City of Houston, City Administrator

STATE OF TEXAS
COUNTY OF HAYS

NOTICE OF SALE BY THE PUBLIC, Part 1, Section 4, Para. 2, c Registered
Professional Land Surveyor in the State of Texas, do hereby certify that the
lot in this and currently made and is returned from an actual survey of the
property made under my supervision on the ground and the corner monuments
are found or made as shown and are as shown.

100-443886-5761

LOT SIZE CATEGORIES	
0 LOTS	10 ACRES OR LARGER
0 LOTS	LARGER THAN 5.0 ACRES AND SMALLER THAN 10 ACRES
0 LOTS	2.00 ACRES OR LARGER UP TO 5.00 ACRES
0 LOTS	LARGER THAN 1.00 ACRE AND SMALLER THAN 2.0 ACRES
2 LOTS	SMALLER THAN 1.00 ACRE

Driftwood Surveying

ĐÁNG CỘNG SẢN VIỆT NAM

THE

TEL (909) 947-7322 FAX (909) 947-7322

PROF. DR. AGOSTINO

QUEST 1 OF 3

Plotted 07/17/2009

SUBDIVISIONS IN HAYS COUNTY, TEXAS

[illegible]

REPLAT CONFIGURATION

LINE TABLE		
LINE	LENGTH	BEARING
L1	8.83'	-
L2	38.82'	-
L3	48.90'	N88°27'21"E
L4	8.41'	S28°29'38"W
L5	38.39'	N30°54'42"W

[illegible]

Driftwood Surveying
Professional Land Surveyors - Surveyors Map and County

P.O. Box 379
Tomball, TX 77376
Ph: (281) 845-7222
FAX: (281) 845-7222
PCRM NO. M007169
SHEET 2 OF 2

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 p.m. on WEDNESDAY.

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

AGENDA ITEM: Discussion and possible action to adopt the Findings of the proposed Hays County Development Regulations, adopt the proposed Hays County Development Regulations (August 11, 2009 version) in response to the Findings, and adopt the updated Response to Public Comments (August 12, 2009 version).

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: FORD

SPONSORED BY: FORD

SUMMARY:

Please see attached:

- Findings and Order for the Adoption of the Hays County Development Regulations
- Hays County Development Regulations dated 8-11-09
- Updated Response to Public Comment, dated 8-12-09

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 publish notice of a public hearing on a proposed new fee for Preservation and Restoration of Archived Records.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Adair

SPONSORED BY: SUMTER

SUMMARY: The commissioners court shall publish notice of a public hearing on the plan in a newspaper of general circulation in the county not later than the 15th day before the date of the hearing. After the public hearing, the plan shall be considered for approval by the commissioners court.

**Commissioners Court can approve up to a \$5.00 fee for archiving records for the District Court.
See attached.**

Proposed New Fee
SB1685
For Preservation and Restoration
Of Archived Records

Presented By
Cecelia Adair, District Clerk

August 2009

	Page
Summary and Steps to implement	2
Notice of Public Hearing	3
Notice to Post	4
Archive Plan	5
Projected Revenue	6
SB 1685	7
Additional fee information	8

Background

The purpose of this document is to define the restoration and preservation, digital capture, storage, retention and management of archived records within the District Clerk's office..

Many offices are moving records to a digital format and/or microfilm to relieve storage problems. In order to comply with retention and preservation statutes and State Library rules (see Bulletin B at <http://www.tsl.state.tx.us/slrn/recordspubs/lgbullb.html>), the film and digital images must be maintained permanently and a plan in place to store the film and secure the future transition of digitized records to new media that allows access to these records.

The State Library suggests that a department head make a plan for future retention of the court records and have the appropriate person/body sign off on a guarantee that the funding will be in place to upgrade the ability to retrieve permanent records. However, a commissioner's court is powerless to obligate a future court to any expenditure. Therefore, this dedicated fund will insure the funds are available to do the necessary preservation and conversion work to preserve and restore archived records and this new legislation was designed to target archived records.

Purpose

S.B. 1685 creates a dedicated district court **records technology fund** and authorizes district clerks to collect an additional filing fee not to exceed \$5 per filing. The bill provides that these funds be used only for the preservation and restoration of the district court records archive. The bill authorizes the district courts to effectively preserve and efficiently retrieve the large amount of legal documents that are required to be preserved.

This bill authorizes the commissioner's court to adopt a records archive fee for deposit in the District Court Records Technology Fund as part of the county's annual budget. If the provisions of SB 1865 are implemented, the county will experience a revenue gain. This additional revenue will be dedicated to helping the district clerk focus on preserving older records.

The effective date of this Act was June 19, 2009 and expires upon completion of the projects necessary to preserve and digitize the district court records

Steps to Implement

- Prepare Archive Plan

- Commissioner's Court Approval

- Public Hearing

- Post Notice of Fee in a conspicuous place as follows:

NOTICE
SPECIAL MEETING
OF THE COMMISSIONERS COURT
OF HAYS COUNTY, TEXAS

.....

Notice is hereby given that a SPECIAL meeting of the Hays County Commissioner's Court will be held on the ____ day of August, 2009, at _____ A.M. in the Commissioners Courtroom, third floor, Hays County Courthouse, 111 East San Antonio Street, San Marcos, Texas at which time the following subjects will be discussed.

1. PUBLIC HEARING - re: SB1685, District Court Technology Fund
2. Adjourned

Dated this the _____ day August, 2009

_____ County Judge, Hays County
Liz Sumter

ATTEST:

_____ District Clerk, Hays County
Cecelia Adair

NOTICE OF ADDITIONAL FEE

THE COMMISSIONERS COURT OF HAYS COUNTY
PURSUANT TO SB1685 AND GOVERNMENT CODE,
Section 51.305 HAS DETERMINED THAT A RECORDS
ARCHIVE FEE OF \$ 5.00. IS NEEDED TO
RESERVE AND RESTORE DISTRICT COURT
RECORDS

EFFECTIVE DATE _____ 2009

CECELIA ADAIR, DISTRICT CLERK, HAYS COUNTY

ARCHIVE PLAN

Introduction

Currently, this office has records dating back to the mid 1800s. We are transferring records that were initially only on microfilm to digital format for faster and easier retrieval. The Odyssey system installed in 2006, has a better imaging system which allows us to create digital images. The ultimate goal is for the judiciary to use computers in the courtroom in order to move to a paperless system.

Designation of Court Documents subject to the plan:

All civil and criminal case files, pending and final or closed.

The Process

To accomplish our goals, we have purchased and installed a software system by CASO which is also supported by them.

Active case documents are scanned into Odyssey Case Management System for Record Storage and retrieval convenience.

After the case is final, all case records are prepared and picked up by CASO for digitizing and the creation of microfilm. The Microfilm is archived and stored by CASO in the proper facility in San Antonio. The microfilm is not used for search purposes.

Digital images are also stored on an easy searchable CASO program available to anyone and may be photo copied for a fee.

Upon the District Clerk's request and after approval has been obtained from the State Library the documents are eventually destroyed by CASO.. The exception per State Library and Archive Rules are criminal judgments or docket sheets upon which defendant's finger prints have been placed. The criminal files are returned and they remain as a permanent paper document.

The goal

The goal is to reproduce and archive all documents, regardless of type, as efficiently as possible. The District Clerk's office is also in the process of determining the restoration requirements of very old hand-written records, suspending their deterioration, improving public access. This is a continuing process as new cases are filed daily. All closed cases have been scanned and preserved.

To complete our efforts toward electronic storage of all case files, we envision maintaining closed cases on our shelves for a short period of time and using computers to access all records with a view to the future of using the computers entirely for court activity.

With less cost to the County, we may continue this ongoing process by using the archive fee to cover the cost of scanning paper based documents. In addition to preserving the documents, the images will be added to our existing imaging system and improve customer service. Additionally, significant space savings will be realized once paper documents are destroyed.

The approximate annual cost of continuing this project is estimated to be \$40 to \$60 thousand. Additional funds are available in the county records preservation fund which is being increased monthly from fees collected by all fee officers on court cases.

Expenditures, including but not limited to:

- Computer hardware, including any and all peripherals necessary
- Computer software
- Service provider and other outsourcing services
- Relevant staff salary
- Data storage supplies
- Travel expenses to and from a service provider to deliver and pickup case documents, if necessary

Projected Annual Revenue (SB1685)

Document Type	Documents Subject to Fee	Revenue at \$5.00	Revenue at \$4.00	Revenue at \$3.00	Revenue at \$2.00
Filing new suit, including appeal from lower court	2600	\$ 13,000	\$10,400	\$ 7,800	\$ 5,200
Filing cross-action, counterclaim, intervention, contempt action, motion for new trial, 3 rd party petition	950	\$ 4,750	\$ 3,800	\$ 2,850	\$ 1,900
Total	3550	\$ 17,750	\$ 14,200	\$ 10,650	\$ 7,100

AN ACT

relating to the creation of a district court records technology fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 51, Government Code, is amended by adding Section 51.305 to read as follows:

Sec. 51.305. DISTRICT COURT RECORDS TECHNOLOGY FUND. (a) In this section:

(1) "Court document" means any instrument, document, paper, or other record that the district clerk is authorized to accept for filing or maintenance.

(2) "Deterioration" means any naturally occurring process or a natural disaster that results in the destruction or partial destruction of a court document.

(3) "Preservation" means any process that:

(A) suspends or reduces the deterioration of a court document; or

(B) provides public access to a court document in a manner that reduces the risk of deterioration.

(4) "Restoration" means any process that permits the visual enhancement of a court document, including making the document more legible.

(b) The commissioners court of a county may adopt a district court records archive fee of not more than \$5 for the filing of a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, in a district court in the county as part of the county's annual budget. The fee must be set and itemized in the county's budget as part of the budget preparation process and must be approved in a public meeting. The fee is for preservation and restoration services performed in connection with maintaining a district court records archive.

(c) The county treasurer, or the official who discharges the duties commonly delegated to the county treasurer, in a county that adopts a fee under Subsection (b) shall establish a district court records technology fund in the general fund of the county for deposit of fees paid under Section 51.317(f).

(d) Subject to Subsection (f), money generated from the fee imposed under this section may be expended only for the preservation and restoration of the district court records archive.

(e) The district clerk shall designate the court documents that are part of the records archive for purposes of this section. The designation of court documents by the district clerk under this subsection is subject to approval by the commissioners court in a public meeting.

(f) The district clerk in a county that adopts a fee under this section shall prepare an annual written plan for the preservation and restoration of the district court records archive. The plan may include a proposal for entering into a contract with another person for preservation and restoration services. The commissioners court shall publish notice of a public hearing on the plan in a newspaper of general circulation in the county not later than the 15th day before the date of the hearing. After the public hearing, the plan shall be considered for approval by the commissioners court. Money in the district court records technology fund may be expended only as provided by the plan. All expenditures from the records technology fund must comply with Subchapter C, Chapter 262, Local Government Code.

(g) If a county imposes a fee under this section, a notice shall be posted in a conspicuous place in the district clerk's office. The notice must state the amount of the fee in the following form: "THE COMMISSIONERS COURT OF

(Insert name of county) COUNTY HAS DETERMINED THAT A RECORDS ARCHIVE FEE OF \$ (Insert amount adopted by commissioners court) IS NEEDED TO PRESERVE AND RESTORE DISTRICT COURT RECORDS."

(h) Money remaining from the collection of fees imposed under this section after completion of a district court records archive preservation and restoration project may be expended for records management and preservation purposes in the manner provided by Section 51.317(d). The commissioners court of a county may not impose a fee under this section after the district court records archive preservation and restoration project is complete.

SECTION 2. Section 51.317, Government Code, is amended by amending Subsection (b) and adding Subsections (b-2) and (f) to read as follows:

(b) The fees are:

(1) except as provided by Subsection (b-1), for filing a suit, including an appeal from an inferior court, \$50;

(2) for filing a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, \$15;

(3) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed, \$8;

(4) for records management and preservation, \$10; and

(5) in addition to the other fees imposed under this section, for filing a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, the amount adopted by the county commissioners court, not to exceed \$5, for court records archiving.

(b-2) The fee imposed under Subsection (b)(5) does not apply to a filing by a state agency.

(f) The district clerk, after collecting a fee under Subsection (b)(5), shall pay the fee to the county treasurer, or to an official who discharges the duties commonly delegated to the county treasurer, for deposit to the district court records technology fund established under Section 51.305.

SECTION 3. Subchapter D, Chapter 101, Government Code, is amended by adding Section 101.06116 to read as follows:

Sec. 101.06116. ADDITIONAL DISTRICT COURT FEES: GOVERNMENT CODE. The clerk of a district court shall collect a district court records archive fee of not more than \$5 under Section 51.317(b)(5), if adopted by the county commissioners court.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009**

****Passed each house by more than a two-thirds majority and signed by the governor June 19, 2009 (effective date).**

Additional New Fee Information: not relevant to this plan

HB3637 (effective 1-1-2010) requires a \$4 fee to be assessed on criminal conviction and creates another new fund: "County & District Court Technology Fund"

Projected District Court revenue = **\$2,700**

This bill also assesses an additional fee not to exceed \$10 in each civil case to be deposited into a "Court Records preservation fund".

Projected District Court Revenue = **\$35,500.**

Existing related fees:

Records preservation Fee of \$10.00 assessed on all civil cases except "Fraudulent Filing" cases. \$5 goes to the District Clerk's Records Preservation Fund and \$5 to County Records Preservation Fund.

Records preservation fee of \$25.00 assessed on any conviction of an offense in county court at law or district court. - \$22.50 applied to the county Records Preservation Fund and \$2.50 to District Clerk's Records Preservation Fund.

Related funds:

County Records Preservation Fund.....GC 51.317 (b) & (c) & CCP 102.005(f)	09-341-3412
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County Clerk Records Management and Preservation Fund.....LGC Sec. 118.0216	— — — — —
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District Clerk Records Pres. Fund.....GC 51.317 & CCP 102.005	09-341-3412
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Co & Dist Clerk Technology Fund.....HB3637, CCP 102.0169	new GL code
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Court Records Preservation Fund.....HB3637 GC 51.708	new GL code
--	-------------

District Court Technology Fund.....SB1685 GC 51.305	new GL code
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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 November 3, 2009 Polling Locations.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Cowan

SPONSORED BY: SUMTER

SUMMARY: See attached

**Constitutional Amendment Election
City of San Marcos General Election
November 3, 2009, POLLING LOCATIONS**

Precincts Voting

POLLING PLACE

110/113	Elections Office 401-C Broadway St. San Marcos, TX 78666
111/112	Dunbar Center 801 Martin Luther King Dr. San Marcos, TX 78666
114	Allenwood Homes 1201 Thorpe Ln San Marcos, TX 78666
116	Hernandez Intermediate School 333 Stagecoach Trail San Marcos, TX 78666
120	San Marcos Housing Residents Office 820 Sturgeon San Marcos, TX 78666
127	Tobias Elementary School 1005 E FM 150 Kyle, TX 78640
226/230	Hays Hills Baptist Church 1401 N FM 1626 Buda, TX 78610
224/228	Buda City Hall 121 N. Main St Buda, TX 78610
221/223/225/227	Kyle City Hall 100 W Center St. Kyle, TX 78640
229/234	Goforth Water Supply 8900 Niederwald Strasse Niederwald, TX 78640
315	Doris Miller Jr. High 301 Foxtail Run San Marcos, TX 78666

330	Lamar Annex 500 W Hutchison St. San Marcos, TX 78666
332/334	Old Fish Hatchery Building 201 N. C M Allen Parkway San Marcos, TX 78666
331/336	Merrill Gardens at San Marcos Auxiliary Room 1720 Ranch Road 12 San Marcos, Texas 78666
333/335/337	Wimberley Community Center 14068 Ranch Rd 12 Wimberley, TX 78676
440	Henly Baptist Church 200 Henly Loop Henly, TX 78620
441/449	DSISD, Administration Office 510 West Mercer St Dripping Springs, TX 78620
442/448	Driftwood Community Center 15100 FM 150 Driftwood, TX 78619
443/444	Sunset Canyon Baptist Church 4400 E Hwy 290 (corner 290 & Sunset Canyon) Dripping Springs, TX 78620
446/447	Travis Elementary School 1437 Post Road San Marcos, TX 78666

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 12:00 noon on WEDNESDAY.

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

AGENDA ITEM: Discussion and possible action to approve the Purchase Agreement with Tyler Technologies for conversion of tax data from Guadalupe and Comal County

Consent, Action, Executive Session, Etc. – Action

MEETING DATE REQUESTED: August 18, 2009

REQUESTED BY: Luanne Caraway

FUNDS REQUIRED: None

SUMMARY: Attached is the Purchase Agreement with Tyler Technologies for \$6,180.00. This is for the conversion of tax data from Guadalupe and Comal Counties for tax year 2009. This bill will actually be prorated between San Marcos CISD (\$2,425), City of San Marcos (\$97) and Hays CISD (\$568) based on the number of accounts that they have in each county. Once the work is completed Tyler Technologies will send the bill to Hays County and we will forward same to the above three taxing entities for payment.

AGENDA ITEM – APPROVED BY:

COUNTY JUDGE

☐

COUNTY AUDITOR

☐

COMMISSIONER PCT. 1

☐

COMMISSIONER PCT. 2

☐

COMMISSIONER PCT. 3

☐

COMMISSIONER PCT. 4

☐

ACTION TAKEN / ACTION REQUIRED:



TECHNOLOGIES

August 7, 2009

Purchase Agreement
for

Hays County Tax Office

Description	Quantity	Units	Unit Price	Ext. Price
Import and Balancing of Hays County Tax Office Certified Roll from Caldwell CAD.	1	EA	3,090.00	\$3,090.00
Import and Balancing of Hays County Tax Office Certified Roll from Guadalupe CAD.	1	EA	3,090.00	\$3,090.00

Services will take place from Tyler's office via network connection. Tyler will request the Hays County Tax Office's Staff who work with Orion to review and sign-off on reports and sample properties throughout the process to ensure the data is being converted correctly. This is a conversion agreement based on importing a file from "True Automation" and does not include matching, client training or import of files from other vendors. To get an estimate for Tyler to update CADIDs for the import to match on, please contact Brian McGrath.

Subtotal	\$6,180.00
----------	------------

Total (shipping charges not included):	\$6,180.00
--	------------

Tyler Technologies

Prepared by: Michael Morrison
6500 International Parkway
Suite 2000
Plano, Texas 75093
(800) 966-6999 / (972) 713-3777 fax

Hays County Tax Office

Bill To (please print)

PO Number

Authorized Signature

Date

To Authorize This Purchase Agreement

- 1) Review Items for Accuracy
 - 2) Complete 'Bill To' and 'Ship To' Information
 - 3) Note any Special Instructions (i.e. expedite shipping, invoice asap, etc.)
 - 4) Attach Your Purchase Order (if applicable, not required)
 - 5) Sign and Fax to 972-713-3777, Attn: Michael Morrison
- Prices valid for up to 30 days from date of issue.

Ship To Attention Of (please print)

Telephone

Ship To Address

Special Shipping or Invoicing Instructions (if applicable)

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Clerk's office

no later than 12:00 noon on WEDNESDAY.

Phone (512) 393-7330 Fax (512) 393-7337

AGENDA ITEM: Discussion and possible action to approve work authorization and contract for Loomis Austin for safety improvements on FM 2325.

Consent, Action, Executive Session, Etc. –

MEETING DATE REQUESTED: 08/18/09

REQUESTED BY: Will Conley

FUNDS REQUIRED:

SUMMARY:

This is in relation to the bond election to make improvements voted on by Hays County citizens to make 7.2 of safety improvements on FM 2325 from Carney to Fischer Store Rd.

AGENDA ITEM – APPROVED BY:

COUNTY JUDGE

COUNTY AUDITOR

COMMISSIONER PCT. 1

COMMISSIONER PCT. 2

COMMISSIONER PCT. 3

COMMISSIONER PCT. 4

ACTION TAKEN / ACTION REQUIRED:

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 an Interlocal Agreement between Hays County and the City of Kyle.

CHECK ONE: CONSENT X ACTION EXECUTIVE SESSION
WORKSHOP PROCLAMATION PRESENTATION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Barton

SPONSORED BY: Barton

SUMMARY: On August 4, 2009 the City of Kyle approved and signed an interlocal agreement with Hays County to participate in improvements to the FM 150 overpass and the realignment of RM 150 E @ IH 35 of the Pass Through Road Package between Hays County and TxDOT. The City of Kyle will commit \$3 million dollars to the project. This interlocal is part of the shared commitment of Hays County's municipalities' to provide improvements on roads for both mobility and safety. This is one of the projects that eventually will allow access roads along IH 35 to be converted to one way.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the County Judge to execute an Interlocal Agreement between Hays County and the City of Kyle.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$

COUNTY PURCHASING GUIDELINES FOLLOWED: _____

PAYMENT TERMS ACCEPTABLE: _____

COMMENTS:

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: _____ MDK _____

COMMENTS:

COMMISSIONERS' COURT

APPROVED/DISAPPROVED AND DATE: _____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

THE STATE OF TEXAS §
 §
COUNTY OF HAYS §

RECITALS

96 1

way to one-way operation. The total Project cost is estimated to be \$29,593,600 ("Project Costs").

1.2 Obligation of TxDOT. TxDOT will be responsible for letting and managing the Project.

2. Party Obligations.

2.1 City Payment. The City shall be obligated to pay Three Million Dollars (\$3,000,000) as its share of the Project Costs. This payment shall be due on or before sixty (60) days prior to the TxDOT letting of the Project. Additionally, the City shall be responsible for all costs related to the acquisition of right-of-way needed for the RM 150 realignment as described above. Except for the acquisition of the right-of-way as stated above, the City shall not be obligated to fund any sums above \$3,000,000.

2.2 County Payment. The County shall be responsible for all costs related to the environmental permitting, project design, acquisition of right-of-way, and construction costs for the RM 150 Project (except for the City's obligation to acquire right-of-way for the RM 150 realignment).

B.

MISCELLANEOUS PROVISIONS

1. **Execution.** This Agreement may be simultaneously executed in any number of counterparts, each of which will serve as an original and will constitute one and the same instrument.
2. **Governing Law.** This Agreement will be governed by the Constitution and laws of the State of Texas.
3. **Successors and Assigns.** The assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party.
4. **Headings.** The captions and headings appearing in this Agreement are inserted merely to facilitate reference and will have no bearing upon its interpretation.
5. **Partial Invalidity.** If any of the terms, covenants or conditions of this Agreement, or the application of any term, covenant, or condition, is held invalid as to any person or circumstance by any court with jurisdiction, the remainder of this Agreement, and the application of its terms, covenants, or conditions to other persons or circumstances, will not be affected.

6. **Waiver.** Any waiver by any party of its rights with respect to a default or requirement under this Agreement will not be deemed a waiver of any subsequent default or other matter.
7. **Amendments.** This Agreement may be amended or modified only by written agreement duly authorized and executed by the duly authorized representatives of the Parties.
8. **Cooperation.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.
9. **Venue.** All obligations of the Parties are performable in Hays County, Texas and venue for any action arising hereunder will be in Hays County.
10. **Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.
11. **Representations.** Unless otherwise expressly provided, the representations, warranties, covenants, indemnities, and other agreements will be deemed to be material and continuing, will not be merged, and will survive the termination or expiration of this Agreement.
12. **Exhibits.** All exhibits attached to this Agreement are hereby incorporated in this Agreement as if the same were set forth in full in the body of this Agreement.
13. **Entire Agreement.** This Agreement, including any attached exhibits, contains the entire agreement between the Parties with respect to the subject matter and supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties with respect to such matters.
14. **Term.** This Agreement shall automatically terminate if a contract for the Project is not awarded within three (3) years after this Agreement is executed by both parties.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed and attested in duplicate by their duly authorized officers, as of the Effective Date.

HAYS COUNTY

By: _____
Honorable Elizabeth "Liz" Sumter, County Judge

Date: _____

CITY OF KYLE, TEXAS

By: _____
Miguel Gonzalez, Mayor

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: Discussion and possible action to approve a standard utility relocation agreement.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: See attached.

Prime Strategies. Inc.

1508 S. Lamar Blvd.
Austin, Texas 78704
Voice 512.445.7074
Fax 445.7064

Memo

To: Judge Liz Sumter, Hays County
From: Michael J. Weaver
Date: August 6, 2009
Re: Hays County Pass-Through Finance and Road Bond Programs – Routine Utility Relocation Agreements

As we move forward with pass-through and road bond projects moving into the final project development, pre-construction phase, it would be an appropriate time for the Court to take action regarding adopting standardized utility relocation agreements that could be used for all projects. I recommend that the most expeditious way for the Court to proceed would be to have Mark Kennedy review the attached proposed routine utility relocation agreements and have your office place them on the Court's August 18th agenda, requesting the Court's approval of the agreements and authorizing you or the Commissioner whose Precinct the project is located in to execute project-specific agreements as they arise. The signed agreements would be noted as part of the Court's consent agenda to record the Court's acknowledgement that the agreements were signed. This system would apply to agreements where there are no deviations from the previously approved standardized agreement. I do not foresee many, if any, deviations, but they could be addressed on a specific basis.

Part of the Court's action in approving the routine utility relocation agreements would also be authorizing the Commissioners to review and approve utility relocation invoices for projects located in their Precincts without the need for further Court action. We propose that for the Pass-Through Finance Program projects, the invoices first be directed to PSI for review, approval and submission to the appropriate Commissioner's office for final approval and routing for payment. This process has worked well in other Counties and significantly (and beneficially) affects the timing of payment which is critical when dealing with utility providers who are not under the County's control.

Let me know if you have any questions or would like to discuss this subject further.

Attachments

cc: (w/attachments)
Commissioner Debbie Ingalsbe, Precinct 1
Commissioner Jeff Barton, Precinct 2
Commissioner Will Conley, Precinct 3
Commissioner Karen Ford, Precinct 4
Mark Kennedy, Hays County
Theresa Schwartz, Hays County
Jeff Watson, P.E., HNTB Corporation
Jeff Curren, P.E., HDR

P:\Prime Strategies Data\Projects\HC-0360 Pass-Through PM\Utility Relocation\HC Utility Relocation Agt Court Action_Sumter memo.doc

County:
CSJ No.:
Roadway:
Limits:
Fed. Proj. No.:
ROW Acct. No.:

AFFIDAVIT

Agreement No. Hays-U1

THE STATE OF TEXAS)
COUNTY OF [REDACTED])

WHEREAS, the State of Texas, acting by and through Hays County, herein called the County, has deemed it necessary to make certain roadway improvements on [Project Name] [REDACTED] in [REDACTED] County, Texas, from [REDACTED] to [REDACTED]; and,

WHEREAS, it is anticipated that the hereinabove mentioned improvements will affect the facilities of [REDACTED] hereinafter called the **Owner**, at the following described locations:

and;

WHEREAS, the County has requested that the **Owner** furnish to the County information relative to interests that **Owner** hold in lands at each of the hereinabove referenced locations;

NOW THEREFORE, before me, the undersigned authority, this day personally appeared , who, after being by me duly sworn, did depose and say:

That he/she is of and, as such, has knowledge of the facts contained herein, and

That, to the best of his/her knowledge, said **Owner** is the owner of the following described interests in the hereinabove-indicated lands, copies of the instruments under which said **Owner** claims said interests being attached hereto and made a part hereof.

Signature

Title

Company

Sworn to and subscribed before me this _____ day of _____, A.D. 20__.

Notary Public, State of Texas

My Commission expires:

Utility Joint Use Acknowledgement 80A

Agreement No. JU-Hays-ATT-002

THE STATE OF TEXAS}
COUNTY OF HAYS}

County: Hays
Road Location:
Limits: *(ex. Conduit Crossing at Sta.
758+03)*

WHEREAS, Hays County, hereinafter called the **County**, proposes to make certain roadway improvements on that section of the above indicated roadway; and

WHEREAS, Southwestern Bell Telephone L.P. d/b/a AT&T Texas, hereinafter called the **Owner**, proposes to adjust or relocate certain of its facilities on, along or across, and within or over such limits of the roadway right of way as indicated on the plans attached to the Master Utility Agreement executed by Owner on the ____ day, of ____, 20__, or on location sketches attached hereto except as provided below;

NOW, THEREFORE, it is hereby mutually acknowledged that joint use for both roadway and utility purposes will be made of the area within the roadway right of way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Nothing in this Acknowledgement shall serve to modify or extinguish any interest vested in **Owner** in the event the current facilities are retained, altered, modified, added to, or constructed on additional facilities presently located within the above-described area, provided that **Owner** acknowledges that such interest is non exclusive and is subject to roadway use. If existing facilities are to be altered or modified or new facilities constructed within said area, the **Owner** will attempt to notify the **County** prior thereto, and will furnish necessary sketches showing location, type of construction and methods to be used for protection of traffic, unless an emergency situation occurs and immediate action to repair facilities is required. If such alteration, modification or new construction is in conflict with the current roadway or planned future roadway improvements, or could endanger the traveling public using said roadway, the **County** shall have the right, to the extent it has the legal authority, and after receipt of such notice, to prescribe such regulations as necessary for the protection of the roadway facility and the traveling public using said roadway. Such regulations shall not extend, however, to the requiring of the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

Participation in actual costs incurred by the **Owner** for any future adjustment, removal or relocation of utility facilities required by roadway construction shall be in accordance with the laws of the State of Texas. Except as expressly provided herein, (1) the **Owner's** rights of access to the through-traffic roadways and/or ramps shall be subject to the same rules and regulations as apply to the general public, and (2) the **Owner** and the **County**, by execution of this agreement, do not waive or relinquish any right which they may have under the law or Constitution of this State. Nothing herein shall be interpreted to be an agreement by the **Owner** to an expansion or addition to the **County's** authority under State law nor shall anything herein be interpreted to be a restriction on the **County's** authority and state laws.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

Southwestern Bell Telephone, L.P.
d/b/a AT&T Texas

Hays County

By _____
Authorized Name

By _____
Authorized Name

Title: _____

Title: _____

Date: _____

Date: _____

UTILITY ADJUSTMENT AGREEMENT

Hays/UAA/ATT-XX

THIS AGREEMENT, by and between Hays County ("County") and Southwestern Bell Telephone, L.P. d/b/a AT&T Texas ("Owner"), is as follows:

WITNESSETH

WHEREAS, the County is authorized to design, construct, operate, maintain, and improve roadway projects as part of the state highway system throughout the State of Texas, all in conformance with the provisions of *Chapter 251, Texas Transportation Code*, as it may be amended from time to time; and

WHEREAS, the County proposes to (re)construct _____ (*ex. FM 1626 under the Pass Through Finance program*), hereinafter identified as the "**Project**", identified by the following project limits:

Sta XXX+XX to XXX+XX; and

WHEREAS, the County's duties pursuant to the Project include causing the removal, relocation, or other necessary adjustment of existing utilities impacted by the Project (the "**Adjustment**"), at the County's expense; and

WHEREAS, the County has notified the Owner that certain of its facilities and appurtenances ("**Owner Utilities**"), are in conflict with the Project (and/or with the "**Ultimate Design**", as hereinafter defined), and the Owner has requested that the County undertake the Adjustment of the Owner Utilities as necessary to accommodate the Project (and the Ultimate Design); and

WHEREAS, the Owner Utilities and the proposed Adjustment of the Owner Utilities are described as follows:

- (*ex. Drawing for cable prints to relocate existing buried AT&T cable along CR 180 at Scottsdale Dr. and 183A that extend from along the East ROW from Sta. 516+60 to Sta. 543+45*); and

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the County and the Owner desire to implement the Adjustment of the Owner Utilities by entering into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and the Owner agree as follows:

1. **Preparation of Plans.** The County has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Exhibit A (collectively, the “Plans”), for the proposed Adjustment of the Owner Utilities, including the design of Betterment and conduit crossings. Upon the signing of the Plans, Owner will signify its approval of the Plans and confirm that the Plans are in compliance with Owner’s “standards” described in Paragraph 3(c).
2. **Review by County.** The parties hereto acknowledge and agree as follows:
 - (a) Upon execution of this Agreement by both the County and the Owner, pursuant to the Project, the County will assemble this Agreement, together with the Plans for its review, comment and acceptance as part of a package referred to as a “**Utility Assembly**.” The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to the parties, to respond to any comments made by the County thereon. Without limiting the generality of the foregoing, the Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the County in response to the County comments within **fourteen (14) business days** after receipt of such modifications. The process set forth in this paragraph will be repeated until the Owner and the County have approved this Agreement and accepted the Plans.
 - (b) The signature of the County’s representative on this Agreement confirms the County’s determination that the Utility Assembly for the Adjustment of the Owner Utilities meets the requirements of the Project, and any other applicable County requirements; however, the parties hereto acknowledge and agree that the County’s review is solely for the purpose of determining compliance with the Project and County requirements and other matters of particular concern to the County have, and by its review and acceptance of such Utility Assembly undertakes, no duty to review its components for their quality or for the adequacy of the Adjustment (as designed) for the purposes for which they are intended to be used or for compliance with law or applicable standards (other than the Project and County requirements).
3. **Design and Construction Standards.** All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:
 - (a) All applicable local, state, and federal laws, regulations, decrees, ordinances and policies;

- (b) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and
- (c) The standard specifications, standards of practice, and construction methods (collectively, the “standards”) which the Owner customarily applies to facilities comparable to the Owner Utilities constructed by Owner or for Owner by its contractors and which standards are current at the time this Agreement is signed.

Such design and construction also shall be consistent and compatible with (i) the County’s current design and construction of the Project, (ii) the County’s projected design for the Project as it will ultimately be built out in the future (the “Ultimate Design”), and (iii) any other utilities being installed in the same vicinity. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standards shall apply.

4. **Construction by the County.**

- (a) The Owner hereby requests that the County perform the construction necessary to adjust the Owner Utilities and the County hereby agrees to perform such construction. All construction work hereunder, with the exception of splicing labor performed by the Owner, shall be performed by a contractor approved by the Owner, in a good and workmanlike manner, and in accordance with the Plans. Minor deviations from the Plans, e.g. due to field conditions, are permitted, subject to submission in writing to the Owner for approval of proposed deviations. Owner shall respond to any request for a minor deviation within two business days of the County’s request for Owner acceptance or rejection. Owner shall respond to any request for a major deviation within three business days of the County’s request for Owner acceptance or rejection, unless otherwise agreed by the Owner and County. If Owner fails to respond in a timely manner, the County shall provide at least two business days written notice to the Owner of its intent to proceed with the modified Plans.
- (b) The County shall retain such contractor or contractors, from a list of approved contractors provided by Owner, as are necessary to adjust the Owner Utilities through the County’s normal procedures.
- (c) The County shall obtain all permits necessary for the construction to be performed by the County hereunder, and the Owner shall cooperate in that process as needed.

5. **County Responsible for Costs of Work.** With the exception of any “Betterment” as defined in Paragraph 7, all work to be performed pursuant to this Agreement shall be at the sole cost and expense of the County, including, without limitation, the engineering, splicing, inspection, and other costs of the Owner as defined in Paragraph 6 hereof. All costs charged to the County by the Owner shall be approved by the County in advance,

shall be reasonable, and shall be computed using rates and schedules not exceeding those applicable to the similar work performed by or for the Owner at the Owner's expense. The County's payment shall be provided to the Owner within **sixty (60) calendar days** after County's receipt of the Owner's invoice therefore, together with supporting documentation; any refund shall be due within **sixty (60) calendar days** after completion of the Adjustment work hereunder.

6. **Costs of the Work.**

The costs for Adjustment of the Owner Utilities shall be derived from (i) the accumulated total of costs incurred by the County for design and construction of such Adjustment, and (ii) the direct and indirect costs incurred by the Owner, including, without limitation, design, review, administration reasonable and appropriate for the circumstances, inspection, and splicing, as well as the cost of acquisition of new easements or other interests in real property, to the extent necessary to replace property interests, as further defined by Paragraph 13 hereof.

7. **Betterment and Salvage.**

(a) For purposes of this Agreement, the term "Betterment" means any upgrading of an Owner Utility being Adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including, but not limited to, an increase in the capacity of existing facilities or an expansion of the existing facilities; provided, however, that the following are not considered Betterments:

- (i) any upgrading which is required by the Project;
- (ii) replacement devices or materials that are of equivalent standards although not identical;
- (iii) replacement devices or materials no longer regularly manufactured with the next highest grade or size;
- (iv) any upgrading required by applicable laws, regulations or ordinances;
- (v) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); or
- (vi) any upgrading required by the Owner's written "standards" meeting the requirements of Paragraph 3(c).

[Include the following for fiber optic Owner Utilities only:] Extension of an Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Owner in order to maintain its written telephony standards.

Any upgrading required by the Owner's written "standards" meeting the requirements of Paragraph 3(c) shall be deemed to be of direct benefit to the Project.

- (b) The Adjustment of the Owner Utilities pursuant to the Plans includes Betterment to the Owner Utilities by reason of requested, (*ex. non-existing 4 - 4" PVC conduit crossings on the northside of Avery Ranch Blvd*). The County will provide to the Owner comparative estimates for (i) all work to be performed by the County pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment. The estimated cost of the County's work hereunder which is attributable to Betterment is \$ _____, calculated by subtracting (ii) from (i). The percentage of the total cost of the County's work hereunder which is attributable to Betterment is _____%, calculated by subtracting (ii) from (i), which remainder is divided by (i).
- (c) If Paragraph 7(b) identifies Betterment, the Owner shall advance to the County, at least **fourteen (14) business days** prior to the date scheduled for commencement of construction for Adjustment of the Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 7(b). [*If Paragraph 7(b) identifies Betterment, check the one appropriate provision*]:
- ☐ The estimated cost stated in Paragraph 7(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.
- ☐ The Owner is responsible for the County's actual cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the County the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the County shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the Owner shall be due within **sixty (60) calendar days** after Owner's receipt of the County's invoice therefore, together with supporting documentation; any refund shall be due within **sixty (60) calendar days** after completion of the Adjustment work hereunder. The actual cost of Betterment incurred by the County shall be calculated by multiplying (i) the Betterment percentage stated in Paragraph 7(b), by (ii) the actual cost of all work performed by the County pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the County to the Owner.
- (d) If Paragraph 7(b) identifies Betterment, the parties shall mutually determine the appropriate portion, if any, of the Owner's indirect costs (including without limitation any cost reimbursable pursuant to Paragraph (13)) which were increased by such Betterment. Neither party shall unreasonably withhold or delay

its approval of a proposal in this regard made by the other party. Owner's invoice to the County for its indirect costs shall credit the County with any Betterment amount determined by the parties pursuant to this Paragraph 7(d).

- (e) All salvage materials collected on site will be returned to an area designated by the Owner.
- 8. **Project Management.** The County will provide project management during the Adjustment of the Owner Utilities.
- 9. **Utility Investigations.** The County shall comply with the notification and locate process established under the Underground Facility Damage Prevention and Safety Act, Ch. 251, Texas Utilities code (the "One-Call Statute"). If the horizontal markings provided in response to the County's compliance with the One-Call Statute indicate a potential conflict, the County shall take all additional actions that may be necessary to physically locate the facilities which are owned and/or operated by Owner and may be impacted by the Project.
- 10. **Inspection and Acceptance by the Owner.**
 - (a) Throughout the Adjustment construction hereunder, the Owner shall provide adequate inspectors for such construction. Further, upon request by the County or its contractors, the Owner shall furnish an inspector within 48 hours time from request, in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual forty (40) hour work week and at such other times as reasonably required. The County and the Owner shall schedule an agreed time for the requested inspection such that the inspection will occur within the 48 hour time period following the request, unless otherwise agreed by the County and the Owner. The Owner requires that pull string be utilized through all conduit placement in the presence of the Owner's inspector to prove duct integrity. The Owner agrees to promptly notify the County of any concerns resulting from any such inspection. The County will be responsible to remedy the noted issues to ensure compliance with the approved plans, and any deviations from Paragraph 3(c).
 - (b) The Owner shall perform a final inspection of the Adjusted Owner Utilities, including conducting any tests as are necessary or appropriate, within **five (5) business days** after the County provides written notice of completion of construction hereunder. The Owner shall accept such construction if it is consistent with the performance standards described in Paragraph 3, by giving written notice of such acceptance to the County within said **five (5) day** period. If the Owner does not accept the construction, then the Owner shall, not later than the expiration of said **five (5) day** period, notify the County in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the County will comply. The Owner shall re-inspect any revised construction (and re-test if appropriate) and give notice of

acceptance, not later than **five (5) business days** after completion of corrective work, unless otherwise agreed by the Owner and County.

- (c) From and after the Owner's acceptance of an Adjusted Owner Utility, the Owner agrees to accept ownership of, and full operation and maintenance responsibility for, such Owner Utility.
- 11. **Design Changes.** The County will be responsible for additional Adjustment design and/or construction costs necessitated by design changes to the Project, upon the terms specified herein.
- 12. **Field Modifications.** Prior to making any deviation from field plans, the County must notify Owner in writing as per Paragraph 4(a). After installation, the County shall provide the Owner with documentation of any deviations from the plans that were made in the field during the Adjustment of the Owner Utilities.
- 13. **Real Property Interests.**

Existing or new private property interests affected or required by the relocation of Owner Utilities shall be handled as follows:

- (a) The Owner shall, upon execution of this Agreement (and if not previously provided), promptly provide to the County evidence establishing a legal right, title or interest in real property beyond the rights granted by State law, claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are referred to herein as "**Existing Interests**". Relinquishment by Owner of an Existing Interest shall be compensable at the amount required for the Owner to obtain a comparable property interest. If the Owner chooses not to relocate or otherwise adjust the Owner Utilities to a comparable property interest, then the compensation to the Owner for the relinquishment of the Existing Interest shall be at the fair market value of a comparable property interest.
- (b) If acquisition of any new easement or other interest in real property ("**New Interest**") is necessary for the Adjustment of any Owner Utilities, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the County's Project schedules. The County shall be responsible for the actual and reasonable acquisition costs of any such New Interest (including without limitation the Owner's reasonable overhead charges and legal costs as well as compensation paid to the landowner), excluding any costs attributable to Betterment as described in Paragraph 7. Eligible acquisition costs shall be approved in advance, invoiced by the Owner, and paid by the County pursuant to this Agreement, as a segregated component of the Owner's indirect costs described in Paragraph 6. Owner's billing shall provide sufficient detail for the County to understand the nature of Owner's costs, and any such

New Interest shall have a written valuation and be acquired in accordance with applicable law.

- (c) If the Owner holds a private easement, from which the facilities were relocated, upon completion of the related Adjustment work and its acceptance by the Owner, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing the interest in the private easement to the County, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the private easement.
- 14. **Fees.** Under no circumstances shall the County impose any tolls, fees, fares, or other charges on the Owner for the facilities placed under this Agreement that are located on, across, or along the public right-of-way managed by the County. However, the County reserves any right it may have under the law to impose tolls, fees, fares, or other charges on any future facility installations that are not subject to this Agreement, or upgrades of the facilities placed under this Agreement, and the Owner reserves its right to dispute the legality and applicability of such tolls, fees, fares, or other charges.
- 15. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, as set forth herein. Any difference between actual costs and estimated costs of Adjustment work not resulting from a change in the scope of such work is not considered an amendment or modification.
 - (a) Except as otherwise provided in subsection (b), any amendment or modification to this Agreement shall be implemented by a Utility Adjustment Agreement Amendment ("UAAA") in the form of Exhibit B hereto. The UAAA form can be used for a new scope of work with concurrence of the County as long as the Design and Construction responsibilities have not changed. The Owner agrees to keep and track costs separate from other work being performed.
 - (b) Any change in the agreed scope of the work hereunder (other than the addition or deletion of Betterment) which will increase or decrease the estimated cost of the County's work by less than fifty thousand dollars (\$50,000.00) shall not require a UAAA, provided that the change is adequately described in informal documentation which is signed by authorized representatives of the County and the Owner to indicate their respective approval thereof.
- 16. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the County be considered as or represent itself to be an agent of the other.
- 17. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.

18. **Assignment; Binding Effect.** Neither the Owner nor the County may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided, however, that the County may assign any of its rights and/or delegate any of its duties to any other entity engaged by the County to fulfill the County's obligations under the Project or under this Agreement, at any time without the prior consent of the Owner. This Agreement shall bind the Owner, the County, and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general.

19. **Breach by the County.** If the Owner claims that the County has breached any of its obligations under this Agreement, the Owner will notify the County in writing of such breach, and the County shall have 30 days following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach. The County shall be obligated to reimburse the Owner for all costs of the adjustment of the Owner Utilities up to date of said breach, as set forth in Paragraph 6.

20. **Traffic Control.** The County shall provide traffic control or reimburse the Owner for traffic control made necessary by the Adjustment work performed by the County pursuant to this Agreement, in compliance with the requirements of the Texas Manual on Uniform Traffic Control Devices.

21. **Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

The Owner: Southwestern Bell Telephone, L.P. d/b/a AT&T Texas
ROW Department
1616 Guadalupe, Suite 503
Austin, Texas 78701
Phone: 512-870-3345
Fax: 512-870-3303

The County: Hays County
Attn: Utility Coordinator
2171 Yarrington Road
San Marcos, Texas 78666
P.O. Box #906
San Marcos, Texas 78667
Phone: 512-393-7385
Fax: 512-393-7393

Any notice or demand required herein shall be given (a) personally, (b) by electronic mail, return receipt requested, (c) by confirmed fax, or (d) by reliable messenger or overnight courier

to the appropriate address set forth above. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party; the County may designate another address by written notice to the Owner.

22. **Approvals.** Any acceptance, approval, or any other like action (collectively "**Approval**") required or permitted to be given by either the County or the Owner pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto), and
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 21.

23. **Time.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to "**days**" herein shall be construed to refer to calendar days, unless otherwise stated. Calculations of time shall not include the date of notification.
- (c) No party shall be liable to the other(s) for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("**Force Majeure**"), such as acts of God, acts of civil or military authority, riot, sabotage, fire, earthquake, strike, unusually severe weather, floods, power blackouts, or other similar catastrophic and unforeseen events, including interference by any party to this Agreement, a governmental entity, or any other entity with the party's ability to proceed with performance.

24. **Continuing Performance.** In the event of a dispute, the parties agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.

25. **Authority.** Each party represents and warrants to the other party(ies) that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this

Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.

26. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner and the County to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the County agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the County's current and future construction schedules for the Project.

27. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the County shall notify the Owner in writing and the County reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination. Notwithstanding the foregoing, the County shall complete all work in progress as necessary to ensure a continuation of utility service and protection of the Owner Utilities, and shall pay any amounts owed to the Owner for work incurred in furtherance of the Project.

28. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement, that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.

29. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the content of their respective paragraphs.

30. **Venue and Governing Law.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Hays County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

31. **No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

32. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.

33. **Effective Date.** This Agreement shall become effective upon the date of signing by the last party signing this Agreement.

THE REMAINDER OF THIS PAGE INTENDED TO REMAIN BLANK

HAYS COUNTY

**SOUTHWESTERN BELL
TELEPHONE, L.P. d/b/a AT&T TEXAS**

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

Utility Joint Use Agreement 80A

Agreement No. JU-Hays-Atmos-001

THE STATE OF TEXAS}
COUNTY OF HAYS}

County: Hays

Road Location:

Limits: (ex. 8" Poly Crossing on South
Side of New Hope Rd. at Sta.
563+40)

WHEREAS, Hays County, hereinafter called the **County**, proposes to make certain roadway improvements on that section of the above indicated roadway; and

WHEREAS, Atmos Energy Corporation, hereinafter called the **Owner**, proposes to relocate certain of its facilities on, along or across, and within or over such limits of the roadway right of way as indicated on the plans attached to the Master Utility Agreement executed by **Owner** on the _____ day of ___, 20___, or on location sketches attached hereto except as provided below;

NOW, THEREFORE, it is hereby mutually agreed that joint use for both roadway and utility purposes will be made of the area within the right-of-way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Where **Owner** by reason of ownership within the area described above of an easement or fee title has the right to alter, modify or add to facilities presently located within the area described or construct additional facilities therein, such right is hereby retained, provided, however, if existing facilities are to be altered or modified or new facilities constructed within said area the **Owner** agrees to notify the **County** prior thereto, to furnish necessary sketches showing location, type of construction and methods to be used for protection of traffic, and if, in the sole opinion of the **County**, such alteration, modification or new construction will injure the roadway or endanger the traveling public using said roadway, the **County** shall have the right, after receipt of such notice, to prescribe such regulations and rules for the work proposed by **Owner** as the **County** deems necessary for the protection of the roadway facility and the traveling public using said roadway; provided further, however, that such regulations and rules shall not extend to the requiring of the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

In the event of an emergency, it being evident that immediate action is necessary for protection of the public health and safety and to minimize property damage and loss of investment, either party hereto may at their own responsibility and risk make necessary emergency repairs, notifying the other party hereto of this action as soon as is practical.

Participation in actual costs incurred by the **Owner** for any future adjustment, removal or relocation of utility facilities required by roadway construction shall be in accordance with this Agreement and the laws of the State of Texas. Except as expressly provided herein, (1) the **Owner's** rights of access to the through-traffic roadways and/or ramps shall be subject to the same rules and regulations as apply to the general public, and (2) the **Owner** and the **County**, by execution of this agreement, do not waive or relinquish any right which they may have under the law or Constitution of this State.

In the event the **Owner** fails to comply with the requirements as set out herein, the **County** may take such action, as it deems appropriate to compel compliance.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

Atmos Energy Corporation

Hays County

By: _____
Authorized Name

By: _____
Authorized Name

Title: _____

Title: _____

Date: _____

Date: _____

MASTER UTILITY ADJUSTMENT AGREEMENT
(Utility Owner Managed)
Agreement No.: U--Atmos-001

THIS AGREEMENT, by and between County hereinafter identified as the "**County**", and Atmos Energy Corporation, hereinafter identified as the "**Owner**", is as follows:

WITNESSETH

WHEREAS, the County is authorized to design, construct, operate, maintain, and improve roadway projects in conformance with the provisions of *Chapter 251, Texas Transportation Code*, as it may be amended from time to time; and

WHEREAS, The County proposes to (re)construct _____ (ex. *FM 1626 under the Pass Through Finance Program*), hereinafter identified as the "**Project**", and more particularly described by the following limits:

Sta XXX+XX to XXX+XX; and

WHEREAS, the County's duties include the removal, relocation, or other necessary adjustment of existing utilities, hereinafter identified as "**Adjustment**", impacted by the Project; and

WHEREAS, the County has notified the Owner that certain of its facilities and appurtenances are in locational conflict with the Project, and/or with the "**Ultimate Design**", as hereinafter identified, and has requested that the Owner undertake the Adjustment of the Owner utility structures as necessary to accommodate the Project and the Ultimate Design, and

WHEREAS, the Owner utility structures and the proposed Adjustment of the Owner utility structures are described as follows:

- (ex. *Drawing for proposed installation of 8-inch poly distribution main in 12-inch steel casing on the south side of New Hope Rd. crossing 183A right-of-way at Sta. 563+40*),
-
-
- ; and

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the County and the Owner desire to implement the Adjustment of the Owner utility structures by entering into this Agreement, hereinafter described as "**Agreement**".

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and the Owner agree as follows:

1. **Preparation of Plans.** [Check one box that applies:]

- ☐ The Owner has provided plans and required specifications, attached hereto as Exhibit A, for the proposed Adjustment. The Owner represents and warrants that the Plans conform to the Ultimate Design provided to Owner by the County and prepared pursuant to the Project. By its execution of this Agreement, the County hereby approves the Plans and attests they conform to the Ultimate Design. The Owner also has provided to the County a utility plan view map illustrating the location of existing and proposed utility facilities on the County's right-of-way map of the Project. With regard to its preparation of the Plans, Owner represents as follows *[check one box that applies if compensable]*:
 - ☐ The Owner's or County's employees or authorized representatives were utilized to prepare the Plans, and Owner represents that the charges therefore do not exceed the Owner's typical costs for such work.
 - ☐ The Owner utilized consulting engineers to prepare the Plans and represent that these plans conform to the regulations governing the installation, relocation, and/or abandonment of the Owner's facilities.

2. **Review by the County.** The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by both the County and the Owner, pursuant to the Project the Owner will submit this Agreement, together with the attached Plans, to the County for its review, comment and acceptance as part of a package, hereinafter identified as "**Utility Assembly**". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to both parties, to respond to any comments made by the County thereon. Without limiting the generality of the foregoing, (i) the Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the County within **fourteen (14) business days** after receipt of such modifications; and (ii) if the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to the County's comments and to submit such modified Plans to the County for its comment and/or acceptance within **twenty-eight (28) days** after receipt of the County's comments. The Owner's failure to timely respond to any modified Plans submitted by the County pursuant to this paragraph shall be deemed the Owner's acceptance of same. If the Owner fails to timely prepare modified Plans which are its responsibility

hereunder, then the County shall have the right to modify the Plans for the Owner's approval as if the County had originally prepared the Plans. The process set forth in this paragraph will be repeated until the Owner and the County have approved this Agreement and accepted the Plans.

- (b) The signature of the County's representative on this Agreement confirms County's determination that the Utility Assembly meets the requirements of the Project, the County, and any other applicable County requirements; however, the parties hereto acknowledge and agree that the County's review is solely for the purpose of determining compliance with County requirements and other matters of particular concern to the County have, and by its review and acceptance of such Assembly and Plans, undertaken no duty to review its components for their quality or for the adequacy of the Adjustment for the purposes for which they are intended to be used or for compliance with law or applicable standards (other than County requirements).

3. **Design and Construction Standards.** All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:

- (a) All applicable local, state and federal laws, regulations, decrees, ordinances, policies, and the policies of the County;
- (b) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and
- (c) The standard specifications, standards of practice, and construction methods, hereinafter described as "**Standards**" which the Owner customarily applies to structures comparable to the Owner utility structures constructed by Owner or for Owner by its contractors, which standards are current at the time this Agreement is signed by the Owner, and which the Owner has submitted to the County in writing.

Such design and construction also shall be consistent and compatible with (i) the County's Ultimate Design and construction of the Project, (ii) County's projected design for the Project as it will ultimately be built out in the future, and (iii) any other utilities being installed in the same vicinity. The Owner acknowledges receipt from the County of Project plans and Ultimate Design documents as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

4. **Construction by the Owner; Scheduling.**

- (a) The Owner hereby agrees to perform the construction necessary to make the Adjustments. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except for minor

deviations from the Plans, e.g. due to field conditions). The Owner agrees that during the Adjustments, Owner and its contractors will coordinate their work with the County so as not to interfere with the performance of work on the Project by the County or by any other party. "Interfere" means any action or inaction that interrupts, interferes, delays or damages Project work.

- (b) The Owner shall obtain all permits necessary from the County for the construction to be performed by the Owner hereunder.
- (c) The Owner shall commence its construction for the Adjustments promptly after (i) receiving written notice to proceed therewith from the County, and (ii) any right-of-way necessary for such Adjustment has been acquired either by the County (for Adjustments to be located within the Project right-of-way) or by the Owner (for Adjustments to be located outside of the Project right-of-way), or a right-of-entry permitting Owner's construction has been obtained from the landowner by the County or by the Owner with the County's prior approval. The Owner shall notify the County at least 72 hours prior to commencing construction for the Adjustments.
- (d) The Owner shall expeditiously stake the survey of the proposed locations of the Owner Utilities being adjusted, on the basis of the Ultimate Design. The County shall verify that the Owner utility structures, whether moving to a new location or remaining in place, clear the Ultimate Design of the Project as staked in the field.
- (e) Upon Owner's receipt of a notice to proceed issued by the County for one or more of the projects specifically identified in this Agreement, Owner shall promptly commence, and thereafter diligently pursue to completion, the construction of the identified Utility Adjustment through final testing and acceptance thereof. Owner will use its best efforts (subject to force majeure and County delays) to achieve completion of the identified Utility Adjustment within thirty (30) days from receipt of the notice to proceed, but Owner shall not be liable to the County for failing to achieve completion within such timeframe. With respect to the Project, the County acknowledges that the general contractor is to be engaged by a third party, and as such Owner has no control over the general contractor or its scheduling.

5. **Owner Responsible for Costs of Work.**

- (a) All work to be performed pursuant to this Agreement shall be at the sole cost and expense of the Owner.

6. **Utility Investigations.** At the County's request, the Owner shall assist the County in locating any Utilities (including appurtenances) which are owned and/or operated by Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the Adjustments nor existing, unadjusted utilities owned or operated by the Owner are damaged during construction of the Project,

the Owner shall mark in the field the location of all such utilities horizontally on the ground in advance of Project construction in the immediate area of such utilities.

7. **Inspection and Ownership of Owner Utilities.**
 - (a) The County shall have the right, at its own expense, to inspect the Adjustment work performed by the Owner or its contractors, during and upon completion of construction. All inspections of work shall be completed and any comment provided within five (5) business days after request for inspection is received.
 - (b) The Owner shall accept full responsibility for all future repairs and maintenance of said Adjustments. In no event shall the County become responsible for making any repairs or maintenance, or for discharging the cost of same. The provisions of this Paragraph 7(b) shall not limit any rights which the Owner may have against the County if the County damages any Owner Utility as a result of its Project activities.
8. **Design Changes.** The County will be responsible for additional Adjustment design and/or construction costs necessitated by design changes to the Ultimate Design if Owner is notified of such design changes after the County has approved Owner's signed and sealed construction drawings.
9. **Field Modifications.** The Owner shall provide the County with documentation of any field modifications occurring in the Adjustment of the Owner Utilities as well as a copy of redline plans and an electronic and hard copy of the as-built drawings within 60 days of Adjustment.
10. **Real Property Interests.**
 - (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the County, documentation acceptable to the County indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to the County's approval as part of its review of the Utility Assembly as described in Paragraph 2. Claims approved by the County as to rights or interests are referred to herein described as "Existing Interests".
 - (b) The Owner shall execute a Utility Joint Use Agreement (Hays-U-80A) for each Adjusted Owner Utility where required pursuant to County policies.
11. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 13.
12. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties

hereto and under no circumstances shall the Owner or the County be considered as or represent itself to be an agent of the other.

13. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
14. **Assignment; Binding Effect.** Neither the Owner nor the County may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided, however, that the County may assign any of its rights and/or delegate any of its duties to any other entity engaged by the County to fulfill the County's obligations under the Project, at any time without the prior consent of the Owner. This Agreement shall bind the Owner, the County, and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general.
15. **Breach by the County.** If the Owner claims that the County has breached any of its obligations under this Agreement, the Owner will notify the County in writing of such breach, and the County shall have 30 days following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach. Without limiting the generality of the foregoing, in no event shall the County be responsible for any repairs or maintenance to the Owner Utilities Adjusted pursuant to this Agreement.
16. **Traffic Control.** The Owner shall provide traffic control made necessary by the Adjustment work performed by the Owner pursuant to this Agreement, in compliance with the requirements of the Texas Manual on Uniform Traffic Control Devices.
17. **Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

The Owner: Atmos Energy Corporation
 5420 LBJ Freeway
 Suite 1721
 Dallas, Texas 75240
 Phone: 214-206-2937
 Fax: 214-276-6402
 Attn: Thomas E. Holley
 Email: thomas.holley@atmosenergy.com

The County: County
 2171 Yarrington Road
 San Marcos, Texas 78666

P.O. Box #906
San Marcos, Texas 78667
Phone: 512-393-7385
Fax: 512-393-7393
Attn: Project Utility Coordinator
Email:

Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) by reliable messenger or overnight courier to the appropriate address set forth above. Notices may also be sent by email to Owner and County, provided that email to Owner shall be sent concurrently to both thomas.holley@atmosenergy.com and mark.patterson@atmosenergy.com. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party.

18. **Approvals.** Any acceptance, approval, or any other like action, hereinafter described as "**Approval**" required or permitted to be given by either the County or the Owner pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto),
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval, and
- (c) Except for Approvals by the County, and except as may be specifically provided otherwise in this Agreement, approval shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then fourteen (14) calendar days), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 17.

19. **Time.**

- (a) Time is of the essence in the performance of this Agreement.

- (b) All references to “days” herein shall be construed to refer to calendar days, unless otherwise stated.
 - (c) Neither the Owner nor the County shall be liable to the other for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence (“**Force Majeure**”), such as acts of God, acts of civil or military authority, fire, earthquake, strike, adverse weather, floods or power blackouts. In addition to the foregoing, Owner’s performance may also be delayed by reason of customer service considerations, in which case such delay shall be considered a Force Majeure delay. If any such event of Force Majeure occurs, the Owner agrees, if requested by the County, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as the County agrees to reimburse the Owner for such the reasonable and actual costs of such efforts.
20. **Continuing Performance.** In the event of a dispute, the Owner and the County agree to continue their respective performance hereunder to the extent feasible in light of the dispute.
21. **Equitable Relief.** The County and the Owner acknowledge and agree that delays in Adjustment of the Owner utility structures will impact the public convenience, safety and welfare, and that (without limiting the parties’ remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; provided, however, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.
22. **Authority to Enter Into Agreement.** The Owner and the County each represents and warrants to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.
23. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner (and its contractors) and the County to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the County agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the County’s current and future construction schedules for the Project. The Owner further agrees to require its contractors to coordinate their respective work hereunder with the County.

24. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the County shall notify the Owner in writing and the County reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.
25. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement, that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
26. **Venue and Governing Law.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
27. **No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
28. **Indemnification of County.** OWNER SHALL INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF OWNER OR ANY OF ITS EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.
29. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contest of their respective paragraphs.

30. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.
31. **Effective Date.** Except for the provisions of Paragraph 2(a) (which shall become effective immediately upon execution of this Agreement by both the Owner and the County), this Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the County) signing this Agreement, and (b) the completion of the County's review as indicated by the signature of the County's representative, below.

COUNTY

ATMOS ENERGY CORPORATION

By: _____
Authorized Signature

By _____
Authorized Signature

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK
(AS APPEARING IN ESTIMATE)
Agreement No. Hays-U-48

County _____
Federal Project No. _____

ROW CSJ No. _____
Construction CSJ No. _____

I, _____, a duly authorized and qualified representative of _____, hereinafter referred to as **Owner**, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as appears in the estimate to which this statement is attached.

It is more economical and/or expedient for Owner to contract this adjustment, or Owner is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicated on the estimate. Therefore the work will be contracted through one of the methods described below. Notwithstanding the contracting for such work, Owner shall remain liable for the proper conduct of the work and for assuring that it is performed timely and in accordance with the estimate and the specifications previously provided, or to be provided, by Hays County, hereinafter referred to as the **County**.

Procedure to be Used in Contracting Work

- ☐ A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.
- ☐ B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Such presently known contractors are listed below:
1. _____
 2. _____
 3. _____
- ☐ C. The work is to be performed under an existing, continuing contract under which certain work is regularly performed for Owner and under which the lowest available costs are developed. (If only part of the contract work is to be done under an existing continuing contract, give detailed information by attachment hereto.)
- ☐ D. The Utility proposes to contract outside the foregoing requirements and therefore evidence in support of its proposal is attached to the preliminary estimate in order to obtain the concurrence of the County prior to taking action thereon (approval of the agreement shall be considered as approval of such proposal).

OWNER

[Print Utility Company Name]

By: _____

Signature

Title

Date

Utility Joint Use Agreement

Agreement No. _____

THE STATE OF TEXAS}
COUNTY OF HAYS}

County: Hays

Road Location:

Limits: _____

WHEREAS, Hays County, hereinafter called the **County**, proposes to make certain roadway improvements on that section of the above indicated roadway; and

WHEREAS, _____, hereinafter called the **Owner**, proposes to relocate certain of its facilities on, along or across, and within or over such limits of the roadway right of way as indicated on the plans attached to the Master Utility Agreement executed by **Owner** on the _____ day of ____, 20__, or on location sketches attached hereto except as provided below;

NOW, THEREFORE, it is hereby mutually agreed that joint use for both roadway and utility purposes will be made of the area within the right of way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Where **Owner** by reason of ownership within the area described above of an easement or fee title has the right to alter, modify or add to facilities presently located within the area described or construct additional facilities therein, such right is hereby retained, provided, however, if existing facilities are to be altered or modified or new facilities constructed within said area the **Owner** agrees to notify the **County** prior thereto, to furnish necessary sketches showing location, type of construction and methods to be used for protection of traffic, and if, in the sole opinion of the **County**, such alteration, modification or new construction will injure the roadway or endanger the traveling public using said roadway, the **County** shall have the right, after receipt of such notice, to prescribe such regulations and rules for the work proposed by **Owner** as the **County** deems necessary for the protection of the roadway facility and the traveling public using said roadway; provided further, however, that such regulations and rules shall not extend to the requiring of the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

In the event of an emergency, it being evident that immediate action is necessary for protection of the public health and safety and to minimize property damage and loss of investment, either party hereto may at their own responsibility and risk make necessary emergency repairs, notifying the other party hereto of this action as soon as is practical.

Participation in actual costs incurred by the **Owner** for any future adjustment, removal or relocation of utility facilities required by roadway construction shall be in accordance with this Agreement and the laws of the State of Texas. Except as expressly provided herein, (1) the **Owner's** rights of access to the through-traffic roadways and/or ramps shall be subject to the same rules and regulations as apply to the general public, and (2) the **Owner** and the **County**, by execution of this agreement, do not waive or relinquish any right which they may have under the law or Constitution of this State.

This Agreement is executed by **Owner** on the date indicated above, subject to the specific conditions that **Owner** is not relinquishing any of its prior rights which are referred to on Affidavit (Form Hays-U1) – Exhibit B concerning this project and with understanding that, insofar as the **County** is affected, such prior rights are valid at the new location (as shown on Drawing _____ dated _____, which is attached hereto and made part of this Agreement for all purposes) insofar only as such new location is within the limits of the project referred to herein above.

In the event the **Owner** fails to comply with the requirements as set out herein, the **County** may take such action, as it deems appropriate to compel compliance.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

Owner _____
Utility Name

Hays County

By _____
Authorized Signature

By _____
Authorized Signature

Title: _____

Title: _____

Date: _____

Date: _____

Utility Joint Use Agreement 80A

Agreement No. _____

THE STATE OF TEXAS}
COUNTY OF HAYS}

County: Hays

Road Location:

Limits: _____

WHEREAS, Hays County, hereinafter called the **County**, proposes to make certain roadway improvements on that section of the above indicated roadway; and

WHEREAS, _____, hereinafter called the **Owner**, proposes to relocate certain of its facilities on, along or across, and within or over such limits of the roadway right of way as indicated on the plans attached to the Master Utility Agreement executed by **Owner** on the _____ day of ___, 20 ___, or on location sketches attached hereto except as provided below;

NOW, THEREFORE, it is hereby mutually agreed that joint use for both roadway and utility purposes will be made of the area within the right of way limits as such area is defined and to the extent indicated on the aforementioned plans or sketches. Where **Owner** by reason of ownership within the area described above of an easement or fee title has the right to alter, modify or add to facilities presently located within the area described or construct additional facilities therein, such right is hereby retained, provided, however, if existing facilities are to be altered or modified or new facilities constructed within said area the **Owner** agrees to notify the **County** prior thereto, to furnish necessary sketches showing location, type of construction and methods to be used for protection of traffic, and if, in the sole opinion of the **County**, such alteration, modification or new construction will injure the roadway or endanger the traveling public using said roadway, the **County** shall have the right, after receipt of such notice, to prescribe such regulations and rules for the work proposed by **Owner** as the **County** deems necessary for the protection of the roadway facility and the traveling public using said roadway; provided further, however, that such regulations and rules shall not extend to the requiring of the placement of intended overhead lines underground or the routing of any lines outside of the area of joint usage above described.

In the event of an emergency, it being evident that immediate action is necessary for protection of the public health and safety and to minimize property damage and loss of investment, either party hereto may at their own responsibility and risk make necessary emergency repairs, notifying the other party hereto of this action as soon as is practical.

Participation in actual costs incurred by the **Owner** for any future adjustment, removal or relocation of utility facilities required by roadway construction shall be in accordance with this Agreement and the laws of the State of Texas. Except as expressly provided herein, (1) the **Owner's** rights of access to the through-traffic roadways and/or ramps shall be subject to the same rules and regulations as apply to the general public, and (2) the **Owner** and the **County**, by execution of this agreement, do not waive or relinquish any right which they may have under the law or Constitution of this State.

In the event the **Owner** fails to comply with the requirements as set out herein, the **County** may take such action, as it deems appropriate to compel compliance.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

Owner _____
Utility Name

Hays County

By _____
Authorized Signature

By _____
Authorized Signature

Title: _____

Title: _____

Date: _____

Date: _____

MASTER UTILITY ADJUSTMENT AGREEMENT
(Developer Managed)
Agreement No.: _____

THIS AGREEMENT, by and between Hays County, hereinafter identified as the "**County**", and _____, hereinafter identified as the "**Owner**", is as follows:

WITNESSETH

WHEREAS, the County is authorized to design, construct, operate, maintain, and improve roadway projects in conformance with the provisions of *Chapter 251, Texas Transportation Code*, as it may be amended from time to time; and

WHEREAS, The County proposes to (re)construct _____ (ex. *FM 1626 under the Pass Through Finance Program*), hereinafter identified as the "**Project**", and more particularly described by the following limits:

Sta XXX+XX to XXX+XX; and

WHEREAS, the County's duties pursuant to the Project include causing the removal, relocation, or other necessary adjustment of existing utilities, hereinafter identified as "**Adjustment**", impacted by the Project; and

WHEREAS, the County has notified the Owner that certain of its facilities and appurtenances are in locational conflict with the Project, and/or with the "**Ultimate Design**", as hereinafter identified, and has requested that the Owner undertake the Adjustment of the Owner utility structures as necessary to accommodate the Project and the Ultimate Design, and

WHEREAS, the Owner utility structures and the proposed Adjustment of the Owner utility structures are described as follows *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., "adjust 12" waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00")]*: _____; and

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the County and the Owner desire to implement the Adjustment of the Owner utility structures by entering into this Agreement, hereinafter described as "**Agreement**".

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and the Owner agree as follows:

1. Preparation of Plans. [Check one box that applies:]

- ☐ The County has hired engineering firm(s) acceptable to the Owner to perform all engineering services needed for the preparation of plans, required specifications, and cost estimates, attached hereto as Exhibit A (collectively, the "Plans"), for the proposed Adjustment of the Owner Utilities. By its execution of this Agreement or by the signing of the Plans, Owner hereby approves the Plans and confirms that the Plans are in compliance with Owner's "standards" described in Paragraph 3(c).
- ☐ The Owner has provided plans, required specifications and cost estimates, attached hereto as Exhibit A for the proposed Adjustment of the Owner Utilities. By its execution of this Agreement, the County hereby approves the Plans. The Owner also has provided to the County a utility plan view map illustrating the location of existing and proposed utility facilities on the County's right-of-way map of the Project. With regard to its preparation of the Plans, Owner represents as follows [check one box that applies if compensable]:
 - ☐ The Owner's employees were utilized to prepare the Plans, and Owner represents that the charges therefore do not exceed the Owner's typical costs for such work.
 - ☐ The Owner utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner Utilities described herein, and do not include fees for work done on any other project. Owner represents that the fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. Review by County. The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by both the County and the Owner, pursuant to the Project the Owner will submit this Agreement, together with the attached Plans, to County for its review, comment and acceptance as part of a package

referred to as a "Utility Assembly". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to both parties, to respond to any comments made by the County thereon. Without limiting the generality of the foregoing, (i) the Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or Agreement prepared by the County within **fourteen (14) business days** after receipt of such modifications; and (ii) if the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to the County's comments and to submit such modified Plans to the County for its comment and/or acceptance within **fourteen (14) business days** after receipt of the County's comments. The Owner's failure to timely respond to any modified Plans submitted by the County pursuant to this paragraph shall be deemed the Owner's acceptance of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the County shall have the right to modify the Plans for the Owner's approval as if the County had originally prepared the Plans. The process set forth in this paragraph will be repeated until the Owner and the County have approved this Agreement and accepted the Plans.

- (b) The signature of the County's representative on this Agreement confirms the County's determination that the Utility Assembly for the Adjustment of the Owner Utilities meet the requirements of the Project, and any other applicable County requirements; however, the parties hereto acknowledge and agree that the County's review is solely for the purpose of determining compliance with County requirements and other matters of particular concern to the County, and the County has, and by its review and acceptance of such Utility Assembly undertakes no duty to review its components for their quality or for the adequacy of the Adjustment (as designed) for the purposes for which they are intended to be used or for compliance with law or applicable standards (other than County requirements).

3. **Design and Construction Standards.** All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:

- (a) All applicable local, state and federal laws, regulations, decrees, ordinances, policies, and the policies of the County;
- (b) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and
- (c) The standard specifications, standards of practice, and construction methods, hereinafter described as "**Standards**" which the Owner customarily applies to structures comparable to the Owner utility structures constructed by Owner or for Owner by its contractors, which standards are current at the time this Agreement

is signed by the Owner, and which the Owner has submitted to the County in writing.

Such design and construction also shall be consistent and compatible with (i) the County's current design and construction of the Project, (ii) the County's projected design for the Project as it will ultimately be built out in the future (the "Ultimate Design"), and (iii) any other utilities being installed in the same vicinity. The Owner acknowledges receipt from the County of Project plans and Ultimate Design documents as necessary to comply with the foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

4. **Construction by the County.**

- (i) The Owner hereby requests that the County perform the construction necessary to adjust the Owner Utilities and the County hereby agrees to perform such construction. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except for minor deviations from the Plans, e.g. due to field conditions).
- (ii) The County shall retain such contractor or contractors as are necessary to adjust the Owner Utilities through the County's normal procedures.
- (iii) The County shall obtain all permits necessary for the construction to be performed by the County hereunder, and the Owner shall cooperate in that process as needed.

5. **Owner Responsible for Costs of Work.** All work to be performed pursuant to this Agreement shall be at the sole cost and expense of the Owner including without limitation costs of relinquishing and/or acquiring right-of-way.

6. **Costs of the Work.** The costs for Adjustment of the Owner Utilities shall be derived from (i) the accumulated total of costs incurred by the County for design and construction of such Adjustment. The Owner is responsible for all indirect costs including design, review and administration.

7. **Betterment and Salvage.**

- (a) For purposes of this Agreement, the term "Betterment" means any upgrading of an Owner Utility being Adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Owner, including but not limited to an increase in the capacity of existing facilities or an expansion of the existing facilities; provided, however, that the following are not considered Betterments:
 - (i) any upgrading which is required by the Project;

- (ii) replacement devices or materials that are of equivalent standards although not identical;
- (iii) replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- (iv) any upgrading required by applicable laws, regulations or ordinances;
- (v) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); or
- (vi) any upgrading required by the Owner's written "standards" meeting the requirements of Paragraph 3(c).

[Include the following for fiber optic Owner Utilities only:] Extension of an Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Owner in order to maintain its written telephony standards.

Any upgrading required by the Owner's written "standards" meeting the requirements of Paragraph 3(c) shall be deemed to be of direct benefit to the Project.

- (b) The Adjustment of the Owner Utilities pursuant to the Plans includes Betterment to the Owner Utilities by reason of [insert explanation, e.g. "replacing 12" pipe with 24" pipe]: _____. The County has provided to the Owner comparative estimates for (i) all work to be performed by the County pursuant to this Agreement, including work attributable to the Betterment, and (ii) the cost to perform such work without the Betterment, which estimates are hereby approved by the Owner. The estimated cost of the County's work hereunder which is attributable to Betterment is \$_____, calculated by subtracting (ii) from (i). The percentage of the total cost of the County's work hereunder which is attributable to Betterment is _____%, calculated by subtracting (ii) from (i), which remainder is divided by (i).
- (c) If Paragraph 7(b) identifies Betterment, the Owner shall advance to the County, at least fourteen (14) business days prior to the date scheduled for commencement of construction for Adjustment of the Owner Utilities, the estimated cost attributable to Betterment as set forth in Paragraph 7(b). [If Paragraph 7(b) identifies Betterment, check the one appropriate provision]:
 - ☐ The estimated cost stated in Paragraph 7(b) is the agreed and final amount due for Betterment hereunder, and accordingly no adjustment (either up or down) of such amount shall be made based on actual costs.

- ☐ The Owner is responsible for the County's actual cost for the identified Betterment. Accordingly, upon completion of all Adjustment work to be performed by both parties pursuant to this Agreement, (i) the Owner shall pay to the County the amount, if any, by which the actual cost of the Betterment (determined as provided below in this paragraph) exceeds the estimated cost advanced by the Owner, or (ii) the County shall refund to the Owner the amount, if any, by which such advance exceeds such actual cost, as applicable. Any additional payment by the Owner shall be due within sixty (60) calendar days after Owner's receipt of the County's invoice therefore, together with supporting documentation; any refund shall be due within sixty (60) calendar days after completion of the Adjustment work hereunder. The actual cost of Betterment incurred by the County shall be calculated by multiplying (i) the Betterment percentage stated in Paragraph 7(b), by (ii) the actual cost of all work performed by the County pursuant to this Agreement (including work attributable to the Betterment), as invoiced by the County to the Owner.
- (d) If Paragraph 7(b) identifies Betterment, the parties shall mutually determine the appropriate portion, if any, of the Owner's indirect costs (including without limitation any costs reimbursable pursuant to Paragraph 13) which were increased by such Betterment. Neither party shall unreasonably withhold or delay its approval of a proposal in this regard made by the other party. Owner's invoice to the County for its indirect costs shall credit the County with any Betterment amount determined by the parties pursuant to this Paragraph 7(d).
8. **Project Management.** The County will provide project management during the Adjustment of the Owner Utilities.
9. **Utility Investigations.** At the County's request, the Owner shall assist the County in locating any Utilities (including appurtenances) which are owned and/or operated by Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the Adjusted Owner Utilities nor existing, unadjusted utilities owned or operated by the Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such utilities horizontally on the ground in advance of Project construction in the immediate area of such utilities.
10. **Inspection and Acceptance by the Owner.**
- (a) Throughout the Adjustment construction hereunder, the Owner shall provide adequate inspectors for such construction. The work shall be inspected by the Owner's inspector(s) at least once each working day, and more often if such inspections are necessary for prudent installation. Further, upon request by the County or its contractors, the Owner shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual forty (40) hour

work week and at such other times as reasonably required. The Owner agrees to promptly notify the County of any concerns resulting from any such inspection.

- (b) The Owner shall perform a final inspection of the Adjusted Owner Utilities, including conducting any tests as are necessary or appropriate, within five (5) business days after completion of construction hereunder. The Owner shall accept such construction if it is consistent with the performance standards described in Paragraph 3, by giving written notice of such acceptance to the County within said five (5) day period. If the Owner does not accept the construction, then the Owner shall, not later than the expiration of said five (5) day period, notify the County in writing of its grounds for non-acceptance and suggestions for correcting the problem, and if the suggested corrections are justified, the County will comply. The Owner shall re-inspect any revised construction (and re-test if appropriate) and give notice of acceptance, not later than five (5) business days after completion of corrective work. The Owner's failure to inspect and/or to give any required notice of acceptance or non-acceptance within the specified time period shall be deemed acceptance.
 - (c) From and after the Owner's acceptance (or deemed acceptance) of an Adjusted Owner Utility, the Owner agrees to accept ownership of, and full operation and maintenance responsibility for, such Owner Utility.
- 11. **Design Changes.** The County will be responsible for additional Adjustment design and/or construction costs necessitated by design changes to the Project, upon the terms specified herein.
- 12. **Field Modifications.** The County shall provide the Owner with documentation of any field modifications occurring in the Adjustment of the Owner Utilities.
- 13. **Real Property Interests.**
 - (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the County, documentation acceptable to the County indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to the County's approval as part of its review of the Utility Assembly as described in Paragraph 2. Claims approved by the County as to rights or interests are referred to herein as "Existing Interests".
 - (b) If acquisition of any new easement or other interest in real property ("New Interest") is necessary for the Adjustment of any Owner Utilities, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the County's Project schedules. The County shall be responsible for the actual and reasonable acquisition costs of any such New

Interest (including without limitation the Owner's reasonable overhead charges and legal costs as well as compensation paid to the landowner), excluding any costs attributable to Betterment as described in Paragraph 7, and subject to the provisions of this Paragraph 13; provided, however, that all acquisition costs shall be subject to the County's prior written approval. Eligible acquisition costs shall be invoiced by the Owner and paid by the County pursuant to this Agreement, as a segregated component of the Owner's indirect costs described in Paragraph 6. Any such New Interest shall have a written valuation and acquired in accordance with applicable law.

- (c) For each Existing Interest located within the final Project right-of-way, upon completion of the related Adjustment work and its acceptance by the Owner, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Interest to the County, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Interest.
- (d) The Owner shall execute a Utility Joint Use Agreement (Hays-U-80A) for each Adjusted Owner Utility where required.

14. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with either Paragraph 14(a) or Paragraph 14(b), below. Any difference between actual costs and estimated costs of Adjustment work not resulting from a change in the scope of such work is not considered an amendment or modification for purposes of this Paragraph 14.

- (a) Except as otherwise provided in Section 14(b), any amendment or modification to this Agreement shall be implemented by a Utility Adjustment Agreement Amendment (UAAA) in the form of Hays-U-35A-DM. The UAAA form can be used for a new scope of work with concurrence of the County and the Owner as long as the Design and Construction responsibilities have not changed. The Owner agrees to keep and track costs separate from other work being performed.
- (b) Any change in the agreed scope of the work hereunder (other than the addition or deletion of Betterment) which will increase or decrease the estimated cost of the County's work by less than fifty thousand dollars (\$50,000.00) shall not require a Utility Adjustment Agreement Amendment, provided that the change is adequately described in informal documentation which is signed by authorized representatives of the County and the Owner to indicate their respective approval thereof.
- (c) Each Utility Adjustment Agreement Amendment and each informal modification is subject to the review and approval of the County, prior to its becoming effective for any purpose and prior to any work being initiated thereunder.

15. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the County be considered as or represent itself to be an agent of the other.
16. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
17. **Assignment; Binding Effect.** Neither the Owner nor the County may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided, however, that the County may assign any of its rights and/or delegate any of its duties to any other entity engaged by the County to fulfill the County's obligations under the Project, at any time without the prior consent of the Owner. This Agreement shall bind the Owner, the County, and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general.
18. **Breach by the County.** If the Owner claims that the County has breached any of its obligations under this Agreement, the Owner will notify the County in writing of such breach, and the County shall have 30 days following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach. Without limiting the generality of the foregoing, in no event shall the County be responsible for any repairs or maintenance to the Owner Utilities Adjusted pursuant to this Agreement.
19. **Traffic Control.** The County shall provide traffic control or reimburse the Owner for traffic control made necessary by the Adjustment work performed by the County pursuant to this Agreement, in compliance with the requirements of the Texas Manual on Uniform Traffic Control Devices.
20. **Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

The Owner:

Attn:
Address:
Phone:
Fax:
Email:

The County: Hays County
 Attn: Utility Coordinator
 2171 Yarrington Road
 San Marcos, TX 78666
 P.O. Box #906
 San Marcos, TX 78667
 Phone: 512-393-7385
 Fax: 512-393-7393
 Email:

Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, d) by reliable messenger or overnight courier to the appropriate address set forth above or (e) by e-mail. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party.

21. **Approvals.** Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by either the County or the Owner pursuant to this Agreement:

- (a) Must be in writing to be effective (except if deemed granted pursuant hereto),
- (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval, and
- (c) Except for approvals by the County, and except as may be specifically provided otherwise in this Agreement, shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then fourteen (14) calendar days), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 20.

22. **Time.**

- (a) Time is of the essence in the performance of this Agreement.

- (b) All references to “days” herein shall be construed to refer to calendar days, unless otherwise stated.
 - (c) Neither the Owner nor the County shall be liable to the other for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence (“Force Majeure”), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts.
23. **Continuing Performance.** In the event of a dispute, the Owner and the County agree to continue their respective performance hereunder to the extent feasible in light of the dispute, including paying billings, and such continuation of efforts and payment of billings shall not be construed as a waiver of any legal right.
24. **Equitable Relief.** The County and the Owner acknowledge and agree that delays in Adjustment of the Owner Utilities will impact the public convenience, safety and welfare, and that (without limiting the parties’ remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; provided, however, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.
25. **Authority.** The Owner and the County each represents and warrants to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.
26. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner and the County to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the County agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the County’s current and future construction schedules for the Project.
27. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the County shall notify the Owner in writing and the County reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide

mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.

28. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement, that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
29. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contest of their respective paragraphs.
30. **Venue and Governing Law.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Hays County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
31. **No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
32. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.
33. **Effective Date.** Except for the provisions of Paragraph 2(a) (which shall become effective immediately upon execution of this Agreement by both the Owner and the County), this Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the County) signing this Agreement, and (b) the completion of the County's review as indicated by the signature below.

HAYS COUNTY

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

OWNER

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

MASTER UTILITY ADJUSTMENT AGREEMENT
(Utility Owner Managed)
Agreement No.: _____

THIS AGREEMENT, by and between Hays County, hereinafter identified as the "**County**", and _____, hereinafter identified as the "**Owner**", is as follows:

WITNESSETH

WHEREAS, the County is authorized to design, construct, operate, maintain, and improve roadway projects in conformance with the provisions of *Chapter 251, Texas Transportation Code*, as it may be amended from time to time; and

WHEREAS, The County proposes to (re)construct _____ (ex. FM 1626 under the Pass Through Finance Program), hereinafter identified as the "**Project**", and more particularly described by the following limits:

Sta XXX+XX to XXX+XX; and

WHEREAS, the County's duties pursuant to the Project include causing the removal, relocation, or other necessary adjustment of existing utilities, hereinafter identified as "**Adjustment**", impacted by the Project; and

WHEREAS, the County has notified the Owner that certain of its facilities and appurtenances are in locational conflict with the Project, and/or with the "**Ultimate Design**", as hereinafter identified, and has requested that the Owner undertake the Adjustment of the Owner utility structures as necessary to accommodate the Project and the Ultimate Design, and

WHEREAS, the Owner utility structures and the proposed Adjustment of the Owner utility structures are described as follows *[insert below a description of the affected facilities (by type, size and location) as well as a brief description of the nature of the Adjustment work to be performed (e.g., "adjust 12" waterline from approximately Highway Station 100+00 to approximately Highway Station 200+00")]*: _____; and

WHEREAS, the Owner recognizes that time is of the essence in completing the work contemplated herein; and

WHEREAS, the County and the Owner desire to implement the Adjustment of the Owner utility structures by entering into this Agreement, hereinafter described as "**Agreement**".

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and the Owner agree as follows:

1. **Preparation of Plans.** [Check one box that applies:]

- ☐ The Owner has provided plans, required specifications and cost estimates, attached hereto as Exhibit A, for the proposed Adjustment. The Owner represents and warrants that the Plans conform to the Ultimate Design provided to Owner by the County and prepared pursuant to the Project. By its execution of this Agreement, the County hereby approves the Plans and attests they conform to the Ultimate Design. The Owner also has provided to the County a utility plan view map illustrating the location of existing and proposed utility facilities on the County's right-of-way map and/ schematic of the Project. With regard to its preparation of the Plans, Owner represents as follows *[check one box that applies if compensable]*:
 - ☐ The Owner's or County's employees were utilized to prepare the Plans, and Owner represents that the charges therefore do not exceed the Owner's typical costs for such work.
 - ☐ The Owner or County utilized consulting engineers to prepare the Plans, and the fees for such work are not based upon a percentage of construction costs. Further, such fees encompass only the work necessary to prepare the Plans for Adjustment of the Owner utility structures described hereinabove, and do not include fees for work done on any other project. Owner represents that the fees of the consulting engineers are reasonable and are comparable to the fees typically charged by consulting engineers in the locale of the Project for comparable work for the Owner.

2. **Review by County.** The parties hereto acknowledge and agree as follows:

- (a) Upon execution of this Agreement by both the County and the Owner, pursuant to the Project the Owner will submit this Agreement, together with the attached Plans, to the County for its review, comment and acceptance as part of a package, hereinafter identified as "**Utility Assembly**". The parties agree to cooperate in good faith to modify this Agreement and/or the Plans, as necessary and mutually acceptable to both parties, to respond to any comments made by the County thereon. Without limiting the generality of the foregoing, (i) the Owner agrees to respond (with comment and/or acceptance) to any modified Plans and/or

Agreement prepared by the County within **fourteen (14) business days** after receipt of such modifications; and (ii) if the Owner originally prepared the Plans, the Owner agrees to modify the Plans in response to the County's comments and to submit such modified Plans to the County for its comment and/or acceptance within **fourteen (14) business days** after receipt of the County's comments. The Owner's failure to timely respond to any modified Plans submitted by the County pursuant to this paragraph shall be deemed the Owner's acceptance of same. If the Owner fails to timely prepare modified Plans which are its responsibility hereunder, then the County shall have the right to modify the Plans for the Owner's approval as if the County had originally prepared the Plans. The process set forth in this paragraph will be repeated until the Owner and the County have all approved this Agreement and accepted the Plans.

- (b) The signature of the County's representative on this Agreement confirms the County's determination that the Utility Assembly meets the requirements of the Project, the County, and any other applicable County requirements; however, the parties hereto acknowledge and agree that the County's review is solely for the purpose of determining compliance with County requirements and other matters of particular concern to the County, and the County has, and by its review and acceptance of such Assembly and Plans, undertaken no duty to review its components for their quality or for the adequacy of the Adjustment for the purposes for which they are intended to be used or for compliance with law or applicable standards (other than County requirements).

3. **Design and Construction Standards.** All design and construction performed for the Adjustment work which is the subject of this Agreement shall comply with and conform to the following:

- (a) All applicable local, state and federal laws, regulations, decrees, ordinances, policies, and the policies of the County;
- (b) The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work; and
- (c) The standard specifications, standards of practice, and construction methods, hereinafter described as "**Standards**" which the Owner customarily applies to structures comparable to the Owner utility structures constructed by Owner or for Owner by its contractors, which standards are current at the time this Agreement is signed by the Owner, and which the Owner has submitted to the County in writing.

Such design and construction also shall be consistent and compatible with (i) the County's Ultimate Design and construction of the Project, (ii) the County's projected design for the Project as it will ultimately be built out in the future, and (iii) any other utilities being installed in the same vicinity. The Owner acknowledges receipt from the County of Project plans and Ultimate Design documents as necessary to comply with the

foregoing. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

4. **Construction by the Owner; Scheduling.**

- (a) The Owner hereby agrees to perform the construction necessary to make the Adjustments. All construction work hereunder shall be performed in a good and workmanlike manner, and in accordance with the Plans (except for minor deviations from the Plans, e.g. due to field conditions). The Owner agrees that during the Adjustments, Owner and its contractors will coordinate their work with the County so as not to interfere with the performance of work on the Project by the County or by any other party. "Interfere" means any action or inaction that interrupts, interferes, delays or damages Project work.
- (b) The Owner shall obtain all permits necessary for the construction to be performed by the Owner hereunder, and the County shall cooperate in that process as needed.
- (c) The Owner shall commence its construction for the Adjustments promptly after (i) receiving written notice to proceed therewith from the County, and (ii) any right-of-way necessary for such Adjustment has been acquired either by the County (for Adjustments to be located within the Project right-of-way) or by the Owner (for Adjustments to be located outside of the Project right-of-way), or a right-of-entry permitting Owner's construction has been obtained from the landowner by the County or by the Owner with the County's prior approval. The Owner shall notify the County at least 72 hours prior to commencing construction for the Adjustments.
- (d) The Owner shall expeditiously stake the survey of the proposed locations of the Owner Utilities being adjusted, on the basis of the ultimate design. The County shall verify that the Owner utility structures, whether moving to a new location or remaining in place, clear the Ultimate Design of the Project as staked in the field.
- (e) The Owner shall complete all of the Utility Adjustments, including final testing and acceptance thereof (check one box that applies):

☐ on or before _____, 20__.

☐ a duration not to exceed _____ calendar days upon notice to proceed by the County.

5. **Owner Responsible for Costs of Work.** All work to be performed pursuant to this Agreement shall be at the sole cost and expense of the Owner (including without limitation costs of relinquishing and/or acquiring right-of-way).

6. **Utility Investigations.** At the County's request, the Owner shall assist the County in locating any Utilities (including appurtenances) which are owned and/or operated by Owner and may be impacted by the Project. Without limiting the generality of the foregoing, in order to help assure that neither the Adjustments nor existing, unadjusted utilities owned or operated by the Owner are damaged during construction of the Project, the Owner shall mark in the field the location of all such utilities horizontally on the ground in advance of Project construction in the immediate area of such utilities.
7. **Inspection and Ownership of Owner Utilities.**
 - (a) The County shall have the right, at its own expense, to inspect the Adjustment work performed by the Owner or its contractors, during and upon completion of construction. All inspections of work shall be completed and any comment provided within five (5) business days after request for inspection is received.
 - (b) The Owner shall accept full responsibility for all future repairs and maintenance of said Adjustments. In no event shall the County become responsible for making any repairs or maintenance, or for discharging the cost of same. The provisions of this Paragraph 7(b) shall not limit any rights which the Owner may have against the County if the County damages any Owner Utility as a result of its Project activities.
8. **Design Changes.** The County will be responsible for additional Adjustment design and/or construction costs necessitated by design changes to the Project, upon the terms specified herein.
9. **Field Modifications.** The Owner shall provide the County with documentation of any field modifications occurring in the Adjustment of the Owner Utilities.
10. **Real Property Interests.**
 - (a) The Owner has provided, or upon execution of this Agreement shall promptly provide to the County, documentation acceptable to the County indicating any right, title or interest in real property claimed by the Owner with respect to the Owner Utilities in their existing location(s). Such claims are subject to the County's approval as part of its review of the Utility Assembly as described in Paragraph 2. Claims approved by the County as to rights or interests are referred to herein described as "**Existing Interests**".
 - (b) If acquisition of any new easement or other interest in real property, hereinafter described as "**New Interest**" is necessary for the Adjustment, then the Owner shall be responsible for undertaking such acquisition. The Owner shall implement each acquisition hereunder expeditiously so that related Adjustment construction can proceed in accordance with the County's Project schedules. The Owner shall be responsible for the actual and reasonable acquisition costs of any such New Interest (including without limitation the Owner's reasonable overhead charges

and legal costs as well as compensation paid to the landowner). Any such New Interest shall have a written valuation and acquired in accordance with applicable law. For each Existing Interest located within the final Project right-of-way, upon completion of the related Adjustment and its acceptance by the Owner and County, the Owner agrees to execute a quitclaim deed or other appropriate documentation relinquishing such Existing Interest to the County, unless the affected Owner Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Interest.

- (c) The Owner shall execute a Utility Joint Use Agreement (Hays-U-80A) for each Adjusted Owner Utility where required pursuant to County policies.
11. **Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto, in accordance with Paragraph 13. Each amendment and informal modification is subject to the review and approval of the County prior to its becoming effective for any purpose and prior to any work being initiated thereunder.
12. **Relationship of the Parties.** This Agreement does not in any way, and shall not be construed to, create a principal/agent or joint venture relationship between the parties hereto and under no circumstances shall the Owner or the County be considered as or represent itself to be an agent of the other.
13. **Entire Agreement.** This Agreement embodies the entire agreement between the parties and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.
14. **Assignment: Binding Effect.** Neither the Owner nor the County may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed; provided, however, that the County may assign any of its rights and/or delegate any of its duties to any other entity engaged by the County to fulfill the County's obligations under the Project, at any time without the prior consent of the Owner. This Agreement shall bind the Owner, the County, and their successors and permitted assigns, and nothing in this Agreement nor in any approval subsequently provided by either party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, any contractor or other party retained for the Adjustment work or the public in general.
15. **Breach by the County.** If the Owner claims that the County has breached any of its obligations under this Agreement, the Owner will notify the County in writing of such breach, and the County shall have 30 days following receipt of such notice in which to cure such breach, before the Owner may invoke any remedies which may be available to it as a result of such breach. Without limiting the generality of the foregoing, in no event shall the County be responsible for any repairs or maintenance to the Owner Utilities Adjusted pursuant to this Agreement.

16. **Traffic Control.** The Owner shall provide traffic control made necessary by the Adjustment work performed by the Owner pursuant to this Agreement, in compliance with the requirements of the Texas Manual on Uniform Traffic Control Devices.
17. **Notices.** Except as otherwise expressly provided in this Agreement, all notices or communications pursuant to this Agreement shall be sent or delivered to the following:

The Owner:

Attn:
Address:
Phone:
Fax:
Email:

The County:

Hays County
Attn: Utility Coordinator
2171 Yarrington Road
San Marcos, TX 78666
P.O. Box #906
San Marcos, TX 78667
Phone: 512-393-7385
Fax: 512-393-7393
Email:

Any notice or demand required herein shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, d) by reliable messenger or overnight courier to the appropriate address set forth above or (e) by e-mail. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Either party may from time to time designate any other address for this purpose by written notice to the other party.

18. **Approvals.** Any acceptance, approval, or any other like action, hereinafter described as "**Approval**" required or permitted to be given by either the County or the Owner pursuant to this Agreement:
- (a) Must be in writing to be effective (except if deemed granted pursuant hereto),
 - (b) Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for

withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval, and

- (c) Except for Approvals by the County, and except as may be specifically provided otherwise in this Agreement, shall be deemed granted if no response is provided to the party requesting an Approval within the time period prescribed by this Agreement (or if no time period is prescribed, then fourteen (14) calendar days), commencing upon actual receipt by the party from which an Approval is requested or required, of a request for Approval from the requesting party. All requests for Approval shall be sent out by the requesting party to the other party in accordance with Paragraph 17.

19. **Time.**

- (a) Time is of the essence in the performance of this Agreement.
- (b) All references to "days" herein shall be construed to refer to calendar days, unless otherwise stated.
- (c) Neither the Owner nor the County shall be liable to the other for any delay in performance under this Agreement from any cause beyond its control and without its fault or negligence ("Force Majeure"), such as acts of God, acts of civil or military authority, fire, earthquake, strike, unusually severe weather, floods or power blackouts. If any such event of Force Majeure occurs, the Owner agrees, if requested by the County, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as the County agrees to reimburse the Owner for such the reasonable and actual costs of such efforts.

20. **Continuing Performance.** In the event of a dispute, the Owner and the County agree to continue their respective performance hereunder to the extent feasible in light of the dispute.

21. **Equitable Relief.** The County and the Owner acknowledge and agree that delays in Adjustment of the Owner utility structures will impact the public convenience, safety and welfare, and that (without limiting the parties' remedies hereunder) monetary damages would be inadequate to compensate for delays in the construction of the Project. Consequently, the parties hereto shall be entitled to specific performance or other equitable relief in the event of any breach of this Agreement which threatens to delay construction of the Project; provided, however, that the fact that specific performance or other equitable relief may be granted shall not prejudice any claims for payment or otherwise related to performance of the Adjustment work hereunder.

22. **Authority to Enter Into Agreement.** The Owner and the County each represents and warrants to the other party that the warranting party possesses the legal authority to enter into this Agreement and that it has taken all actions necessary to exercise that authority and to lawfully authorize its undersigned signatory to execute this Agreement and to bind

such party to its terms. Each person executing this Agreement on behalf of a party warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and to bind it to the terms hereof.

23. **Cooperation.** The parties acknowledge that the timely completion of the Project will be influenced by the ability of the Owner (and its contractors) and the County to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. Subject to the terms and conditions of this Agreement, the Owner and the County agree to take all steps reasonably required to coordinate their respective duties hereunder in a manner consistent with the County's current and future construction schedules for the Project. The Owner further agrees to require its contractors to coordinate their respective work hereunder with the County.
24. **Termination.** If the Project is canceled or modified so as to eliminate the necessity of the Adjustment work described herein, then the County shall notify the Owner in writing and the County reserves the right to thereupon terminate this Agreement. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination.
25. **Nondiscrimination.** Each party hereto agrees, with respect to the work performed by such party pursuant to this Agreement, that such party shall not discriminate on the grounds of race, color, sex, national origin or disability in the selection and/or retention of contractors and consultants, including procurement of materials and leases of equipment.
26. **Captions.** The captions and headings of the various paragraphs of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contest of their respective paragraphs.
27. **Venue and Governing Law.** Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Hays County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
28. **No Waiver of Immunities.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

29. **Indemnification of County.** OWNER SHALL INDEMNIFY, DEFEND, PROTECT, AND SAVE HARMLESS COUNTY, ITS OFFICIALS AND EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LIABILITY, LOSS, DAMAGE, REASONABLE ATTORNEY'S FEES, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO EXPENSES RELATED TO EXPERT WITNESSES) OF ANY KIND WHATSOEVER, TO THE EXTENT ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF OWNER OR ANY OF ITS EMPLOYEES AND ITS AGENTS AND AGENTS' EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.
30. **Counterparts.** This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute one and the same instrument.
31. **Effective Date.** Except for the provisions of Paragraph 2(a) (which shall become effective immediately upon execution of this Agreement by both the Owner and the County), this Agreement shall become effective upon the later of (a) the date of signing by the last party (either the Owner or the County) signing this Agreement, and (b) the completion of the County's review as indicated by the signature of the County's representative, below.

HAYS COUNTY

By: _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

OWNER

By _____
Authorized Signature

Printed
Name: _____

Title: _____

Date: _____

County:
R.O.W. CSJ No.:
Roadway:
Limits:
Fed. Proj. No.:
ROW Acct. No.:

Quitclaim Deed

THE STATE OF TEXAS

}

}

COUNTY OF

}

KNOW ALL MEN BY THESE PRESENTS:

That, _____ of the County of _____, State of Texas, hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of _____ Dollars (\$_____) and other good and valuable consideration to Grantors in hand paid by Hays County, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, have Quitclaimed and do by these presents Bargain, Sell, Release and forever Quitclaim unto the Grantee all of Grantors' right, title, interest, claim and demand in and to that certain tract or parcel of land in the County of _____, State of Texas, more particularly described in Exhibit A, attached hereto and incorporated herein for any and all purposes.

TO HAVE AND TO HOLD for said purposes together with all and singular the rights, privileges, and appurtenances thereto in any manner belonging unto the Grantee, it successor and assigns forever.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, 20__.

Grantor

Grantee

Authorized Signature

Authorized Signature

Date

Date

ACKNOWLEDGMENT

THE STATE OF TEXAS, }
 }
COUNTY OF _____}

This instrument was acknowledged before me on _____, 20____, by _____

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS, }
 }
COUNTY OF _____}

This instrument was acknowledged before me on _____, 20____, by _____

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS, }
 }
COUNTY OF _____}

This instrument was acknowledged before me on _____, 20____, by _____

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS, }
 }
COUNTY OF _____}

This instrument was acknowledged before me on _____, 20____, by _____

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS, }
 }
COUNTY OF _____}

This instrument was acknowledged before me on _____, 20____, by _____

Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF TEXAS, }
 }
COUNTY OF _____}

This instrument was acknowledged before me on _____, 20____, by _____

Notary Public, State of Texas

After recording please return this instrument to:

GRANTEE'S ADDRESS: Hays County Engineering Department
P.O. Box #906
San Marcos, Texas 78667

Parcel No. _____	
County _____	Highway Control _____ Sec. _____ Job _____
Account or Federal No. _____	
From _____	To: _____

QUITCLAIM DEED	
Grantors _____	
TO _____	
THE STATE OF TEXAS AUSTIN, TEXAS	
Filed for Record	
This _____ day of _____, A.D. 20____, at _____ o'clock.	
Recorded	
This _____ day of _____, A.D. 20____, at _____ o'clock.	
Book _____	Page _____
Other _____	
By: _____ County Clerk Deputy _____	

CERTIFICATE OF RECORDING

THE STATE OF TEXAS

COUNTY OF _____

}
}
}

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 Legal Counsel to obtain an appraisal on the property Hays County will receive under the MOU between Hays County and Cedar Valley Investments, LLC for the realignment of Oak Branch Drive.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: Not to exceed \$4500.

LINE ITEM NUMBER OF FUNDS REQUIRED: 03-460-5386

REQUESTED BY:

SPONSORED BY: FORD

SUMMARY: Work is currently being performed on what will be the realigned portion of Oak Branch Drive, near Highway 290 in Precinct 4. Upon completion of work, the parties to the above-cited MOU will convey properties to one another. Hays County will receive the property upon which the realigned portion of Oak Branch Drive is located. Since this exchange of property essentially amounts to a donation of Right of Way by Cedar Valley Investments, Hays County should obtain an appraisal on this property in advance of conveyance.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize Legal Counsel to obtain an appraisal on the property Hays County will receive under the MOU between Hays County and Cedar Valley Investments, LLC for the realignment of Oak Branch Drive.

Work is currently being performed on what will be the realigned portion of Oak Branch Drive, near Highway 290 in Precinct 4. Upon completion of work, the parties to the above-cited MOU will convey properties to one another. Hays County will receive the property upon which the realigned portion of Oak Branch Drive is located. Since this exchange of property essentially amounts to a donation of Right of Way by Cedar Valley Investments, Hays County should obtain an appraisal on this property in advance of conveyance.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$4500. 03-460-5386

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ N/A ____

PAYMENT TERMS ACCEPTABLE: ____ Yes ____

COMMENTS:

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

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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 professional services agreement, for the performance of, per the recommendations of the Insurance Committee.

insurance-related consulting.

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

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

PREFERRED MEETING DATE REQUESTED: Tuesday, August 18, 2009

AMOUNT REQUIRED: \$8000

LINE ITEM NUMBER OF FUNDS REQUIRED: 01-421-5448

REQUESTED BY: Baen

SPONSORED BY: Ingalsbe

SUMMARY: The specific duties of this temporary service include assisting with the evaluation of the insurance RFP responses, comparisons of benefit structures, analysis of per member, specific and aggregate rates and benefit structure, working with the committee to conduct scoring from responses, carrier interviews and final analysis .

Human Resources has a Contract Services line item (421-5448) that currently has a balance of approximately \$10000.

Between the time this item is posted and Tuesday, May 18, the Insurance Committee will make a recommendation that will be delivered to the Court in advance of this item being heard. Additionally our standard professional services contract will be attached at that time.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the county Judge to execute a professional services agreement, for the performance of per the recommendations of the Insurance Committee.

The specific duties of this temporary service include assisting with the evaluation of the insurance RFP responses, comparisons of benefit structures, analysis of per member, specific and aggregate rates and benefit structure, working with the committee to conduct scoring from responses, carrier interviews and final analysis .

Human Resources has a Contract Services line item (421-5448) that currently has a balance of approximately \$10000.

Between the time this item is posted and Tuesday, May 18, the Insurance Committee will make a recommendation that will be delivered to the Court in advance of this item being heard. Additionally our standard professional services contract will be attached at that time.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$8000 01-421-5448

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ Yes ____

PAYMENT TERMS ACCEPTABLE: ____ Yes ____

COMMENTS:

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 approve the Contractual Agreement for Right-of-Way Procurement – Local Government for RM 12 from RM 32 to proposed FM 3407 and adopt the resolution.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: See attached

111 E. San Antonio Street
San Marcos, Texas 78666



RESOLUTION

WHEREAS, an Agreement with the Texas Department of Transportation for Hays County RM 12 from FM 32 from proposed FM 3407 would benefit the citizens of Hays County. The project consists of widening RM 12 from FM 32 to proposed FM 3407.

NOW, THREFORE, BE IT RESOLVED that the Hays County Commissioners Court does hereby enter into this Agreement with the Texas Department of Transportation

PASSED AND ADOPTED this the 18th day of August, 2009.

Elizabeth "Liz" Sumter
County Judge

Debbie Gonzales Ingalsbe
Commissioner Precinct 1

Jefferson W. Barton
Commissioner Precinct 2

Will Conley
Commissioner Precinct 3

Karen Ford
Commissioner Precinct 4

ATTEST:

Linda Fritsche, County Clerk



Form ROW-RM-37

Replaces Form ROW-RM-37 and ROW-RM-38

(Rev. 4/2006)

GSD-EPC

Page 1 of 5

CONTRACTUAL AGREEMENT FOR RIGHT OF WAY PROCUREMENT - LOCAL GOVERNMENT

County: Hays
District: Austin

Federal Project No:
Highway: RM 12

ROW CSJ No:

This Agreement by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the **State**, and Hays County, Texas, acting by and through its duly authorized official pursuant to an Ordinance or Order dated the _____ day of _____, hereinafter called the **Local Government**, *shall be effective on the date of approval and execution by and on behalf of the State.*

WHEREAS, the **State** has deemed it necessary to make certain highway improvements on Highway No. RM 12 from FM 32 to proposed FM 3407, and which section of highway improvements will necessitate the acquisition of certain right of way; and

WHEREAS, it is agreed such right of way purchase shall be a joint effort of the **State** and the **Local Government**;

NOW, THEREFORE be it agreed that acquisition of such right of way shall be in accordance with the terms of this agreement and in accordance with the Texas Department of Transportation Right of Way Manual and all applicable Federal and State laws governing the acquisition policies for acquiring real property. The **State** hereby authorizes and requests the **Local Government** to proceed with acquisition and the **State** agrees to reimburse the **Local Government** for its share of the cost of such right of way, providing such acquisition and reimbursement are accomplished according to the provisions outlined herein and agreed to by both parties hereto.

Location Surveys and Preparation of Right of Way Data: The **State**, without cost to the **Local Government**, will do the necessary preliminary engineering and title investigation in order to supply to the **Local Government** the data and instruments necessary to obtain acceptable title to the desired right of way.

Determination of Right of Way Values: The **Local Government** agrees to make a determination of property values for each right of way parcel by methods acceptable to the **State** and to submit to the **State's** District Office a tabulation of the values so determined, signed by the appropriate **Local Government** representative. Such tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land taken, itemization of improvements taken, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in arriving at all determined values. Such work will be performed by the **Local Government** at its expense without cost participation by the **State**. The **State** will review the data submitted and may base its reimbursement on the values which are determined by this review. The **State**, however, reserves the right to perform at its own expense any additional investigation deemed necessary, including supplemental appraisal work by **State** employees or by employment of fee appraisers, all as may be necessary for determination of values to constitute the basis for **State** reimbursement. If at any stage of the project development it is determined by mutual agreement between the **State** and **Local Government** that there should be waived the requirement that the **Local Government** submit to the **State** property value determinations for any part of the required right of way, the **Local Government** will make appropriate written notice to the **State** of such waiver, such notice to be acknowledged in writing by the **State**. In instances of such waiver, the **State** by its due processes and at its own expense will make a determination of values to constitute the basis for **State** reimbursement.

Negotiations: The **State** will notify the **Local Government** as soon as possible as to the **State's** determination of value. Negotiation and settlement with the property owner will be the responsibility of the **Local Government** without participation by the **State**; however, the **Local Government** will notify the **State** immediately prior to closing the transaction so that a current title investigation may be made to determine if there has been any change in the title. The **Local Government** will deliver properly executed instruments of conveyance which, together with any curative instruments found to be necessary as a result of the **State's** title investigation, will properly vest good and indefeasible title in the **State** for each right of way parcel involved. The **Local Government** will also deliver to the **State** an owner's policy of title insurance for each

parcel, except as otherwise specifically approved by the **State**. Upon payment to the property owner of the agreed purchase price, the **Local Government** is authorized and directed to secure for the **State** possession of each parcel in accordance with all applicable Federal and **State** laws governing relocation assistance, notices to vacate and forcible detainer. The costs incidental to negotiation, recording the right of way instruments, and securing possession of the parcels will be the responsibility of the **Local Government**. The cost of title insurance, closing services and all costs of relocation assistance as authorized by applicable Federal and **State** laws will be the responsibility of the **State**.

Administrative Settlements: After the offer has been delivered to the property owner, and prior to the Commissioners' Hearing, the property owner may deliver one written counteroffer ("Administrative Settlement Proposal") to the **Local Government**. The **Local Government** will evaluate the Administrative Settlement Proposal and make a recommendation of approval or disapproval to the **State** through the **State's** appropriate District Office. The District Office will then submit the Administrative Settlement Proposal, together with the **Local Government** and District recommendations, to the **State** Right of Way Division office for final approval in accordance with current **State** procedures. The **State's** approval of the Administrative Settlement Proposal is only for purposes of closing the purchase of the property prior to the Special Commissioners' Hearing. In the event a closing of the purchase does not occur prior to the hearing, the **State's** approval is automatically, without further action, withdrawn, and the **State** will participate only in the original approved value. In the event the **State** does not approve the Administrative Settlement Proposal, and the **Local Government** elects to purchase the property at a value greater than the original approved value, the **State's** participation in the purchase price will apply only to the original approved value, and the **Local Government** will pay one hundred percent (100%) of the costs which exceed the original approved value, even if the applicable county qualifies as an economically disadvantaged county.

Condemnation: Condemnation proceedings will be initiated at a time selected by the **Local Government** and will be the **Local Government's** responsibility at its own expense except as hereinafter indicated. The **Local Government** will obtain from the **State** without cost current title information and engineering data at the time condemnation is to be initiated. Except as hereinafter set forth the **Local Government** will concurrently file condemnation proceedings and a notice of lis pendens for each case in the name of the **State**, and in each case so filed the judgment of the court will decree title and possession to the property condemned to the **State**. The **Local Government** may, as set forth herein under "Excess Takings" and where it is determined to be necessary, enter condemnation proceedings in its own name. Property acquired in the **Local Government's** name for the **State** must comply with requirements set forth in the engineering data and title investigation previously furnished to the **Local Government** by the **State** at such time as the **Local Government** conveys said property to the **State**.

Court Costs, Costs of Special Commissioners' Hearings and Appraisal Expense: Court costs and costs of Special Commissioners' hearings assessed against the **State** or **Local Government** in condemnation proceedings conducted on behalf of the **State** and fees incident thereto will be paid by the **Local Government**. Such costs and fees, with the exception of recording fees, will be eligible for ninety percent (90%) **State** reimbursement under the established reimbursement procedure provided such costs and fees are eligible for payment by the **State** under existing law. Where the **Local Government** uses the **State's** appraisers employed on a fee basis in Special Commissioners' Hearings or subsequent appeals, the cost of the appraiser for updating the report, for preparing new reports, preparing for court testimony and appearing in court to testify in support of the appraisal will be paid direct by the **Local Government**, but will be eligible for ninety percent (90%) **State** reimbursement under established procedure provided prior approval for such appraiser has been obtained from the **State**. The fee paid the appraiser by the **Local Government** shall be in accordance with the fee schedule set forth in the appraiser's contract for appraisal services with the **State**.

Excess Takings: In the event the **Local Government** desires to acquire land in excess of that requested by the **State** for right of way purposes, the **State's** cost participation will be limited to the property needed for its purposes. If the **Local Government** elects to acquire the entire property, including the excess taking, by a single instrument of conveyance or in one eminent domain proceeding, the property involved will be acquired in the name of the **Local Government** and that portion requested by the **State** for right of way will be separately conveyed to the **State** by the **Local Government**. When acquired by negotiation, the **State's** participation will be based on the **State's** approved value of that part of the property requested for right of way purposes, provided that such approved value does not exceed actual payment made by the **Local Government**.

When acquired by condemnation, the **State's** participation will be in the proportionate part of the final judgment amount computed on the basis of the relationship of the **State's** approved value to the **State's** predetermined value for the whole property.

Improvements: Property owners will be afforded an opportunity in the negotiations to retain any or all of their improvements in the right of way taking. In anticipation of the owner desiring to retain improvements, the **State's** approved value will include the amounts by which the upper limit of **State** participation will be reduced for the retention. It is further agreed that the upper limit for the **State's** participation in the **Local Government's** cost for an improved parcel will be reduced as shown in the **State's** approved value where the owner retains an improvement which is to be moved by either the **Local Government** or the owner. In the event improvements which are, in whole or part, a part of the right of way taking are not retained by the owner, title is to be secured in the name of the **State**.

The **State** will participate in the acquisition of a structure severed by the right of way line if the part of the house, building or similar structure which lies outside the right of way cannot be reconstructed adequately or there is nothing but salvage left, provided that the **State's** value is established on this basis and provided that title to the entire structure is taken in the name of the **State**. The **State** shall dispose of all improvements acquired. The net revenue derived by the **State** from the disposition of any improvements sold through the General Services Commission will be credited to the cost of the right of way procured and shared with the **Local Government**.

Relocation of Utilities: If the required right of way encroaches upon an existing utility located on its own right of way and the proposed highway construction requires the adjustment, removal or relocation of the utility facility, the **State** will establish the necessity for the utility work. **State** participation in the cost of making the necessary change, less any resulting increase in the value to the utility and less any salvage value obtainable, may be obtained by either the "actual cost" or "lump sum" procedures. Reimbursement under "actual cost" will be made subsequent to the **Local Government's** certification that the work has been completed and will be made in an amount equal to ninety percent (90%) of the eligible items of cost as paid to the utility owner. The "lump sum" procedure requires that the **State** establish the eligibility of the utility work and enter into a three-party agreement with the owners of the utility facilities and the **Local Government**, which sets forth the exact lump sum amount of reimbursement as approved in such agreement. The utility will be reimbursed by the **Local Government** after proper certification by the utility that the work has been done, said reimbursement to be based on the prior lump sum agreement. The **State** will reimburse the **Local Government** in an amount equal to ninety percent (90%) of the firm commitment as paid to the utility owner. The foregoing is subject to the provision that the individual lump sum approved value shall not exceed \$20,000, except as specifically approved by the **State**. In those cases where a single operation is estimated to exceed \$20,000, the transaction will be brought to the attention of the **State** for determination of proper handling based upon the circumstances involved. Such utility firm commitment will be an appropriate item of right of way. The adjustment, removal or relocation of any utility line on publicly owned right of way by sufferance or permit will not be eligible for **State** reimbursement. The term "utility" under this agreement shall include publicly, privately and cooperatively owned utilities.

Fencing Requirements: The **Local Government** may either pay the property owner for existing right of way fences based on the value such fences contribute to the part taken and damages for an unfenced condition resulting from the right of way taking, in which case the estimated value of such right of way fences and such damages will be included in the recommended value and the approved value, or the **Local Government** may do the fencing on the property owner's remaining property.

Where the **Local Government** performs right of way fencing as a part of the total right of way consideration, neither the value of existing right of way fences nor damages for an unfenced condition will be included in the recommended value or the approved value. **State** participation in the **Local Government's** cost of constructing right of way fencing on the property owner's remainder may be based on either the actual cost of the fencing or on a predetermined lump sum amount. The **State** will be given credit for any salvaged fencing material and will not participate in any overhead costs of the **Local Government**.

If **State** participation is to be requested on the lump sum basis, the **State** and the **Local Government** will reach an agreement prior to the actual accomplishment of the work as to the necessity, eligibility and a firm commitment as to the cost of the entire fencing work to be performed. The foregoing is subject to the provision that the lump sum approved cost shall not exceed \$20,000, except as specifically approved by the **State**. In the event the cost of the fencing is estimated to exceed \$20,000, the transaction will be brought to the attention of the **State** for determination of proper handling based upon the circumstances involved.

Reimbursement: The **State** will reimburse the **Local Government** for right of way acquired after the date of this agreement in amount not to exceed ninety percent (90%) of the cost of the right of way acquired in accordance with the terms and provisions of this agreement. The **State's** reimbursement will be in the amount of ninety percent (90%) of the **State's** predetermined value of each parcel, or the net cost thereof, whichever is the lesser amount. All requests by the **Local Government** for reimbursement shall comply with the then current reimbursement submission requirements set forth in the Texas Department of Transportation Right of Way Manual. The **State's** financial participation described above with the **Local Government** will end at the close of business August 31, 2009. TxDOT will not participate financially or otherwise in any eligible costs incurred by Hays County not properly invoiced by the close of business August 31, 2009. Including but not limited to, appraisal, acquisition, relocation, reimbursable utilities, and related Right of Way costs. **State's** participation shall not exceed \$1,500,000.

If condemnation is necessary and title is taken as set forth herein under the section entitled "Condemnation", the participation by the **State** shall be based on the final judgment, conditioned upon the **State** having been notified in writing prior to the filing of such suit and upon prompt notice being given as to all action taken therein. The **State** shall have the right to become a party to the suit at any time for all purposes, including the right of appeal at any stage of the proceedings. All other items of cost shall be borne by the **State** and the **Local Government** as provided in other sections of this agreement.

If a lump sum fencing or utility adjustment agreement has been executed, the **State** will reimburse the **Local Government** in the amount of ninety percent (90%) of the predetermined lump sum cost of the right of way fencing or utility adjustment.

If the **Local Government** prefers not to execute a lump sum agreement for either fencing or utility adjustments, the **State** will reimburse on the actual cost of such fencing or adjustments. The **Local Government's** request for reimbursement will be supported by a breakdown of the labor, materials and equipment used.

Inspection of Books and Records: The **Local Government** shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the **State** and, if federally funded, the Federal Highway Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the **State** and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions. The **State** auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the **State** auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

General: It is understood that the terms of this agreement shall apply to new right of way authorized and requested by the **State** which is needed and not yet dedicated, in use or previously acquired in the name of the **State** or **Local Government** for highway, street or road purposes. This agreement shall also apply, with regard to any existing right of way, to outstanding property interests not previously acquired and to eligible utility adjustments not previously made, as authorized and requested by the **State**. The **State's** financial participation described above with the **Local Government** will end at the close of business August 31, 2009. TxDOT will not participate financially or otherwise in any eligible costs incurred by Hays County not properly invoiced by the close of business August 31, 2009. Including but not limited to, appraisal, acquisition, relocation, reimbursable utilities, and related Right of Way costs. **State's** participation shall not exceed \$1,500,000.

It is further understood that if unusual circumstances develop in the right of way acquisition which are not clearly covered by the terms of this agreement, such unusual circumstances or problems will be resolved by mutual agreement between the **State** and the **Local Government**.

LOCAL GOVERNMENT

By: _____

Title: _____

Date: _____

EXECUTION RECOMMENDED:

District Engineer, District

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____

John P. Campbell, P.E.
Director, Right of Way Division

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: Discussion and possible action to authorize the County Auditor to pay for right of way on RR 12 not to exceed the amounts approved by the Commissioners' Court and to authorize the treasurer to release the checks to the property owners upon execution of the possession and use agreement.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: See attached List

LINE ITEM NUMBER OF FUNDS REQUIRED: Bond Funds

REQUESTED BY: Conley

SPONSORED BY: Conley

SUMMARY: These right of way purchases are to be reimbursed by the State Of Texas @ 90% if paid for by August 31, 2009. This Court action will allow the County Auditor to process payments for the attached list of properties based upon the "not to exceed" amounts indicated and release the checks to the property owners upon execution of a "possession and use agreement".

RR12 Road Projects

HRM Consultants - ROW Agent

<u>Project</u>	<u>Property Address</u>	<u>Parcel</u>	<u>100% Appraised Value</u>	<u>90% Appraised Value</u>	<u>Property Owner</u>
RR12 @ Wonderworld Drive	RR12	58	77,485	69,737	Joseph Freeman Trust
RR12 @ Wonderworld Drive	2801 RR12	60-1 & 2	24,707	22,236	SM Baptist Academy Fdtn
RR12 @ Wonderworld Drive	2510 RR12	61	86,712	78,041	Frost National Bank, SA
RR12 @ Wonderworld Drive	RR12	63	179	161	SM Baptist Academy Fdtn
RR12 @ Wonderworld Drive	2503 RR12	65	13,351	12,016	Freeman Educational Fdtn
RR12 @ Sink Creek	RR12	51	496,800	447,120	Ingram Ranch
RR12 @ Sink Creek	RR12	56	20,282	18,254	Ingram Ranch
RR12 @ Junction	West Line, RR12	6	25,122	22,610	Suzanne Mebane
RR12 @ Junction	9670 RR12	7	31,947	28,752	Southerland Properties
RR12 @ Junction	NE Corner, RR12	9	55,822	50,240	Tx Commercial Land Ptnrs
			832,407	749,166	

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 clarify the board members of the Hays County Park Foundation, Inc.; and to request that the board member draft and execute a document stating that the 50+ acre tract of land be donated to the City of Kyle from Hays County.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: BARTON

SPONSORED BY: BARTON

SUMMARY: The Linebarger Lake property is a 50.14 acre tract of land that was donated to Hays County Parks Foundation. The purpose of the donation was to hold the land for the City of Kyle until they were prepared to begin construction on the park designated for this particular tract of land. The City of Kyle is now prepared to receive donation of the Linebarger Lake Property.

It is necessary that the Hays County Parks Foundation draft and execute documents conveying the property to the City of Kyle, but Counsel believes it would be prudent to 1) clarify the current makeup of the Foundation, and 2) have the Commissioners Court formally request the conveyance of the property by the Foundation to the City of Kyle.

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 the Advanced Funding Agreement for IH 35 at FM 2001 (1776-02-014) and adopt the resolution.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: See attached

111 E. San Antonio Street
San Marcos, Texas 78666



RESOLUTION

WHEREAS, an Agreement with the Texas Department of Transportation for Hays County 1776-02-014: IH 35 at FM 2001 (Overpass Road) would benefit the citizens of Hays County. The project consists of improving existing Overpass Road as part of the overall realignment and improvements to FM 2001.

NOW, THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court does hereby enter into this Agreement with the Texas Department of Transportation

BE IT FURTHER RESOLVED that the Hays County Commissioners Court does hereby approve payment of \$805,978.00 to the Texas Department of Transportation for the construction of the Hays County 1776-02-014: IH 35 at FM 2001 (Overpass Road) project.

PASSED AND ADOPTED this the 18th day of August, 2009.

Elizabeth "Liz" Sumter
County Judge

Debbie Gonzales Ingalsbe
Commissioner Precinct 1

Jefferson W. Barton
Commissioner Precinct 2

Will Conley
Commissioner Precinct 3

Karen Ford
Commissioner Precinct 4

ATTEST:

Linda Fritsche, County Clerk



Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

July 14, 2009

Hays County
CSJ: 1776-02-014
Overpass Road in Buda



The Honorable Elizabeth Sumter
Hays County Judge
111 E. San Antonio St., #300
San Marcos, Texas 78666

Dear Judge Sumter:

Enclosed are two original Advance Funding Agreements for the above project. The Project consists of the construction of the Overpass Road from I-35 to 645 feet east of I-35 in Buda.

Please sign and date both Agreements and return to me for further execution. One original executed copy of the Agreement will be returned for your records.

To maintain the proposed September 2009 letting date, a check for the amount of \$805,978 will be due upon receipt of an executed agreement.

If you have any questions, please contact me at (512) 832-7050.

Sincerely,

Patricia L. Crews-Weight, P.E.
Director of Design - AUS

Attachments

cc: Don Nyland, P.E.



THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT
PROJECTS WITH NO REQUIRED MATCH**

THIS AGREEMENT IS MADE BY AND BETWEEN the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and Hays County, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, Commission Minute Order Number 110689 authorizes the State to undertake and complete a highway improvement generally described as widen existing roadway; and,

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as construction of an existing two-lane roadway to a four-lane divided facility, hereinafter called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

AGREEMENT

Article 1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding and Work Responsibilities

The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract.

In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project items of work that are the

responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.

In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.

Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

Whenever funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are distributed to a Local Government, the Local Government must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.

Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

Article 3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

Article 4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right-of-way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

Article 5. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 6. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

Article 8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Project Budget and Description, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the State and incorporated herein by reference, or special specifications approved by the State.

Article 9. Increased Costs

In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accord with Article 11 - Termination. If this is a fixed price agreement as specified in Attachment A, Project Budget and Description, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.

If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property

interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

Article 10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

Article 11. Termination

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
- ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.

- ◆ Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

Article 12. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
Hays County Judge 111 E. San Antonio, #300 San Marcos, Texas 78666	Austin District Engineer P.O. Drawer 15426 Austin, Texas 78761-5426

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

Article 14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

Article 15. Amendments

By mutual written consent of the parties, this contract may be amended prior to its expiration.

Article 16. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Whenever ARRA funds are used and the Local Government is performing any work, either directly or through a contractor, it must comply with the following provisions. If a Local Government is receiving ARRA funds, but is not performing any work, the following provisions apply, if appropriate, and to the extent necessary to comply with ARRA regulations.

In accordance with Section 902 of the ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the LG (Local Government). It is the responsibility of the LG to obtain this form from the prime Contractor and any subcontractors and, the LG shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The LG shall ensure that this form is submitted by the LG to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the LG shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

Article 17. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 18. Debarment

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Government, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

Article 19. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

THE LOCAL GOVERNMENT

Name of the Local Government **HAYS COUNTY**

By _____ Date _____

Typed or Printed Name and Title _____

ATTACHMENT A

Payment Provision and Work Responsibilities

The Local Government will pay for the cost of the construction of Overpass Road from a two-lane roadway to a four-lane divided facility from I-35 to 645 feet east of I-35, which is an on-system location. The Local Government's participation is 100% of the cost of this particular improvement. The Local Government's estimated cost of this additional work is \$942,994, including construction items and construction engineering and inspection. The State has estimated the project to be as follows:

Description	Total Estimate Cost	Local Participation			
				%	Cost
Construction to Widen to 4-lane facility	\$805,978			100%	\$805,978
Subtotal	\$805,978				\$805,978
Direct State Costs (including plan review)	\$0				\$0
Indirect State Costs (no local participation required except for service projects)	\$0				\$0
TOTAL	\$805,978				\$805,978

Direct State Cost will not be charged.

Local Government's Participation (100%) = \$805,978

It is further understood that the State will include only those items for the improvements as requested and required by the Local Government. This is an estimate only; final participation amounts will be based on actual charges to the project.

Work Responsibilities

1. Environmental Requirements

Environmental clearance has been obtained for this project. If it is determined during project development that design changes are needed that are not consistent with the current environmental document, it shall be the State's responsibility to prepare the appropriate environmental documentation to secure environmental clearance for those design changes.

2. Engineering Services

The Local Government shall prepare or cause to be prepared the engineering plans, specifications, and estimates (PS&E) necessary for the development of the Project. The PS&E shall be prepared in accordance with all applicable laws, policies and regulations, deemed necessary by the State.

The design shall conform to the Texas Department of Transportation *Roadway Design Manual*, the Texas Accessibility Standards and any applicable State design criteria, and engineering plans shall be developed in accordance with the current edition of the *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* and the special specifications and special provisions related thereto.

3. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before construction begins on the Project, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction begins.

Construction Responsibilities

The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract.

The State will use its approved contract letting and award procedures to let and award the construction contract. At its option, the State may submit the Project for pricing and execution as a change order into a currently active State let roadway improvement project.

The State will award the contract up to a cost equal to 20% over the Latest Engineers Estimate. The Local Government shall be responsible for 100% of the construction costs of any contract so awarded.

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 the Advance Funding Agreement for I-35 at Kyle Crossing (0016-02-107) and approve the resolution.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

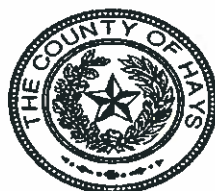
LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: See attached.

111 E. San Antonio Street
San Marcos, Texas 78666



RESOLUTION

WHEREAS, an Agreement with the Texas Department of Transportation for Hays County 0016-02-107, I-35 at Kyle Crossing would benefit the citizens of Hays County. The project consists of replacing bridge and approaches at Kyle Crossing including turnaround bridge structures, and construction of southbound frontage road from CR 210 (Kyle Crossing) to FM 1626.

NOW, THEREFORE, BE IT RESOLVED that the Hays County Commissioners Court does hereby enter into this Agreement with the Texas Department of Transportation

PASSED AND ADOPTED this the 18th day of August, 2009.

Elizabeth "Liz" Sumter
County Judge

Debbie Gonzales Ingalsbe
Commissioner Precinct 1

Jefferson W. Barton
Commissioner Precinct 2

Will Conley
Commissioner Precinct 3

Karen Ford
Commissioner Precinct 4

ATTEST:

Linda Fritsche, County Clerk

TEXAS TRANSPORTATION COMMISSION

HAYS County

MINUTE ORDER

Page 1 of 1

AUSTIN District

On February 26, 2009, by Minute Order Number 111714, the Texas Transportation Commission (commission) granted preliminary approval of an application request for financial assistance from the City of Kyle (city) to borrow \$11 million to pay for improvements to the I-35 southbound frontage roads and ramps between CR 210 and FM 1626, and the reconstruction of CR 210 overpass in Kyle.

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed, and that the Texas Department of Transportation has approved those studies. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the projects will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the financial assistance application submitted by the City of Kyle to borrow \$11,000,000 from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the city. The loan will be repaid over a period of 20 years at 4.25 percent interest per annum, with no principal or interest payments during the first three years.

Submitted and reviewed by:



Director, Finance Division

Recommended by:



Executive Director
111757 MAR 26 09

Minute Number	Date Passed
------------------	----------------

CITY OF KYLE



Notice of Regular City Council Meeting

KYLE CITY HALL
100 W. Center Street

Notice is hereby given that the governing body of the City of Kyle, Texas will meet at 6:30 PM on 12/16/2008, at the Kyle City Hall, 100 West Center Street, Kyle, Texas, for the purpose of discussing the following agenda.

Posted this 12th day of December, 2008 prior to 6:30 PM.

I. Call Meeting To Order

II. Approval of Minutes

1. City Council Regular Meeting - December 2, 2008

[Attachments](#)

2. City Council Regular Meeting - November 18, 2008

[Attachments](#)

III. Citizen Comment Period With City Council

The City Council welcomes comments from Citizens early in the agenda of regular meetings. Those wishing to speak must sign in before the meeting begins at the Kyle City Hall. Speakers may be provided with an opportunity to speak during this time period, and they must observe the three-minute time limit.

IV. Presentation

3. Victor Martinez, Lehman High School, to present his college scholarship application essay - *"Tomorrow's Future Rooted in Our Community"*

[Attachments](#)

V. Appointments

4. Consideration of Nomination for Appointment to the Planning Commission

1. Naomi Harris - Appointment to fill unexpired term (Seat 1)

[Attachments](#)

REGULAR CITY COUNCIL MEETING
December 2, 2008 – Page 4
Kyle City Hall

Mayor Gonzalez moves to approve the (Second Reading) An Ordinance of the City of Kyle, Texas, Amending the Sign Ordinance No. 356, No. 356-1, No. 356-2 and No. 552, Regulating Kiosk Signs; Providing Definitions; Providing a Severability Clause; Providing an Open Meetings Clause; and Providing for Related Matters. Council Member Bryant seconds the motion. All votes aye. Motion carried.

CONSIDER AND POSSIBLE ACTION

A RESOLUTION OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SPECIALIZED PUBLIC FINANCE INC. OF AUSTIN, TEXAS FOR FINANCIAL ADVISORY SERVICES; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS

Mayor Gonzalez moves to approve A Resolution of the City of Kyle, Texas, Authorizing the City Manager to Execute an Agreement with Specialized Public Finance Inc. of Austin, Texas for Financial Advisory Services; Making Findings of Fact; and Providing for Related Matters. Council Member Lopez seconds the motion. All votes aye. Motion carried.

A RESOLUTION OF THE CITY OF KYLE, TEXAS, DIRECTING THE CITY MANAGER AND CITY FINANCIAL ADVISOR TO PREPARE INFORMATION TO SUBMIT TO THE TEXAS DEPARTMENT OF TRANSPORTATION STATE INFRASTRUCTURE BANK (SIB); AUTHORIZING THE PREPARATION OF AN APPLICATION; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS

Mayor Gonzalez moves to approve A Resolution of the City of Kyle, Texas, Directing the City Manager and City Financial Advisor to prepare information to submit to the Texas Department of Transportation State Infrastructure Bank (SIB); Authorizing the preparation of an application; Making Findings of Fact; and Providing for Related Matters. Council Member Selbera seconds the motion. All votes aye. Motion carried.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF RURAL COMMUNITY AFFAIRS, FOR F.Y. 2009-2010 GRANT ASSISTANCE FROM THE COMMUNITY DEVELOPMENT FUND OF THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; AND DESIGNATING THE CITY MANAGER AS AUTHORIZED REPRESENTATIVE TO ACT IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Council Member Lopez moves to approve A Resolution of the City Council of the City of Kyle, Texas, Authorizing the Submission of an Application to the Office of Rural Community Affairs, for F.Y. 2009-2010 Grant Assistance from the Community Development Fund of the Texas

Item # 1



CITY OF KYLE, TEXAS

Meeting Date: 12/2/2008

Date time: 6:30 PM

Resolution - SIB 2 Application

Subject/Recommendation: A RESOLUTION OF THE CITY OF KYLE, TEXAS, DIRECTING THE CITY MANAGER AND CITY FINANCIAL ADVISOR TO PREPARE INFORMATION TO SUBMIT TO THE TEXAS DEPARTMENT OF TRANSPORTATION STATE INFRASTRUCTURE BANK (SIB); AUTHORIZING THE PREPARATION OF AN APPLICATION; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Other Information: Discussed at last meeting; This item is for formal authorization of the TxDOT State Infrastructure Bank (SIB) loan application for the remaining \$11M the City previously agreed to borrow in support of the IH-35 improvements project (in partnership with TxDOT and Hays County).

A copy of the proposed Resolution is included with the meeting packet.

Budget Information: Although there are certainly financial/budgetary implications connected to this overall project, this specific Resolution has no budgetary impact

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[D Resolution](#)

Cover Memo

Item # 7

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KYLE, TEXAS, DIRECTING THE CITY MANAGER AND CITY FINANCIAL ADVISOR TO PREPARE INFORMATION TO SUBMIT TO THE TEXAS DEPARTMENT OF TRANSPORTATION STATE INFRASTRUCTURE BANK (SIB); AUTHORIZING THE PREPARATION OF AN APPLICATION; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City of Kyle, Texas (the "City") hereby finds and determines that there is a need for the City to make certain improvements to roads and streets in the City; and,

Whereas, such capital improvements will be most reasonably financed through the Texas Department of Transportation State Infrastructure Bank (SIB); and,

Whereas, it is hereby officially found and determined that public notice of the time, place, and purpose of this meeting was given, all as required by Texas Government Code, Chapter 551.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, HAYS COUNTY, TEXAS, THAT:

Section 1. Findings. The following recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Authorization. The City Manager and/or City Financial Advisor are hereby directed and authorized to:

- a) Prepare financing information to present to the Texas Department of Transportation State Infrastructure Bank for a loan for street and road improvements in an amount not to exceed \$11,000,000; and,
- b) Begin preparation on an application to the Texas Department of Transportation State Infrastructure Bank (SIB) for the loan, such application to be presented to the City Council for formal approval.
- c) Engage the Director of Finance and City Bond Counsel as needed to assist in preparations and/or presentations to the Texas Department of Transportation State Infrastructure Bank in connection with such loan application.

Section 5. Effective Date. This Resolution shall take effect from and after the date of its passage as authorized by the Charter of the City of Kyle.

Section 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

FINALLY PASSED AND APPROVED on this the ____ day of _____, 2008.

ATTEST:

THE CITY OF KYLE, TEXAS

Amelia Sanchez, City Secretary

Miguel Gonzalez, Mayor

Item # 7



Texas Department of Transportation

P.O. DRAWER 15426 • AUSTIN, TEXAS 78761-5426 • (512) 832-7000

August 6, 2009

Hays County
CSJ: 0016-02-107, etc
I-35 at Kyle Crossing

Honorable Elizabeth Sumter
Hays County Judge
111 E. San Antonio St., #300
San Marcos, Texas 78666

Dear Judge Sumter:

Enclosed are three **revised** original Advance Funding Agreements (AFA) for the above Segment Project. The Project consists of the construction of a new I-35 southbound frontage road including conversion of existing frontage roads to one-way operation, ramps, new bridge at CR 210 (Kyle Crossing) and associated turnaround structures to be funded by Hays County and the City of Kyle and to be constructed by the State. To address the County's and City's concerns over change orders, revisions were made to Article 11c and a new Article 11d was added. A new Article 3f was added to address any potential conflicts between the City's SIB loan agreement and this AFA. Paragraph 2 of Attachment C was also expanded to include language regarding the City's SIB loan. **These documents replace the agreements sent under cover letter dated July 31, 2009.**

Since these are three-party agreements, please sign and date all three Agreements and return to me for further execution. I will forward the signed documents to the City of Kyle. Please include a copy of the Commissioners Court Action agreeing to enter into the Agreement. One original executed copy of the Agreement will be returned for your records.

If you have any questions, please contact me at (512) 832-7050.

Sincerely,



Patricia L. Crews-Weight, P.E.
Director of Design - AUS

Attachments

cc: Don Nyland, P.E.
Mike Walker
Miguel Gonzalez, Mayor of Kyle
Mike Weaver, Prime Strategies

THE TEXAS PLAN

REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY
INCREASE THE VALUE OF OUR TRANSPORTATION ASSETS

197

An Equal Opportunity Employer

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT**

**For A
Pass Thru Finance
Segment Project**

 **ORIGINAL**

THIS AGREEMENT (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation hereinafter called the "State", Hays County, acting by and through its duly authorized officials, hereinafter called the "County" and the City of Kyle, acting by and through its duly authorized officials, hereinafter call the "City". The City and County would be collectively referred to as the "Local Governments".

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

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

WHEREAS, the Texas Transportation Commission passed Minute Order 111258, authorizing an amendment to the pass-through toll agreement with the County to include improvements on I-35 and to complete a highway improvement generally described as replace bridge and approaches and construction of new frontage road; and,

WHEREAS, the Governing Body of the County has approved entering into this Agreement by resolution or ordinance dated _____ and the Governing Body of the City has approved entering into this Agreement by resolution or ordinance dated _____ which is attached hereto and made a part hereof as Attachment A for construction of a new I-35 southbound frontage road including conversion of existing frontage roads to one-way operation, ramps, new bridge at CR 210 (Kyle Crossing) and associated turnaround structures at the location shown on the Map in Attachment B hereinafter referred to as the Project.

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

AGREEMENT

1. Period of the Agreement

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

2. Scope of Work

Scope of work includes replacing the existing I-35 at CR 210 (Kyle Crossing) bridge and approaches, constructing a new southbound frontage road and ramps, converting the existing two-way frontage roads to a one-way operation and construction of turnaround structures at CR 210 and Kyle Parkway as shown on Attachment B.

3. Local Project Sources and Uses of Funds

- a. The total estimated cost of the Project is shown in the Project Budget - Attachment C which is attached hereto and made a part hereof. The expected cash contributions from the federal or State government, the Local Governments, or other parties is shown in Attachment C. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will reimburse the County for any work performed as outlined in Article 11 Pass-Thru Toll Agreement Amendment No. 1.
- b. This project cost estimate shows how necessary resources for completing the project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- c. The County will be responsible for all non-federal, non-State or City participation costs associated with the Project, including any overruns in excess of the approved local project budget unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement.
- d. Prior to the performance of any engineering review work by the State, the Local Governments will pay their share to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Governments' funding share for the estimated cost of preliminary engineering for the project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit their remaining financial share for the State's estimated construction oversight and construction cost.
- e. Whenever funds are paid by the Local Governments to the State under this Agreement, the Local Governments shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be

deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.

- f. In the event that any provision of this Agreement conflicts with the terms of the State Infrastructure Bank Loan Agreement executed by the City on _____, the terms of the State Infrastructure Bank Loan will apply.
- g. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Governments, the State, or the Federal government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the particular Local Governments' contractual obligations to the State under another advance funding agreement.
- h. The State will not pay interest on any funds provided by the Local Governments.
- i. If a waiver has been granted, the State will not charge the Local Governments for the indirect costs the State incurs on the local project, unless this Agreement is terminated at the request of either Local Government prior to completion of the project.
- j. If the project has been approved for a "fixed price" or an "incremental payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the amount of the fixed price or the incremental payment schedule.
- k. If the County is an Economically Disadvantaged County and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- l. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The State will not execute the contract for the construction of the project until the required funding has been made available by the Local Governments in accordance with this Agreement.

4. Termination of this Agreement

This Agreement shall remain in effect until the project is completed and accepted by all parties, unless:

- a. the Agreement is terminated in writing with the mutual consent of the parties;
- b. the Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- c. either Local Government elects not to provide funding after the completion of preliminary engineering, specifications and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Governments agree to reimburse the State for its reasonable actual costs incurred during the Project.

5. Amendments

Amendments to this Agreement due to changes in the character of the work or terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

7. Utilities

The County shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the County's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The County must obtain advance approval for any variance from established procedures. Before a construction contract is let, the County shall provide, at the State's request, a certification stating that the County has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Environmental clearance has been obtained by the State for this project. If it is determined during project development that design changes are needed that are not consistent with the current environmental document, it shall be the State's responsibility to prepare the appropriate environmental documentation to secure environmental clearance for those design changes.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State has responsibility for the performance of architectural and engineering services.

The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*, and the special specifications and special provisions related thereto.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases.

Professional services contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

11. Construction Responsibilities

- a. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. The State will use its approved contract letting and award procedures to let and award the construction contract.
- c. Prior to their execution, the Local Government will be given the opportunity to review and comment on contract change orders that will result in an increase cost of more than 10% to the Local Government over the Project Agreement (Low Bid) amount. Response to the change order by the Local Government will be within 5 business days of the notification by TxDOT.
- d. The State shall provide a monthly status of construction costs to the Local Government.
- e. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- f. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

12. Project Maintenance

The Local Governments shall be responsible for maintenance of their respective locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Governments.

The City shall be responsible for any costs associated with the maintenance of the aesthetics including obelisks, decorative painted surfaces and any metal ornaments provided to the contractor by the City. The State will do the actual work associated with the maintenance and the City shall be responsible for 100% of the costs of labor and materials to perform the work.

13. Right of Way and Real Property

The County is responsible for the provision and acquisition of any needed right of way or real property.

14. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

Local Government:	State:
County: Hays County Judge 111 East San Antonio, #300 San Marcos, Texas 78666 City: City Manager P.O. Box 40 Kyle, Texas 78640	Austin District Engineer 7901 North I-35 Austin, Texas 78753

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

15. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

16. Responsibilities of the Parties

The State and the Local Governments agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

17. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Governments shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Governments.

At the request of the State, the Local Governments shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Governments shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Governments, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Governments, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

In accordance with Section 902 of the American Recovery and Reinvestment Act of 2009 (ARRA), should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

- a. examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and
- b. interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- a. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and
- b. to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

The ARRA Act requires that the Contractor report monthly employment information for its firm as well as that of all of its subcontractors. The Contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the Contractor on a regular basis to the State. It is the responsibility of the State to obtain this form from the prime Contractor and any subcontractors and, the State shall verify the accuracy, completeness, and reasonableness of the data contained in the form.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

23. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

24. Civil Rights Compliance

The State shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

25. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

26. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Governments, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

27. Lobbying Certification

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Governments shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the individual projects and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. Insurance

If this agreement authorizes the Local Governments or their contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

29. Signatory Warranty

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE COUNTY

Name

Printed Name and Title

Date

THE CITY

Name

Printed Name and Title

Date

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

Janice Mullenix
Director of Contract Services
Texas Department of Transportation

Date

CSJ #0016-02-107, etc
District # 14
Code Chart 64 #50106
Code Chart 64 #22850
I-35 at Kyle Crossing
CFDA # 20.205

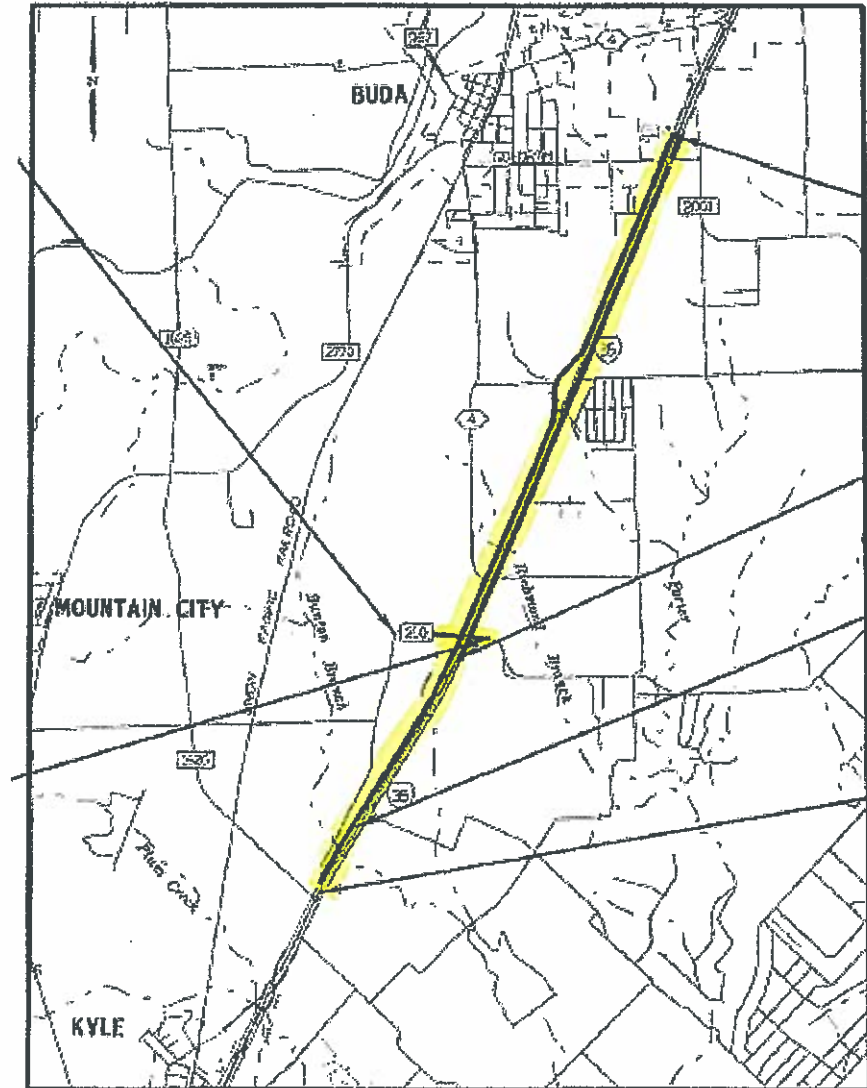
ATTACHMENT A

Resolution or Ordinance

CSJ #0016-02-107, etc
District # 14
Code Chart 64 #50106
Code Chart 64 #22850
I-35 at Kyle Crossing
CFDA # 20.205

ATTACHMENT B

Location Map Showing Project



CSJ #0016-02-107, etc
 District # 14
 Code Chart 64 #50106
 Code Chart 64 #22850
 I-35 at Kyle Crossing
 CFDA # 20.205

ATTACHMENT C

Project Budget and Description

The Local Governments will participate in the cost of the construction of the CR 210 (Kyle Crossing) bridge replacement and approaches including turnaround structures, section of new southbound frontage road between Kyle Crossing and FM 1626, and the conversion of two-way frontage roads to one-way operation between FM 2001 and FM 1626.

The City participation in this Project is to contribute project funding to facilitate the implementation of the Project. The City will contribute a fixed sum, in the amount of \$11,000,000 to be utilized for construction costs associated with the completion of the proposed improvements. Texas Transportation Commission Minute Order Number 111757 approves the City's State Infrastructure Bank (SIB) application to borrow \$11 million to fund the Project. The City agrees to transfer the approved loan funds to the Texas Department of Transportation Austin District for the Project subject to the terms and conditions of the fully executed SIB loan. The parties do not anticipate that ARRA funds will be obligated for this Project. Should the City receive ARRA funds to be expended on this Project, the \$11 million amount that the City proposes to contribute to the Project would be reduced by the ARRA amount.

Based on the funding outlined in the executed Pass-Thru Toll Agreement with Hays County, the County's participation will be the balance of the construction costs.

The State has estimated the project to be as follows:

Description	Total Estimate Cost	County Participation		City Participation	
		%	Cost	%	Cost
CONSTRUCTION COSTS					
Construction of bridge replacement, approaches, turnaround structures; new frontage road; two-way to one-way conversion	\$20,353,577.22		\$9,353,577.22	Fixed	\$11,000,000
Subtotal	\$20,353,577.22		\$9,353,577.22		\$11,000,000
Direct State Costs (including plan review, inspection and oversight)	\$0		\$0		\$0
Indirect State Costs (no local participation required except for service projects)	\$0		\$0		\$0
TOTAL	\$20,353,577.22		\$9,353,577.22		\$11,000,000

Direct State Cost will not be charged.

CSJ #0016-02-107, etc
District # 14
Code Chart 64 #50106
Code Chart 64 #22850
I-35 at Kyle Crossing
CFDA # 20.205

City's Participation (Fixed) = \$11,000,000

County's Participation (Balance of Construction Costs) = \$ 9,353,577.22

It is further understood that the State will include only those items for the improvements as requested and required by the Local Governments. This is an estimate only; final participation amounts will be based on actual charges to the project.

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: Consideration and approval of an order by the Commissioners Court of Hays County, Texas authorizing the issuance of "Hays County, Texas Unlimited Tax Road Bonds, Series 2009"; levying an annual ad valorem tax, without limit as to rate or amount, upon all taxable property in the County for the payment of the bonds; prescribing the form, terms, conditions, and resolving other matters incident and related to the issuance, sale, and delivery of the bonds, including the approval and distribution of an official statement pertaining thereto; authorizing the execution of a paying agent/registrar agreement and a purchase contract; complying with the letter of representations on file with the depository trust company; and providing an effective date.

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

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

PREFERRED MEETING DATE REQUESTED: Tuesday, August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY:

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
300 CONVENT STREET, SUITE 2200
SAN ANTONIO, TEXAS 78205-3792
WWW.FULBRIGHT.COM

W. JEFFREY KUHN
PARTNER
WKUHN@FULBRIGHT.COM

DIRECT DIAL: (210) 270-7131
TELEPHONE: (210) 224-5575
FACSIMILE: (210) 270-7205

August 5, 2009

Honorable Elizabeth Sumter
County Judge
Hays County, Texas
111 East San Antonio
San Marcos, Texas 78666

BY EMAIL

Re: Hays County, Texas Pass-Through Toll Revenue and Limited Tax Bonds, Series
2009

Dear Judge Sumter:

I enclose as Exhibit A to this letter the agenda item to be utilized in preparing the agenda for the August 18, 2009 regular meeting of the Commissioners Court. Thank you for ensuring that this agenda item is posted in accordance with the provisions of the Texas Open Meetings Act. I also enclose as Exhibit B for your convenience the suggested motion for this item. Lastly, I enclose a draft copy of the Order for inclusion in the Commissioners Court's agenda packets.

Thank you, in advance, for your prompt attention to this matter. If I can provide any additional assistance concerning this matter, please do not hesitate to contact me.

Very truly yours,



W. Jeffrey Kuhn

WJK/jcq
Enclosures

cc: **BY EMAIL**

Mr. William Herzog (Hays County, Texas)
Mr. Mark Kennedy (Hays County, Texas)
Mr. Jeff Laws (Hays County, Texas)
Mr. Dan Wegmiller (Specialized Public Finance Inc.)
Mr. James P. Plummer (Firm)
Mr. Clay Binford (Firm)
Mr. Carey R. Troell (Firm)

AN ORDER BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS AUTHORIZING THE ISSUANCE OF "HAYS COUNTY, TEXAS PASS-THROUGH TOLL REVENUE AND LIMITED TAX BONDS, SERIES 2009"; LEVYING AN ANNUAL AD VALOREM TAX, WITHIN THE LIMITATIONS PRESCRIBED BY LAW, FOR THE PAYMENT OF THE BONDS AND FURTHER SECURING SAID BONDS BY A LIEN ON AND PLEDGE OF CERTAIN PLEDGED REVENUES; PRESCRIBING THE FORM, TERMS, CONDITIONS, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, AND DELIVERY OF THE BONDS, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A PURCHASE CONTRACT; COMPLYING WITH THE PROVISIONS OF THE DEPOSITORY TRUST COMPANY'S LETTER OF REPRESENTATIONS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Commissioners Court (the *Commissioners Court*) of Hays County, Texas (the *County*) has determined that it is in the best interests of the residents of the County to construct improvements to the Texas state highway system located within the County (the *Project*), in accordance with the provisions of the Texas Transportation Code; and

WHEREAS, the State of Texas (the *State*), acting through the Texas Department of Transportation (the *Department*), will ultimately own the Project and the State and the County will have full responsibility for its design, construction, operation, and maintenance of the Project; and

WHEREAS, the Department has, pursuant to Minute Order Number _____ adopted on _____, approved the Project and authorized the Department staff to negotiate a pass-through toll agreement with the County with respect to the Project; and

WHEREAS, the County and the Department have entered into a Pass-Through Toll Agreement (the *Agreement*), dated as of _____ (a copy of which is attached hereto as Exhibit D); and

WHEREAS, pursuant to the Agreement, the County is required to deliver to the State \$ _____ at least 60 days prior to the date set for receipt of construction bids for the Project, which County funds will be escrowed by the State and applied only to Project-related construction costs; and

WHEREAS, commencing within 60 days after the first anniversary of the Project's completion, and continuing within 60 days after each succeeding anniversary thereafter, the Department will reimburse the County for its contribution to the Project in an amount calculated based on vehicular traffic utilizing the Project, but never more than \$ _____

nor less than \$ _____ per year, until the County has been fully reimbursed for its contribution; and

WHEREAS, the County and the City of [San Marcos], Texas (the *City*), have entered into an Interlocal Cost Sharing Agreement, effective as of _____ (a copy of which is attached hereto as Exhibit E), pursuant to which the City has agreed to pay to the County a pro rata portion of the actual financing costs related to the County's issuance of the Bonds, such costs to be determined based upon the distance that the Project lies within the City's municipal boundaries as a fraction of the total distance of the Project lying within the County (resulting in a contractual agreement that the City shall be responsible for 30% of the actual financing costs of the Bonds, the payment of which is further described in the Interlocal Agreement); and

WHEREAS, the Commissioners Court hereby finds and determines that pass-through toll revenue and limited tax bonds of the County in the total principal amount of \$ _____ should be issued and sold at this time for the purposes hereinafter described:

WHEREAS, in accordance with the provisions of Section 81.006, as amended, Texas Local Government Code, the Commissioners Court hereby finds and determines that this order was adopted at a regularly scheduled meeting of the Commissioners Court; and

WHEREAS, the Commissioners Court hereby finds and determines that the issuance of pass-through toll revenue and limited tax bonds is in the best interests of the citizens of the County, now, therefore,

BE IT ORDERED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS THAT:

SECTION 1: Authorization - Designation - Principal Amount - Purpose- Date. Pass-through toll agreement and limited tax general obligation bonds of the County shall be and are hereby authorized to be issued in the aggregate principal amount of _____ AND NO/100 DOLLARS (\$ _____) to be designated and bear the title of "HAYS COUNTY, TEXAS PASS-THROUGH TOLL REVENUE AND LIMITED TAX BONDS, SERIES 2009" (the *Bonds*), for the purpose of providing funds for the (i) designing, developing, financing, constructing, maintaining, operating, extending, expanding, and improving roads on the Texas state highway system located within the County, (ii) capitalizing twenty-four months' of interest on the Bonds, and (iii) the payment of the costs of issuance relating to these Bonds, all in conformity with the laws of the State of Texas, particularly Chapter 1479, as amended, Texas Government Code, and an order adopted by the Commissioners Court on August 18, 2009.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Bond Date. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated August 1, 2009 (the *Bond Date*) and shall be in denominations of \$5,000 or any integral multiple thereof, shall be lettered "R- " and numbered consecutively from One (1) upward and principal shall become due and payable on February 15 in each of the years and in amounts (the *Stated Maturities*) and bear interest at the rates per annum in accordance with the following schedule:

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		

The Bonds shall bear interest on the unpaid principal amounts from the Bond Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, to the Stated Maturity, or prior redemption, while Outstanding, at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on February 15 and August 15 in each year, commencing February 15, 2010 (the *Interest Payment Date*), while the Bonds are Outstanding.

SECTION 3: Payment of Bonds - Paying Agent/Registrar. The principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and such payment of principal of, premium, if any, and interest on the Bonds shall be without exchange or collection charges to the Holder (as hereinafter defined) of the Bonds.

The selection and appointment of Wells Fargo Bank, National Association, Austin, Texas (the *Paying Agent/Registrar*) to serve as the initial Paying Agent/Registrar for the Bonds is hereby approved and confirmed, and the County agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached hereto in substantially final form as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the County may prescribe. The County covenants to maintain and provide a Paying Agent/Registrar at all times while the Bonds are Outstanding, and any

successor Paying Agent/Registrar shall be (i) a national or state banking institution, or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and shall be authorized by law to serve as a Paying Agent/Registrar.

The County reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or order terminating such agency. Additionally, the County agrees to promptly cause a written notice of this substitution to be sent to each Holder of the Bonds by United States mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Both principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable only to the registered owner of the Bonds appearing on the Security Register (the *Holder* or *Holders*) maintained on behalf of the County by the Paying Agent/Registrar as hereinafter provided (i) on the Record Date (hereinafter defined) for purposes of payment of interest on the Bonds, (ii) on the date of surrender of the Bonds for purposes of receiving payment of principal thereof at the Bonds' Stated Maturity or upon redemption of the Bonds, and (iii) on any date for any other purpose. The County and the Paying Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Bond for purposes of receiving payment and all other purposes whatsoever, and neither the County nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Bonds shall be payable only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its corporate trust office. Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the last business day of the month next preceding an Interest Payment Date for the Bonds (the *Record Date*) and shall be paid (i) by check sent by United States mail, first-class postage prepaid, by the Paying Agent/Registrar, to the address of the Holder appearing in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder's risk and expense.

If the date for the payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, a Sunday, a legal holiday, or a day on which banking institutions in the city where the corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Bonds was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the County. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each

Holder of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: Redemption.

A. Optional Redemption. The Bonds having Stated Maturities on and after February 15, 2017 shall be subject to redemption prior to Stated Maturity, at the option of the County, on February 15, 2016, or on any date thereafter, as a whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar), at the redemption price of par plus accrued interest to the date of redemption.

B. Exercise of Redemption Option. At least forty-five (45) days prior to a date set for the redemption of Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the County shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem Bonds, the principal amount of each Stated Maturity to be redeemed, and the date set for the redemption thereof. The decision of the County to exercise the right to redeem Bonds shall be entered in the minutes of the governing body of the County.

C. Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall select at random and by lot the Bonds to be redeemed, provided that if less than the entire principal amount of a Bond is to be redeemed, the Paying Agent/Registrar shall treat such Bond then subject to redemption as representing the number of Bonds Outstanding which is obtained by dividing the principal amount of such Bond by \$5,000.

D. Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, a notice of redemption shall be sent by United States Mail, first-class postage prepaid, in the name of the County and at the County's expense, by the Paying Agent/Registrar to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the corporate trust office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Bond is subject by its terms to redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Bond (or the principal amount thereof to be redeemed) so called for redemption shall become due and payable, and if money sufficient for the payment of such Bonds (or of the principal amount thereof to be redeemed) at the then

applicable redemption price is held for the purpose of such payment by the Paying Agent/Registrar, then on the redemption date designated in such notice, interest on the Bonds (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue, and such Bonds shall not be deemed to be Outstanding in accordance with the provisions of this Order. This notice may also be published once in a financial publication, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, The Bond Buyer and The Wall Street Journal), or in the State of Texas (including, but not limited to, The Texas Bond Reporter). Additionally, this notice may also be sent by the County to any registered securities depository and to any national information service that disseminates redemption notices.

E. Transfer/Exchange of Bonds. Neither the County nor the Paying Agent/Registrar shall be required (1) to transfer or exchange any Bond during a period beginning forty-five (45) days prior to the date fixed for redemption of the Bonds or (2) to transfer or exchange any Bond selected for redemption, provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond which is subject to redemption in part.

SECTION 5: Execution - Registration. The Bonds shall be executed on behalf of the County by its County Judge under the seal of the Commissioners Court reproduced or impressed thereon, registered by the County Treasurer, and countersigned by the County Clerk and Ex-Officio Clerk of the Commissioners Court. The signature of any of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who were, at the time of the Bond Date, the proper officers of the County shall bind the County, notwithstanding that such individuals or either of them shall cease to hold such offices prior to the delivery of the Bonds to the Purchasers (hereinafter defined) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Bond shall be entitled to any right or benefit under this Order, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 8C, executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate of registration substantially in the form provided in Section 8D, executed by the Paying Agent/Registrar by manual signature, and either such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified or registered and delivered.

SECTION 6: Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of every owner of the Bonds, or, if appropriate, the nominee thereof. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/ Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond at the corporate trust office of the Paying Agent/Registrar, the County shall execute and the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds of authorized denomination and having the same Stated Maturity and of a like interest rate and aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange upon surrender of the Bonds to be exchanged at the corporate trust office of the Paying Agent/Registrar. Whenever any Bonds are so surrendered for exchange, the County shall execute, and the Paying Agent/Registrar shall register and deliver, the Bonds to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the corporate trust office of the Paying Agent/Registrar, or be sent by registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be the valid and binding obligations of the County, evidencing the same obligation to pay, and entitled to the same benefits under this Order, as the Bonds surrendered upon such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be Predecessor Bonds, evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Bonds shall include any Bond registered and delivered pursuant to Section 19 in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

SECTION 7: Initial Bond(s). The Bonds herein authorized shall be issued initially either (i) as a single fully registered bond in the total principal amount of \$_____ with principal installments to become due and payable as provided in Section 2 and numbered T-1, or (ii) as one (1) fully registered Bond for each year of Stated Maturity in the applicable principal amount, interest rate, and denomination and to be numbered consecutively from T-1 and upward (collectively, the *Initial Bond(s)*) and, in either case, the Initial Bond(s) shall be registered in the name of the Purchasers or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval and certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas. At any time after the delivery of the Initial Bond(s) to the Purchasers, the Paying Agent/Registrar, upon written instructions from the Purchasers, or their designee, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts, and bearing applicable interest rates for transfer and delivery to the Holders named and at the addresses identified therefor; all in accordance with and pursuant

to such written instructions from the Purchasers, or their designee, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8: Forms.

A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of the Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Order and may have such letters, numbers, or other marks of identification (including insurance legends in the event the Bonds, or any Stated Maturities thereof, are insured and identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as may, consistent herewith, be established by the County or determined by the officers executing the Bonds as evidenced by their execution thereof. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, or engraved, produced by any combination of these methods, or produced in any other similar manner, all as determined by the officers executing the Bonds as evidenced by their execution thereof, but the Initial Bond(s) submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

B. Form of Definitive Bonds.

REGISTERED
NO.

REGISTERED
PRINCIPAL AMOUNT
\$ _____

United States of America
State of Texas
HAYS COUNTY, TEXAS
PASS-THROUGH TOLL REVENUE AND LIMITED TAX BOND,
SERIES 2009

Bond Date:
August 1, 2009

Interest Rate:

Stated Maturity:

CUSIP NO:

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS

Hays County, Texas (the *County*), a body corporate and a political subdivision of the State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner specified above, or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount specified above (or so much thereof

as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the Bond Date, or from the most recent interest payment date to which interest has been paid or duly provided for until such Principal Amount has become due and payment thereof has been made or duly provided for to the earlier of redemption or Stated Maturity, while Outstanding, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year, commencing February 15, 2010.

Principal and premium, if any, on this Bond shall be payable to the Registered Owner hereof (the *Holder*), upon presentation and surrender, at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon or a successor thereof. Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Order hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each interest payment date. All payments of principal of and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by the Holder hereof at the Holder's risk and expense.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$ _____ (the *Bonds*) pursuant to an order adopted by the governing body of the County (the *Order*), for the purpose of providing funds for the (i) designing, developing, financing, constructing, maintaining, operating, extending, expanding, and improving roads on the Texas state highway system located within the County, (ii) capitalizing twenty-four months' of interest on the Bonds, and (iii) the payment of the costs of issuance relating to these Bonds, under and in strict conformity with the laws of the State of Texas, including Chapter 1479, as amended, Texas Government Code.

The Bonds stated to mature on and after February 15, 2017 may be redeemed prior to their Stated Maturities, at the option of the County, on February 15, 2016, or on any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par, together with accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States Mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Order. If this Bond is subject to redemption prior to Stated Maturity and is in a denomination in excess of \$5,000, portions of the principal sum hereof in installments of \$5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Order for the then unredeemed balance of the principal sum hereof.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption has been duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the County or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part.

The Bonds of this series are payable from the proceeds of an annual ad valorem tax levied upon all taxable property within the County within the limitations prescribed by law and are further payable from and equally and ratably secured by a lien on and pledge of the Pledged Revenues, such lien on and pledge of the Pledged Revenues being subordinate and inferior to the lien on and pledge of all or any portion of the Pledged Revenues securing payment of any Prior Lien Obligations or Junior Lien Obligations, but senior and superior to the lien on and pledge of all or any portion of the Pledged Revenues securing payment of any Inferior Lien Obligations, hereafter issued by the County. In the Order, the County reserves and retains the right to issue Prior Lien Obligations, Junior Lien Obligations, Additional Parity Obligations, and Inferior Lien Obligations while the Bonds are Outstanding, without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise.

Reference is hereby made to the Order, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied and the revenues pledged for the payment of the Bonds; the terms and conditions under which the County may issue Prior Lien Obligations, Junior Lien Obligations, Additional Parity Obligations, and Inferior Lien Obligations; the terms and conditions relating to the transfer or exchange of the Bonds; the conditions upon which the Order may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the County and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be redeemed or discharged at or prior to its Stated Maturity and deemed to be no longer Outstanding thereunder; and for the other terms and provisions specified in the Order. Capitalized terms used herein have the same meanings assigned in the Order.

This Bond, subject to certain limitations contained in the Order, may be transferred on the Security Register upon presentation and surrender at the corporate trust office of the Paying Agent/Registrar, duly endorsed, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Holder hereof, or his duly authorized agent, and thereupon one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The County and the Paying Agent/Registrar, and any agent of either, shall treat the Holder hereof whose name appears on the Security Register (i) on the Record Date as the owner hereof for purposes of receiving payment of interest hereon, (ii) on the date of surrender of this Bond as the owner hereof for purposes of receiving payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner hereof for all other purposes, and neither the County nor the Paying Agent/Registrar, or any such agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the County. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to the issuance of this Bond in order to render the same a legal, valid, and binding obligation of the County have been performed, exist, and have been done, in regular and due time, form, and manner, as required by law, and that issuance of the Bonds does not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of, premium, if any, and interest on the Bonds by the levy of a tax as aforesaid. In case any provision in this Bond or any application thereof shall be deemed invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Order shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Commissioners Court of the County has caused this Bond to be duly executed under the official seal of its Commissioners Court.

HAYS COUNTY, TEXAS

By: _____
County Judge

COUNTERSIGNED:

REGISTERED:

County Clerk and Ex-Officio Clerk
of the Commissioners Court

County Treasurer

(SEAL OF COMMISSIONERS COURT)

[The remainder of this page intentionally left blank.]

C. *Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond(s) Only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF
PUBLIC ACCOUNTS

THE STATE OF TEXAS

§
§
§
§

REGISTER NO. _____

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

* Note to Printer: Not to appear on Definitive Bonds

D. Form of Certificate of Paying Agent/Registrar to Appear on Definitive Bonds Only.

CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered under the provisions of the within-mentioned Order; the Bond or Bonds of the above-entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date:

WELLS FARGO BANK, NATIONAL
ASSOCIATION, Austin, Texas, as Paying
Agent/Registrar

By: _____

Authorized Signature

*NOTE TO PRINTER: Print on Definitive Bonds.

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number): _____
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Bond on the books kept for registration
thereof, with full power of substitution in the premises.

DATED: _____

NOTICE: The signature on this assignment must
correspond with the name of the registered owner as it
appears on the face of the within Bond in every particular.

Signature guaranteed:

F. The Initial Bond(s) shall be in the form set forth in paragraph B of this Section,
except that the form of the single fully registered Initial Bond shall be modified as follows:

- (i) immediately under the name of the bond the headings "Interest Rate _____" and
"Stated Maturity _____" shall both be completed "as shown below";
- (ii) the first two paragraphs shall read as follows:

Hays County, Texas (the *County*), a body corporate and a political subdivision of the
State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to
the order of the Registered Owner named above, or the registered assigns thereof, the Principal
Amount specified above on the first day of August in each of the years and in principal amounts
and bearing interest at per annum rates in accordance with the following schedule:

<u>Years of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amounts (\$)</u>	<u>Interest</u> <u>Rates (%)</u>
---	---	-------------------------------------

(Information to be inserted from
schedule in Section 2 hereof).

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the Bond Date, or from the most recent interest payment date to which interest has been paid or duly provided for until the Principal Amount has become due and payment thereof has been made or duly provided for, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year, commencing February 15, 2010.

Principal, and premium if any, of this Bond shall be payable to the Registered Owner hereof (the *Holder*), upon its presentation and surrender, at the corporate trust office of Wells Fargo Bank, National Association, Austin, Texas (the *Paying Agent/Registrar*). Interest shall be payable to the Holder of this Bond whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each interest payment date. All payments of principal of and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

G. Insurance Legend. If bond insurance is obtained by the County or the Purchasers for the Bonds, the Definitive Bonds and the Initial Bond(s) shall bear an appropriate legend as provided by the insurer.

SECTION 9: Definitions. For all purposes of this Order (as defined below), except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined in this Section have the meanings assigned to them in this Section, and certain terms used in Sections 24 and 41 of this Order have the meanings assigned to them in such Sections, and all such terms include the plural as well as the singular; (ii) all references in this Order to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Order as originally adopted; and (iii) the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Order as a whole and not to any particular Section or other subdivision.

A. The term *Act* shall mean Chapter 1479, as amended, Texas Local Government Code.

B. The term *Additional Parity Obligations* shall mean (i) obligations hereafter issued by the County payable, in whole or in part, from and equally and ratably secured by a lien on and pledge of all or any portion of the Pledged Revenues, all as provided in Section 21 of this Order, and (ii) obligations hereafter issued to refund any of the foregoing as determined by the Commissioners Court in accordance with any applicable law.

C. The term *Agreement* shall mean the Pass-Through Toll Agreement between the County and the Texas Department of Transportation, effective _____.

D. The term *Authorized Officials* shall mean the County Judge, County Clerk and Ex-Officio Clerk of the Commissioners Court, County Treasurer, County Auditor and/or the County Attorney.

E. The term *Bond Fund* shall mean the special Fund created and established by the provisions of Section 10 of this Order.

F. The term *Bonds* shall mean the \$_____ "HAYS COUNTY, TEXAS PASS-THROUGH TOLL REVENUE AND LIMITED TAX BONDS, SERIES 2009" authorized by this Order.

G. The term *Closing Date* shall mean the date of physical delivery of the Initial Bond(s) in exchange for the payment in full by the Purchasers thereof.

H. The term *Collection Date* shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the County become delinquent.

I. The term *County* shall mean Hays County, Texas and, where appropriate, the Commissioners Court of the County.

J. The term *Debt Service Requirements* shall mean, as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the County as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest at the maximum rate permitted by the terms thereof and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

K. The term *Depository* shall mean an official depository bank of the County.

L. The term *Fiscal Year* shall mean the annual financial accounting period for the County now ending on December 31st of each year; provided, however, the Commissioners Court may change such annual financial accounting period to end on another date if such change is found and determined to be necessary for accounting purposes or is required by applicable law.

M. The term *Government Securities*, as used herein, shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a

nationally recognized investment rating firm not less than "AAA" or its equivalent; or (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent.

N. The term *Holder* or *Holder*s shall mean the registered owner, whose name appears in the Security Register, for any Bond.

O. The term *Inferior Lien Obligations* shall mean (i) any revenue, tax, or combination revenue and tax bonds, certificates of obligation, notes, or similar obligations of the County hereafter issued in one or more installments, pursuant to the provisions of the Act or other available law, payable from and equally and ratably secured by a lien on and pledge of all or any portion (including a limited pledge) of the Pledged Revenues, which lien and pledge is subordinate and inferior to the lien thereon and pledge thereof securing any Prior Lien Obligations, Junior Lien Obligations, or Obligations Similarly Secured, and (ii) obligations hereafter issued to refund any of the foregoing that are payable from and equally and ratably secured by a subordinate and inferior lien on and pledge of all or a portion of the Pledged Revenues, as determined by the Commissioners Court in accordance with any applicable law.

P. The term *Insurance Policy* shall mean the bond insurance policy issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

Q. The term *Insurer* shall mean _____, or any successor thereto or assignee thereof.

R. The term *Interest Payment Date* shall mean the date semiannual interest is payable on the Bonds, being February 15 and August 15 of each year, commencing February 15, 2010, while any of the Bonds remain Outstanding.

S. The term *Interlocal Agreement* shall mean the Interlocal Cost Sharing Agreement between the County and the City of [San Marcos], Texas, effective as of _____.

T. The term *Interlocal Revenues* shall mean all revenues, payments, income and receipts of every nature derived or received by the County pursuant to the Interlocal Agreement, including the interest income from investment or deposit of money in any fund, account or subaccount created by this Order, or maintained by the County in connection therewith.

U. The term *Junior Lien Obligations* shall mean (i) any revenue, tax, or combination revenue and tax bonds, certificates of obligation, notes, or similar obligations of the County hereafter issued in one or more installments, pursuant to the provisions of the Act or other available law, payable from and equally and ratably secured by a junior and inferior lien on and pledge of all or any portion of the Pledged Revenues, which lien and pledge is junior and inferior to the lien thereon and pledge thereof securing any Prior Lien Obligations, but senior and superior to the lien thereon and pledge thereof securing any Obligations Similarly Secured or Inferior Lien Obligations, and (ii) obligations hereafter issued to refund any of the foregoing that

are payable from and equally and ratably secured by a junior and inferior lien on and pledge of all or a portion of the Pledged Revenues as determined by the Commissioners Court in accordance with any applicable law.

V. The term *Obligations Similarly Secured* shall mean the Parity Obligations and any Additional Parity Obligations.

W. The term *Order* shall mean this order adopted by the Commissioners Court of the County on August 18, 2009.

X. The term *Outstanding* when used in this Order with respect to Bonds shall mean, as of the date of determination, all Bonds issued and delivered under this Order, except:

(1) those Bonds canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds for which payment has been duly provided by the County in accordance with the provisions of Section 26 of this Order by the irrevocable deposit with the Paying Agent/ Registrar, or an authorized escrow agent, of money or Government Securities, or both, in the amount necessary to fully pay the principal of, premium, if any, and interest thereon to Stated Maturity or redemption, as the case may be, provided that, if such Bonds are to be redeemed, notice of redemption thereof shall have been duly given pursuant to this Order or irrevocably provided to be given to the satisfaction of the Paying Agent/Registrar, or waived; and

(3) those Bonds that have been mutilated, destroyed, lost, or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 19 of this Order.

Y. The term *Parity Obligations* shall mean (i) the Bonds and (ii) obligations hereinafter issued to refund and of the foregoing that are payable in whole or in part, from and equally and ratably secured by a lien on and pledge of the Pledged Revenues, all as provided in Section 21 of this Order, as determined by the Commissioner Court in accordance with any applicable law.

Z. The term *Pledged Revenues* shall mean (i) the Revenues, plus (ii) the Interlocal Revenues, plus (iii) any additional revenues, income, receipts, or other resources, including, without limitation, any additional revenues derived from any amendment, grants, donations or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter are pledged by the County to the payment of the Obligations Similarly Secured.

AA. The term *Prior Lien Obligations* shall mean (i) any revenue, tax, or combination revenue and tax bonds, certificates of obligation, notes, or similar obligations of the County hereafter issued in one or more installments, pursuant to the provisions of the Act or other available law, that are payable from and secured, in whole or in part, by a first and prior lien on and pledge of all or any portion of the Pledged Revenues, all as provided in Section 21 of this Order, and (ii) obligations hereafter issued to refund any of the foregoing that are payable from

and equally and ratably secured by a first and prior lien on all or any portion of the Pledged Revenues, as determined by the Commissioners Court in accordance with any applicable law.

BB. The term *Purchasers* shall mean the initial purchasers of the Bonds named in Section 23 of this Order.

CC. The term *Revenues* shall mean all revenues, payments, income and receipts of every nature derived or received by the County pursuant to the Agreement, including the interest income from investment or deposit of money in any fund, account or subaccount created by this Order, or maintained by the County in connection therewith and any other revenues hereafter, if any, pledged to the payment of the Obligations Similarly Secured or any other permissible obligations of the County or any non profit corporation created by the County.

DD. The term *Stated Maturity* shall mean the annual principal payments of the Bonds payable on February 15 of each year, as set forth in Section 2 of this Order.

SECTION 10: Bond Fund; Investments. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption, and retirement of the Bonds, there shall be and is hereby created a special Fund to be designated "PASS-THROUGH TOLL REVENUE AND LIMITED TAX BONDS, SERIES 2009, INTEREST AND SINKING FUND" (the *Bond Fund*), which Fund shall be kept and maintained at the Depository, and money deposited in such Fund shall be used for no other purpose and shall be maintained as provided in Section 24. Authorized Officials of the County are hereby authorized and directed to make withdrawals from the Bond Fund sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and shall cause to be transferred to the Paying Agent/Registrar from money on deposit in the Bond Fund an amount sufficient to pay the amount of principal and/or interest stated to mature on the Bonds, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Bonds.

Pending the transfer of funds to the Paying Agent/Registrar, money deposited in any fund or account established or described in this Order, at the option of the County, may be placed in time deposits, certificates of deposit, guaranteed investment contracts, or similar contractual agreements, as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, or be invested, as authorized by any law, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Association, Small Business Administration, or Federal Housing Association; provided that all such deposits and investments shall be made in such a manner that

the money required to be expended from such fund or account will be available at the proper time or times. All interest and income derived from deposits and investments in such fund or account shall be credited to, and any losses debited to, such fund or account. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

SECTION 11: Tax Levy. To provide for the payment of the Debt Service Requirements on the Bonds being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at Stated Maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied, for the current year and each succeeding year thereafter while the Bonds or any interest thereon shall remain Outstanding, a sufficient tax, within the limitations prescribed by law, on each one hundred dollars' valuation of taxable property in the County adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Bond Fund and are thereafter pledged to the payment of the Bonds. The Commissioners Court hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay such Debt Service Requirements, it having been determined that the existing and available taxing authority of the County for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness and other obligations of the County.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Obligations Similarly Secured shall be determined and accomplished in the following manner:

A. Prior to the date the Commissioners Court establishes the annual tax rate and passes an order levying ad valorem taxes each year, the Commissioners Court shall determine:

(1) the amount of Debt Service Requirements to become due and payable on the Obligations Similarly Secured between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year; and

(2) the amount on deposit in the Bond Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Obligations Similarly Secured prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Pledged Revenues or other lawfully available funds appropriated and allocated during such year to pay such Debt Service Requirements, prior to the Collection Date for the ad valorem taxes to be levied; and

(3) the amount of Pledged Revenues appropriated and set aside for the payment of the Debt Service Requirements on the Obligations Similarly Secured between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding Fiscal Year.

B. The amount of taxes to be levied annually each year by the Commissioners Court to pay the Debt Service Requirements on the Obligations Similarly Secured shall be the amount established in paragraph (1) above less the sum total of the amounts established in paragraphs (2) and (3), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 12: Pledge of Pledged Revenues.

A. The County hereby covenants and agrees that, subject to any superior lien on and pledge of all or any portion of the Pledged Revenues to the payment and security of any Prior Lien Obligations or Junior Lien Obligations hereafter issued by the County, the Pledged Revenues are hereby irrevocably pledged to the payment of the principal of and interest on the Obligations Similarly Secured and the pledge of Pledged Revenues herein made for the payment of the Obligations Similarly Secured shall constitute a lien on the Pledged Revenues in accordance with the terms and provisions hereof and be valid and binding without any physical delivery thereof or further act by the County.

B. Chapter 1208, Texas Government Code, applies to the issuance of the Bonds and the pledge of Pledged Revenues granted by the County under subsection (a) of this Section, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the Pledged Revenues granted by the County is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in this pledge, the County agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in this pledge to occur.

SECTION 13: Revenue Fund. The County hereby covenants and agrees that all Revenues and Interlocal Revenues shall be kept separate and apart from all other funds, accounts and money of the County and shall be deposited as collected into the "HAYS COUNTY PLEDGED REVENUE FUND" (the *Revenue Fund*). All money deposited in the Revenue Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown:

A. First: to the payment of all amounts required to be deposited in the special funds and accounts established for the payment, security, and benefit of any Prior Lien Obligations hereafter issued by the County in accordance with the terms and provisions of any orders authorizing their issuance; provided, however, that the County may utilize any money on deposit in the Revenue Fund first to reimburse itself or to pay any costs, fees, or expenses related to the Project or any future projects;

B. Second: to the payment of all amounts required to be deposited in the special funds and accounts established for the payment, security, and benefit of any Junior Lien Obligations hereafter issued by the County in accordance with the terms and provisions of any orders authorizing their issuance;

C. Third: to the payment of all amounts required to be deposited in the special funds and accounts established for the payment, security, and benefit of the Obligations Similarly Secured, including any Additional Parity Obligations hereafter issued by the County in accordance with the terms and provisions of any orders authorizing their issuance; and

D. Fourth: to the payment of the amounts required to be deposited in the special funds and accounts created and established for the payment, security, and benefit of any Inferior Lien Obligations hereafter issued by the County in accordance with the terms and provisions of the orders authorizing their issuance.

Any Pledged Revenues remaining in the Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment, security and benefit thereof, may be appropriated and used for any other County purpose now or hereafter permitted by law.

SECTION 14: Deposits to Bond Fund; Surplus Bond Proceeds. The County hereby covenants and agrees to cause to be deposited in the Bond Fund prior to a principal and interest payment date for the Obligations Similarly Secured from the Pledged Revenues in the Revenue Fund, after the deduction of all payments required to be made to the special funds or accounts created for the payment and security of any Prior Lien Obligations or Junior Lien Obligations hereafter issued by the County, any amounts budgeted to be paid therefrom in such Fiscal Year.

Accrued interest, received from the Purchasers of the Bonds shall be deposited to the Bond Fund and ad valorem taxes levied and collected shall be deposited to the Bond Fund. In addition, any surplus proceeds from the sale of the Bonds, including investment income thereon, not expended for authorized purposes shall be deposited in the Bond Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes.

SECTION 15: Security of Funds. All money on deposit in the Funds for which this Order makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and money on deposit in such Funds shall be used only for the purposes permitted by this Order.

SECTION 16: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the County covenants and agrees particularly that in the event the County (a) defaults in the payments to be made to the Bond Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Order, the Holders of any of the Bonds shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the County and other officers of the County to observe and perform any covenant, condition, or obligation prescribed in this Order.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as

often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 17: Notices to Holders; Waiver. Wherever this Order provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Holders. Where this Order provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 18: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the County, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The County may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the County may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the County.

SECTION 19: Mutilated, Destroyed, Lost, and Stolen Bonds. If (1) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the County and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the County and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the County or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the County shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same Stated Maturity and interest rate and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the County in its discretion may, instead of issuing a new Bond, pay such Bond. Upon the issuance of any new Bond or payment in lieu thereof, under this Section, the County may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including attorney's fees and the fees and expenses of the Paying Agent/Registrar) connected therewith. Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the County, whether or not the mutilated,

destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Order equally and ratably with all other Outstanding Bonds. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 20: Special Covenants. The County hereby further covenants that:

A. it has the lawful power to pledge the Pledged Revenues supporting the Bonds and has lawfully exercised said powers under the laws of the State of Texas, including power existing under the Act; and

B. other than the pledge of the Pledged Revenues for the payment of the Bonds, neither the Revenues nor the Interlocal Revenues have in any manner been pledged to the payment of any debt or obligation of the County.

SECTION 21: Issuance of Additional Obligations. The County hereby expressly reserves the right to hereafter issue Prior Lien Obligations, without limitation as to principal amount, but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, provided that the order authorizing the issuance of any Prior Lien Obligations provides that such obligations are payable from and secured, in whole or in part, by a first and prior lien on the Revenues, the Interlocal Revenues, or any combination of all or any part of the Revenues or Interlocal Revenues.

The County hereby expressly reserves the right to hereafter issue Junior Lien Obligations payable from and secured, in whole or in part, by a lien on and pledge of the Revenues, the Interlocal Revenues, or any combination of all or part of the Revenues or Interlocal Revenues that is junior and inferior to the lien on and pledge thereof securing the payment of any Prior Lien Obligations hereafter issued by the County, but prior and superior to the lien on and pledge of the Revenues or Interlocal Revenues securing the payment of the Parity Obligations or any Additional Parity Obligations or any Inferior Lien Obligations hereafter issued by the County.

The County hereby expressly reserves the right to hereafter issue Additional Parity Obligations, without limitation as to principal amount, but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, provided that the order authorizing the issuance of any Additional Parity Obligations provides that such obligations are payable from and secured, in whole or in part, by a lien on and pledge of the Revenues, the Interlocal Revenues, or any combination of all or part of the Revenues or Interlocal Revenues which is junior and inferior to the Prior Lien Obligations and the Junior Lien Obligations, but have a lien on the Pledged Revenues on parity with the lien on and pledge of the Pledged Revenues securing the payment of the Bonds and any other Obligations Similarly Secured.

The County hereby expressly reserves the right to hereafter issue Inferior Lien Obligations, without limitation as to principal amount, but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, provided that the order authorizing the issuance of any Inferior Lien Obligations provides that such obligations are payable from and secured, in whole or in part, by a lien on and pledge of the Revenues, Interlocal Revenues, or any

combination of all or any part (including a limited pledge) of the Revenues or Interlocal Revenues on a priority that is junior and subordinate to the lien on and pledge of the Pledged Revenues securing the Bonds and any other Obligations Similarly Secured.

Any Prior Lien Obligations or Junior Lien Obligations hereafter issued by the County shall be payable, in whole or in part, from a lien on and pledge of the Revenues, Interlocal Revenues, or any combination of all or any part of the Revenues or Interlocal Revenues, such liens being prior and superior to the lien on and pledge of the Pledged Revenues securing the payment of the Bonds and any other Obligations Similarly Secured.

Prior Lien Obligations, Junior Lien Obligations, Additional Parity Obligations, and Inferior Lien Obligations, if issued, may be payable, in whole or in part, from Revenues, Interlocal Revenues, or any combination of all or any part of the Revenues or Interlocal Revenues (without impairment of the obligation of contract with the Holders of the Bonds and any other Obligations Similarly Secured) upon such terms and conditions as the Commissioners Court may determine.

SECTION 22: Application of the Covenants and Agreements of the Prior Lien Obligations or Junior Lien Obligations. It is the intention of the Commissioners Court and accordingly hereby recognized and stipulated that the provisions, agreements, and covenants contained herein bearing upon the administering and application of the Pledged Revenues, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the orders authorizing the issuance of the Prior Lien Obligations or Junior Lien Obligations and to the extent of any irreconcilable conflict between the provisions contained herein and in the orders authorizing the issuance of the Prior Lien Obligations or Junior Lien Obligations, the provisions, agreements, and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Order, especially the priority of rights and benefits conferred thereby to the owners of any Prior Lien Obligations or Junior Lien Obligations, as appropriate.

SECTION 23: Sale of Bonds – Approval of Purchase Contract - Official Statement Approval – Use of Proceeds. The Bonds authorized by this Order are hereby sold by the County to Piper Jaffray & Co., Dallas, Texas, as the authorized representative of a group of underwriters (the *Purchasers*, having all the rights, benefits, and obligations of a Holder) in accordance with the provisions of a Purchase Contract (the *Purchase Contract*), dated August 18, 2009, attached hereto as Exhibit B and incorporated herein by reference as a part of this Order for all purposes. The Initial Bonds shall be registered in the name of Piper Jaffray & Co. The County Judge is hereby authorized and directed to execute the Purchase Contract for and on behalf of the County and as the act and deed of the Commissioners Court, and in regard to the approval and execution of the Purchase Contract, the Commissioners Court hereby finds, determines and declares that the representations, warranties, and agreements of the County contained in the Purchase Contract are true and correct in all material respects and shall be honored by the County. Delivery of the Bonds to the Purchasers shall occur as soon as practicable after the adoption of this Order, upon payment therefor in accordance with the terms of the Purchase Contract.

Furthermore, the County hereby ratifies, confirms, and approves in all respects (i) the County's prior determination that the Preliminary Official Statement was, as of its date, "deemed final" in accordance with the Rule (hereinafter defined) and (ii) the use and distribution of the

Preliminary Official Statement by the Purchasers in connection with the public offering and sale of the Bonds. The final Official Statement, being a modification and amendment of the Preliminary Official Statement to reflect the terms of sale, attached as Exhibit A to the Purchase Contract (together with such changes approved by the County Judge, County Auditor, County Treasurer, County Clerk, or Deputy County Clerk), shall be and is hereby in all respects approved and the Purchasers are hereby authorized to use and distribute the final Official Statement, dated August 18, 2009, in the reoffering, sale and delivery of the Bonds to the public. The County Judge and County Clerk and Ex-Officio Clerk of the Commissioners Court are further authorized and directed to manually execute and deliver for and on behalf of the County, copies of the Official Statement in final form as may be required by the Purchasers, and such final Official Statement in the form and content manually executed by said officials shall be deemed to be approved by the Commissioners Court and constitute the Official Statement authorized for distribution and use by the Purchasers. The proper officials of the County are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

Proceeds from the sale of the Bonds shall be applied as follows:

A. Accrued interest (in the amount of \$ _____) received from the Purchasers shall be deposited into the Bond Fund. The County received a net premium from the sale of the Bonds of \$ _____ which is hereby allocated by the County in the following manner: (1) \$ _____ to pay the Purchasers' compensation, (2) \$ _____ shall be deposited into the Bond Fund as appropriated interest, (3) \$62 _____ to pay a portion of certain other costs of issuance, and (4) \$ _____ shall be deposited into the construction fund as described in paragraph B below.

B. The balance of the proceeds derived from the sale of the Bonds (after paying costs of issuance and the other deposits referred to in paragraph A above) plus \$ _____ from a portion of the premium referred to in paragraph A above shall be deposited into the special construction account or accounts created for the projects to be constructed with the Bond proceeds and to pay the costs of issuance of the Bonds. This special construction account shall be established and maintained at the Depository and shall be invested in accordance with the provisions of Section 10 of this Order. Interest earned on the proceeds of the Bonds pending completion of the projects financed with such proceeds shall be accounted for, maintained, deposited, and expended as permitted by the provisions of Chapter 1201, as amended, Texas Government Code, or as required by any other applicable law. Thereafter, such amounts shall be expended in accordance with Section 14 of this Order.

SECTION 24: Covenants to Maintain Tax-Exempt Status.

A. Definitions. When used in this Section, the following terms have the following meanings:

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of

(1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

B. Not to Cause Interest to Become Taxable. The County shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the County receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the County shall comply with each of the specific covenants in this Section.

C. No Private Use or Private Payments. Except to the extent that it will not cause the Bonds to become "private activity bonds" within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the County shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross

Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the County or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

D. No Private Loan. Except to the extent that it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the County shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

E. Not to Invest at Higher Yield. Except to the extent that it will not cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the County shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, materially exceeds the Yield of the Bonds.

F. Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the County shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

G. Information Report. The County shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

H. Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The County shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from

all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the County may commingle Gross Proceeds of the Bonds with other money of the County, provided that the County separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the County shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The County shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the County shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The County shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

I. Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the County shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

J. Bonds Not Hedge Bonds.

(1) The County reasonably expects to spend at least 85% of the spendable proceeds of the Bonds within three years after such Bonds are issued.

(2) Not more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

K. Elections. The County hereby directs and authorizes the County Judge, County Clerk, Deputy County Clerk, County Treasurer, County Auditor, or the County's legal advisor, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document. Such elections shall be deemed to be made on the Closing Date.

SECTION 25: Control and Custody of Bonds. The County Judge shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas and shall take and have charge and control of the Bonds pending their approval by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery of the Bonds to the Purchasers.

Furthermore, the County Judge, County Clerk, Deputy County Clerk, County Treasurer, County Auditor, or the County's legal advisor, either or all, are hereby authorized and directed to furnish and execute such documents relating to the County and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and their registration by the Comptroller of Public Accounts and, together with the County's financial advisor, Bond Counsel, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 26: Satisfaction of Obligation of County. If the County shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Order, then the lien on and pledge of the Pledged Revenues and the pledge of taxes levied under this Order and all covenants, agreements, and other obligations of the County to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds, or any principal amount(s) thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at Stated Maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated

Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The County covenants that no deposit of money or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of section 148 of the Code (as defined in Section 24 hereof).

Any money so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such money has been so deposited shall be remitted to the County or deposited as directed by the County. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such money was deposited and is held in trust to pay shall upon the request of the County be remitted to the County against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Order to the contrary, it is hereby provided that any determination not to redeem defeased Bonds that is made in conjunction with the payment arrangements specified in subsection (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the County expressly reserves the right to call the defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Bonds immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Bonds, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Bonds.

SECTION 27: Printed Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to its being furnished a final opinion of Fulbright & Jaworski L.L.P., as Bond Counsel, approving certain legal matters as to the Bonds, said opinion to be dated and delivered as of the date of initial delivery and payment for the Bonds. Printing of a true and correct copy of said opinion on the reverse side of each of the Bonds, with appropriate certificate pertaining thereto executed facsimile signature of the County Clerk or Deputy County Clerk of the County is hereby approved and authorized.

SECTION 28: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the County nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 29: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 30: Order a Contract; Amendments - Outstanding Bonds. The County acknowledges that the covenants and obligations of the County herein contained are a material inducement to the purchase of the Bonds. This Order shall constitute a contract with the Holders from time to time, shall be binding on the County and its successors and assigns, and shall not be amended or repealed by the County so long as any Bond remains Outstanding except as permitted in this Section. The County may, without the consent of or notice to any Holders, from time to time and at any time, amend this Order in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the County may, with the written consent of Holders holding a majority in aggregate principal amount of the Bonds then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Order; provided, however, that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, the redemption price therefor, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required for consent to any such amendment, addition, or rescission.

SECTION 31: Benefits of Order. Nothing in this Order, expressed or implied, is intended or shall be construed to confer upon any person other than the County, Bond Counsel, Paying Agent/Registrar, the Purchasers, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Order or any provision hereof, this Order and all its provisions being intended to be and being for the sole and exclusive benefit of the County, Bond Counsel, the Paying Agent/Registrar, and the Holders.

SECTION 32: Inconsistent Provisions. All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Order are hereby repealed to the extent of such conflict, and the provisions of this Order shall be and remain controlling as to the matters ordered herein.

SECTION 33: Governing Law. This Order shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 34: Severability. If any provision of this Order or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Order and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Commissioners Court hereby declares that this Order would have been enacted without such invalid provision.

SECTION 35: Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Order for all purposes and are adopted as a part of the judgment and findings of the Commissioners Court.

SECTION 36: Construction of Terms. If appropriate in the context of this Order, words of the singular number shall be considered to include the plural, words of the plural number shall

be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 37: Authorization of Paying Agent/Registrar Agreement. The Commissioners Court of the County hereby finds and determines that it is in the best interest of the County to authorize the execution of a Paying Agent/Registrar Agreement concerning the payment, exchange, registration, and transferability of the Bonds. A copy of the Paying Agent/Registrar Agreement is attached hereto, in substantially final form, as Exhibit A and is incorporated by reference to the provisions of this Order.

SECTION 38: Public Meeting. It is officially found, determined, and declared that the meeting at which this Order was adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Order, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 39: Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Order shall be given in such other manner and at such time or times as in the judgment of the County or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Order be deemed to be in compliance with the requirements for publication thereof.

SECTION 40: No Recourse Against County Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Order against any official of the County or any person executing any Bond.

SECTION 41: Continuing Disclosure of Information.

A. Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

“*MSRB*” means the Municipal Securities Rulemaking Board.

“*Rule*” means SEC Rule 15c2-12, as amended from time to time.

“*SEC*” means the United States Securities and Exchange Commission.

B. Annual Reports.

The County shall provide annually to the MSRB (1) within six months after the end of each fiscal year ending in or after 2009, financial information and operating data with respect to the County of the general type included in the final Official Statement authorized by Section 18 of this Order, being the information described in Exhibit C hereto, and (2) if not provided as part such financial information and operating data, audited financial statements of the County, when

and if available. Any financial statements so to be provided shall (i) be prepared in accordance with the accounting principles described in Exhibit C hereto, or such other accounting principles as the County may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the County commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the County changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the County otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

C. Material Event Notices. The County shall notify the MSRB, in a timely manner, of any of the following events with respect to the Certificates, if such event is material within the meaning of the federal securities laws:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions or events affecting the tax-exempt status of the Certificates;
- (7) Modifications to rights of holders of the Certificates;
- (8) Certificate calls;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates; and
- (11) Rating changes.

The County shall notify the MSRB, in a timely manner, of any failure by the County to provide financial information or operating data in accordance with this Section by the time required by this Section.

D. Filings with the MSRB. All financial information, operating data, financial statements, notices, and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

E. Limitations, Disclaimers, and Amendments. The County shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the County remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the County in any event will give notice of any deposit that causes the Certificates to be no longer Outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The County undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the County's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The County does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE COUNTY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE COUNTY, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the County in observing or performing its obligations under this Section shall constitute a breach of or default under this Order for purposes of any other provision of this Order.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the County under federal and state securities laws.

The provisions of this Section may be amended by the County from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the County, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Order that

authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the County (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the holders and beneficial owners of the Certificates. The County may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the County also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the County so amends the provisions of this Section, the County shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 42: Book-Entry Only System.

It is intended that the Bonds initially be registered so as to participate in a securities depository system (the *DTC System*) with the Depository Trust Company, New York, New York, or any successor entity thereto (*DTC*), as set forth herein. Each Stated Maturity of the Bonds shall be issued (following cancellation of the Initial Bond(s) described in Section 7) in the form of a separate single definitive Bond. Upon issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. The County and the Paying Agent/Registrar are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit C (the *Representation Letter*).

With respect to the Bonds registered in the name of Cede & Co., as nominee of DTC, the County and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Bonds from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds (an *Indirect Participant*). Without limiting the immediately preceding sentence, the County and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository Participant or any other person, other than a registered owner of the Bonds, as shown on the Security Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a Holder of a Bond, of any amount with respect to principal of, premium, if any, or interest on the Bonds. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a Bond evidencing the obligation of the County to make payments of principal, premium, if any, and interest pursuant to this Order. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co.,

and subject to the provisions in this Order with respect to interest checks or drafts being mailed to the Holder, the word "Cede & Co." in this Order shall refer to such new nominee of DTC.

In the event that (a) the County determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the County determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the County shall notify the Paying Agent/Registrar, DTC, and the Depository Participants of the availability within a reasonable period of time through DTC of bond certificates, and the Bonds shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. At that time, the County may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the County, or such depository's agent or designee, and if the County and the Paying Agent/Registrar do not select such alternate securities depository system then the Bonds may be registered in whatever name or names the Holders of Bonds transferring or exchanging the Bonds shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Order to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 43: Further Procedures. The officers and employees of the County are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the County all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Order, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, the Purchase Contract, and the Official Statement. In addition, prior to the initial delivery of the Bonds, the County Judge, or the County Clerk and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Order or to any of the instruments authorized and approved by this Order necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Order and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Texas Attorney General's office. In case any officer of the County whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 44: Municipal Bond Insurance. The payment of the debt service requirements on the Bonds is insured by the Insurer pursuant to the Insurance Policy.

SECTION 45: Effective Date. This Order shall be in force and effect from and after its final passage, and it is so ordered.

PASSED AND ADOPTED on the 18th day of August, 2009.

HAYS COUNTY, TEXAS

County Judge

ATTEST:

County Clerk and Ex-Officio Clerk of the
Commissioners Court of Hays County, Texas

(SEAL OF COMMISSIONERS COURT)

Exhibit A - Paying Agent/Registrar Agreement
Exhibit B - Purchase Contract
Exhibit C - DTC Letter of Representations
Exhibit D - Pass-Through Toll Agreement
Exhibit E - Interlocal Cost-Sharing Agreement
Exhibit F - Description of Financial Information and Operating Data

EXHIBIT A

Paying Agent/Registrar Agreement

See Tab No.

EXHIBIT B

Purchase Contract

See Tab No. ____

EXHIBIT C

DTC Letter of Representations

See Tab No.

EXHIBIT D

Pass-Through Toll Agreement

See Tab No.

EXHIBIT E

Interlocal Cost-Sharing Agreement

See Tab No.

EXHIBIT F

The following information is referred to in Section 41 of this Order.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the County to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The County's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the County appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
2. Tables 1 through 11 as disclosed in the Official Statement.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

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: Consideration and approval an order authorizing the issuance of "Hays County, Texas Combination Tax and Limited Pledge Revenue Certificates of Obligation, Series 2009"; providing for the payment of said certificates by the levy of an ad valorem tax upon all taxable property within the County and further securing said certificates by a lien on and pledge of the pledged revenues of the solid waste management system; providing the terms and conditions of said certificates and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said certificates, including the approval and distribution of an official statement; authorizing the execution of a paying agent/registrar agreement and a purchase contract; complying with the requirements imposed by the letter of representations previously executed with the depository trust company; and providing an effective date.

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

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

PREFERRED MEETING DATE REQUESTED: Tuesday, August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: BOND LANGUAGE SAME AS PRIOR AGENDA ITEM.
ONLY FIRST FEW PAGES PARTICULAR TO THIS BOND ISSUE ARE IN BACKUP

AN ORDER BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS AUTHORIZING THE ISSUANCE OF "HAYS COUNTY, TEXAS UNLIMITED TAX ROAD BONDS, SERIES 2009"; LEVYING AN ANNUAL AD VALOREM TAX, WITHOUT LIMIT AS TO RATE OR AMOUNT, UPON ALL TAXABLE PROPERTY IN THE COUNTY FOR THE PAYMENT OF THE BONDS; PRESCRIBING THE FORM, TERMS, CONDITIONS, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, AND DELIVERY OF THE BONDS, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A PURCHASE CONTRACT; COMPLYING WITH THE LETTER OF REPRESENTATIONS ON FILE WITH THE DEPOSITORY TRUST COMPANY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Commissioners Court (the *Commissioners Court*) of Hays County, Texas (the *County*) hereby finds and determines that unlimited tax general obligation bonds of the County in the total principal amount of \$_____ should be issued and sold at this time, being the first installment of the unlimited tax general obligation bonds approved and authorized to be issued at an election held on November 4, 2008 in the County, the respective authorized purposes and amounts authorized to be issued therefor, amounts previously issued, amounts being issued pursuant to this order, and amounts remaining to be issued from such voted authorization subsequent to the date hereof being as follows:

<u>Purposes</u>	<u>Amounts Authorized</u>	<u>Amounts Previously Issued</u>	<u>Amounts Sold this Sale</u>	<u>Unissued Bonds</u>
Road Construction	\$207,110,000	\$0	\$_____	\$_____

WHEREAS, in accordance with the provisions of Section 81.006, as amended, Texas Local Government Code, the Commissioners Court hereby finds and determines that this Order was adopted at a regularly scheduled meeting of the Commissioners Court; and

WHEREAS, the Commissioners Court hereby finds and determines that the issuance of the unlimited tax general obligation bonds is in the best interest of the citizens of the County, now, therefore,

BE IT ORDERED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS THAT:

SECTION 1. Authorization - Designation - Principal Amount - Purpose. Unlimited tax general obligation bonds of the County shall be and are hereby authorized to be issued in the aggregate principal amount of \$_____ (_____ AND NO/100 DOLLARS), to be designated and bear the title "HAYS COUNTY, TEXAS

UNLIMITED TAX ROAD BONDS, SERIES 2009” (the *Bonds*), for the purpose of (i) the construction, acquisition by purchase, maintenance, and operation of macademized, graveled, or paved roads, or in aid thereof, being, generally (but not by way of limitation), constructing, designing, improving, extending, expanding, upgrading and/or developing County roads and/or State highways, including right-of-way acquisition, utility relocation, drainage improvements relating to these road improvements, traffic safety, other safety, and operational improvements, and other transportation related improvements (specifically to include, but not be limited to, those roads that are the subject of an existing partnership agreement between the County and the Texas Department of Transportation (including sections of IH 35, FM 1626, FM 110, and US Hwy 290) pursuant to which the County expects to be reimbursed for a maximum amount of \$133,170,000 over time; and sections of Old Bastrop Highway, SH 21, Dacy Lane, Post Road, FM 967, Lakewood Drive, FM 150, RR 12, FM 2325, US Hwy 290, Lime Kiln Road, and RM/FM 1826) and (ii) paying the costs associated with the issuance of the Bonds, all in conformity with the laws of the State of Texas, particularly Section 1471.015, as amended, Texas Government Code, Article III, Section 52, as amended, of the Texas Constitution, an election held in the County on November 4, 2008, and pursuant to the provisions of a bond order (the *Order*) adopted on the date hereof by the Commissioners Court.

SECTION 2. Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Dated Date. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated August 1, 2009 (the *Bond Date*), shall be in denominations of \$5,000 or any integral multiple thereof, shall be lettered “R” and numbered consecutively from One (1) upward and principal shall become due and payable on February 15 in each of the years and in amounts (the *Stated Maturities*) and bear interest at the rates per annum in accordance with the following schedule:

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2024		
2025		
2026		
2027		
2028		
2029		

The Bonds shall bear interest on the unpaid principal amounts from the Bond Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, to Stated Maturity, or prior redemption, while Outstanding, at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on February 15 and August 15 in each year, commencing February 15, 2010 (the *Interest Payment Date*), while the Bonds are Outstanding.

SECTION 3. Payment of Bonds - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds due and payable by reason of Stated Maturity, redemption, or otherwise shall be payable, without exchange or collection charges to the registered owners of the Bonds (the *Holder* or *Holder*s), appearing on the Security Register (hereinafter defined) maintained by the Paying Agent/Registrar (hereinafter defined), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

The selection and appointment of Wells Fargo Bank, National Association, Austin, Texas to serve as the initial Paying Agent/Registrar (the *Paying Agent/Registrar*) for the Bonds is hereby approved and confirmed, and the County agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached hereto in substantially final form as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the County may prescribe. The County covenants to maintain and provide a Paying Agent/Registrar at all times while the Bonds are Outstanding, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution, or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and shall be authorized by law to serve as a Paying Agent/Registrar.

The County reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or order terminating such agency. Additionally, the County agrees to promptly cause a written notice of this substitution to be sent to each Holder of the Bonds by United States mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

EXHIBIT C

Description of Annual Financial Information

The following information is referred to in Section 36 of this Order.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the County to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The County's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the County appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
2. Tables 1 through 5 and 7 through 12 as disclosed in the Official Statement.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

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: Consideration and approval an order by the Commissioners Court of Hays County, Texas authorizing the issuance of "Hays County, Texas Pass-Through Toll Revenue and Limited Tax Bonds, Series 2009"; levying an annual ad valorem tax, within the limitations prescribed by law, for the payment of the bonds and further securing said bonds by a lien on and pledge of certain pledged revenues; prescribing the form, terms, conditions, and resolving other matters incident and related to the issuance, sale, and delivery of the bonds, including the approval and distribution of an official statement pertaining thereto; authorizing the execution of a paying agent/registrar agreement and a purchase contract; complying with the provisions of the depository trust company's letter of representations; and providing an effective date.

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

PREFERRED MEETING DATE REQUESTED: Tuesday, August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY: *BOND LANGUAGE SAME AS PRIOR AGENDA ITEM -*

AN ORDER AUTHORIZING THE ISSUANCE OF "HAYS COUNTY, TEXAS COMBINATION TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009"; PROVIDING FOR THE PAYMENT OF SAID CERTIFICATES BY THE LEVY OF AN AD VALOREM TAX UPON ALL TAXABLE PROPERTY WITHIN THE COUNTY AND FURTHER SECURING SAID CERTIFICATES BY A LIEN ON AND PLEDGE OF THE PLEDGED REVENUES OF THE SOLID WASTE MANAGEMENT SYSTEM; PROVIDING THE TERMS AND CONDITIONS OF SAID CERTIFICATES AND RESOLVING OTHER MATTERS INCIDENT AND RELATING TO THE ISSUANCE, PAYMENT, SECURITY, SALE, AND DELIVERY OF SAID CERTIFICATES, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND A PURCHASE CONTRACT; COMPLYING WITH THE REQUIREMENTS IMPOSED BY THE LETTER OF REPRESENTATIONS PREVIOUSLY EXECUTED WITH THE DEPOSITORY TRUST COMPANY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Commissioners Court of Hays County, Texas (the *County*) has caused notice to be given of its intention to issue certificates of obligation in the maximum principal amount of \$_____ for the purpose of providing funds for the payment of contractual obligations of the County to be incurred for (1) constructing, acquiring, renovating and otherwise improving County roads, particularly being Dacy Lane located in County Precinct 2, as well as necessary drainage, sidewalks, utility and lighting improvements incidental thereto and acquiring property rights (including easements and rights-of-way) necessary therefor, (2) the purchase of materials, supplies, equipment, machinery, land, rights-of-way for authorized needs and purposes relating to the aforementioned capital improvements, and (3) payment for professional services relating to the construction and financing of the aforementioned projects; and

WHEREAS, this notice has been duly published in a newspaper hereby found and determined to be of general circulation in the County, once a week for two (2) consecutive weeks, the date of the first publication of such notice being not less than thirty (30) days prior to the tentative date stated therein for the passage of the order authorizing the issuance of such certificates of obligation; and

WHEREAS, no petition protesting the issuance of the certificates of obligation described in this notice, signed by at least 5% of the qualified voters of the County, has been presented to or filed with the County Clerk prior to the date tentatively set in such notice for the passage of this order; and

WHEREAS, in accordance with the provisions of Section 81.006, as amended, Texas Local Government Code the Commissioners Court hereby finds and determines that this order was adopted at a regularly scheduled meeting of the Commissioners Court; and

WHEREAS, the Commissioners Court hereby finds and determines that the issuance of the certificates of obligation in the principal amount of \$ _____ is in the best interests of the citizens of the County; now, therefore,

BE IT ORDERED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS THAT:

SECTION 1. Authorization - Designation - Principal Amount - Purpose. The certificates of obligation of the County shall be and are hereby authorized to be issued in the aggregate principal amount of _____ AND NO/100 DOLLARS (\$ _____), to be designated and bear the title of "HAYS COUNTY, TEXAS COMBINATION TAX AND LIMITED PLEDGE REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009" (the *Certificates*), for the purpose of paying contractual obligations of the County to be incurred for making permanent public improvements and for other public purposes, to wit: (1) constructing, acquiring, renovating and otherwise improving County roads, particularly being Dacy Lane located in County Precinct 2, as well as necessary drainage, sidewalks, utility and lighting improvements incidental thereto and acquiring property rights (including easements and rights-of-way) necessary therefor, (2) the purchase of materials, supplies, equipment, machinery, land, rights-of-way for authorized needs and purposes relating to the aforementioned capital improvements, and (3) payment for professional services relating to the construction and financing of the aforementioned projects, pursuant to the authority conferred by and in conformity with the laws of the State of Texas, particularly the Certificate of Obligation Act of 1971, as amended, Texas Local Government Code, Sections 271.041 through 271.065 and Texas Health and Safety Code, Section 363.135, as amended.

SECTION 2. Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Dated Date. The Certificates are issuable in fully registered form only, shall be dated August 1, 2009 (the *Certificate Date*), shall be in denominations of \$5,000 or any integral multiple thereof, and the Certificates shall become due and payable on February 15 in each of the years and in principal amounts (the *Stated Maturities*) and bear interest on the unpaid principal amounts from the Certificate Date, or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to the earlier of redemption or to Stated Maturity, at the per annum rates, while Outstanding, in accordance with the following schedule:

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2011		
2012		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		

SECTION 3. Payment of Certificates - Paying Agent/Registrar. The principal of, premium, if any, and interest on the Certificates, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and such payment of principal of and interest on the Certificates shall be without exchange or collection charges to the Holder (as hereinafter defined) of the Certificates.

The Certificates shall bear interest at the per annum rates shown above in Section 2, computed on the basis of a 360-day year of twelve 30-day months, and interest thereon shall be payable semi-annually on February 15 and August 15 of each year (the *Interest Payment Date*) commencing February 15, 2010, while the Certificates are Outstanding.

The selection and appointment of Wells Fargo Bank, National Association, Austin, Texas (the *Paying Agent/Registrar*) to serve as the initial Paying Agent/Registrar for the Certificates is hereby approved and confirmed, and the County agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Certificates, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached, in substantially final form, as Exhibit A hereto, and such reasonable rules and regulations as the Paying Agent/Registrar and the County may prescribe. The County covenants to maintain and provide a Paying Agent/Registrar at all times while the Certificates are Outstanding, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and authorized by law to serve as a Paying Agent/Registrar.

The County reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or order terminating such agency. Additionally, the County agrees to promptly cause a written notice of

EXHIBIT D

The following information is referred to in Section 45 of this Order.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the County to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The County's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the County appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
2. Tables 1 through 11 as disclosed in the Official Statement.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

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

AGENDA ITEM: Approve the transfer of funds from line item 01-419-5235 Law Enforcement Supply to 01-419-5719 Misc. Equipment in order to purchase Band-it Prisoner Transport and Courtroom Control System. The total amount of funds requested is \$1,820.00; adequate funds are available in the Misc. Equipment lone item.

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

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: \$1,820.00

LINE ITEM NUMBER OF FUNDS REQUIRED: 01-419-5719

REQUESTED BY: Chief Deputy Brodbeck

SPONSORED BY: Ingalsbe

SUMMARY:

Agenda Item Routing Form

DESCRIPTION OF Item: Transfer of funds from line item 01-419-5235 Law Enforcement Supply to 01-419-5719 Misc. Equipment in order to purchase Band-it Prisoner Transport and Courtroom Control System. The total amount of funds requested is \$1,820.00; adequate funds are available in the Misc. Equipment lone item.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$1,820.00 01-419-5719

COUNTY PURCHASING GUIDELINES FOLLOWED: Need a 3rd quote _____

PAYMENT TERMS ACCEPTABLE: _____ Yes _____

COMMENTS: This will require a budget amendment.

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COMMISIONERS' COURT

APPROVED/DISAPPROVED AND DATE: _____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____



County of Hays
OFFICE OF THE SHERIFF

Tommy Ratliff, Sheriff

TO: Sheriff Tommy Ratliff *TER*

FROM: Sergeant Bobby Trelles
Corporal Tim Shaffer

DATE: July 31, 2009

REF: Security System

Due to recent threats being made by inmates going to jury court we have been looking at alternative ways to improve the safety and security of the court room. In one recent trial a high risk inmate made threats to "take a gun and shoot his way out of the court room". Even though these threats were taken seriously and the judge had unnecessary firearms removed from the court room there were still firearms in the courtroom by officers working in the court room.

The inmate goes to jury court in their civilian clothes without visible restraints so the jury can view them as a person and not as an inmate from the jail. We have a leg restraint device which is worn under clothing and will prevent the inmate from effectively running but the inmate still has the use of their hands.

There is a restraint system that is being used in court rooms in surrounding counties that is an electronic stun restraint system that would allow security of the inmate by remote control from a distance of up to 175 feet away. This system would control violent actions of an inmate without the use of lethal force allowing him to be safely brought under control. We believe that this system would provide the extra safety and security we need in to protect everyone in the court room.

We respectfully request the purchase of the Band-it Prisoner Transport and Court Room Control System.



SHERRI TIBBE
Criminal District Attorney
Hays County Justice Center
110 E. Martin Luther King
San Marcos, Texas 78666
(512)393-7600 FAX (512)393-7619

July 13, 2009

Hays County Commissioners
Hays County Courthouse
110 E. San Antonio St.; Ste. 300
San Marcos, Texas 78666

Dear Commissioners:

This letter is to show my support of the Sheriff's Office in their continued pursuit of courthouse safety. The District Attorney's Office is also concerned with ensuring that the courthouse and all those who occupy the courthouse remain protected against any and all threats.

County money is most valuable when spent in the area of prevention. The requested Prisoner Transport and Courtroom Control System is a wise investment for Hays County. This tool will help guarantee the wellbeing of everyone in the courthouse when an inmate cannot be restrained. Those most at risk during these situations are the citizens serving as jurors, the judges, the court staff, the attorneys, and the citizens serving as jurors.

Thank you for your consideration of this matter.

Sincerely,

Sherri K. Tibbe
Criminal District Attorney

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 replace 4 exiting doors, install 3 additional exit doors and purchase fire extinguishers and signage for the Hays County Civic Center and Courthouse

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: \$12,838.00 + \$2,459.75 = \$15,297.75 (Not Budgeted)

LINE ITEM NUMBER OF FUNDS REQUIRED: to be determined

REQUESTED BY: Abel Velasquez/Barry Nelson

SPONSORED BY: Ingalsbe

SUMMARY: After touring/walk-through of our Civic Center, Abel Velasquez, our Safety Specialist has determined that the center is out of compliance with fire and safety guidelines.

Three quotes have been obtained and are as follows for the doors:

Hull Services \$17,560.00

Texdoor Ltd \$16,149.00

Hopson \$12,838.00

The additional \$2,459.75 is for fire extinguishers and signage that is need primarily at the civic center but some signage is needed in the courthouse also. Please see attached information.

This could have been brought before court a month ago for action, but waiting has resulted in a lower quote and Barry is comfortable that the installation will take place smoothly and with no delay or conflict with scheduled events.

Barry and Able Velasquez will be in court to answer any questions there may be.

Agenda Item Routing Form

DESCRIPTION OF Item: Replace 4 exiting doors, install 3 additional exit doors and purchase fire extinguishers and signage for the Hays County Civic Center and Courthouse

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$15,297.75 TBD

COUNTY PURCHASING GUIDELINES FOLLOWED: ___ Yes ___

PAYMENT TERMS ACCEPTABLE: ___ Yes ___

COMMENTS: Budget amendment required.

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 authorize the purchase of a time/date stamp for Constable Pct. 1 and amend the budget accordingly, not to exceed \$515.00

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: \$515.00

LINE ITEM NUMBER OF FUNDS REQUIRED: Transfer \$500 from law enforcement equip. (01-431-5417) to office equip. (01-431-5711)

REQUESTED BY: Constable Peterson

SPONSORED BY: Ingalsbe

SUMMARY:

This is an item we discussed in our budget meetings and hoped Constable Peterson could purchase out of this year's budget. Auditor's office has confirmed there are funds within his budget for this purchase. Cost of the time/date stamp is \$507.

FYI, the court also discussed the purchase of a shredder for the Constable. Because the item is not over \$300, it does not require court action and will be taken out of his office supplies.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the purchase of a time/date stamp for Constable Pct. 1 and amend the budget accordingly, not to exceed \$515.00

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$515.00

Transfer \$500 from law enforcement equip repair 01-431-5417 to office equip. 01-431-5711

COUNTY PURCHASING GUIDELINES FOLLOWED: _Unknown – didn't go thru purchasing dept.

PAYMENT TERMS ACCEPTABLE: _____

COMMENTS: Will require a budget amendment.

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COMMISIONERS' 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 allow the purchase of 14 Bushmaster Carbine BCWA3F1M4 Rifles for the Constable's Offices and amend the budget accordingly.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED: \$10,920

LINE ITEM NUMBER OF FUNDS REQUIRED: Please see details below

REQUESTED BY: Constables Peterson, Ayers, Hood and Mancillas

SPONSORED BY: Ingalsbe

SUMMARY: The court had a discussion with the Constables regarding this issue last week. One concern was where the funding would come from. Following is a break-down of funding.

Constable Peterson has funds within his budget to purchase 5 rifles: \$2,600 from Personnel Insurance, \$800 from FICA, \$250 from Law Enforcement Equip. and \$250 from Vehicle Maint. to 01-431-5717 (law enforcement equipment) Total \$3,900

Constable Mancillas has funds within his budget to purchase 3 rifles: \$1658 from Vehicles, \$700 from Office Supplies to 01-435-5717 (law enforcement equip. which already has \$2,311) Total \$2,340

Constable Ayers will have 3 rifles paid for (\$2,340) by Commissioner Conley's Special Projects line item. 01-441-5353 (\$2,340) to 01-433-5717 (law enforcement equip.) Total \$2,340

Constable Hood has funds within his budget to purchase 3 rifles: \$2,340 from Insurance to 01-432-5717 (law enforcement equipment) Total \$2,340

Agenda Item Routing Form

DESCRIPTION OF Item: Purchase of 14 Bushmaster Carbine BCWA3F1M4 Rifles for the Constable's Offices and amend the budget accordingly.

PREFERRED MEETING DATE REQUESTED: August 18, 2009

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER: \$ 10,920

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ N/A ____

PAYMENT TERMS ACCEPTABLE: ____ N/A ____

COMMENTS: Some adjustments to the amendment may be required.

Bill Herzog

SUMMARY: The court had a discussion with the Constables regarding this issue last week. One concern was where the funding would come from. Following is a break-down of funding.

Constable Peterson has funds within his budget to purchase 5 rifles: \$2,600 from Personnel Insurance, \$800 from FICA, \$250 from Law Enforcement Equip. mtc & repair and \$250 from Vehicle Manint. to 01-431-5717 (law enforcement equipment) Total \$3,900

Constable Mancillas has funds within his budget to purchase 3 rifles: \$1658 from Vehicles, \$700 from Office Supplies to 01-435-5717 (law enforcement equip. which already has \$2,311) Total \$2,340

Constable Ayers will have 3 rifles paid for (\$2,340) by Commissioner Conley's Special Projects line item. 01-441-5353 (\$2,340) to 01-433-5717 (law enforcement equip.) Total \$2,340

Constable Hood has funds within his budget to purchase 3 rifles: \$2,340 from Insurance to 01-434-5717 (law enforcement equipment) Total \$2,340

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

AGENDA ITEM: Discussion and possible action to implement position changes in the Sheriff's Office and to amend the budget accordingly.

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

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: RATLIFF

SPONSORED BY: CONLEY

SUMMARY: See attach

Delete				Add			
Position	Slot	Fund	Budget	Position	Slot	Fund	Budget
Captain	1	01-618-5021	\$ 78,320	Lieutenant	5	01-618-5021	\$ 72,420
Lieutenant	5	01-418-5021	\$ 72,420	Detective	16	01-418-5021	\$ 64,137
Deputy	TBD	01-418-5021	\$40794 - \$53682	Sergeant - Traffic	14	01-418-5021	\$47034 - \$56903
			\$191534 - \$204422				\$183591 - \$193460

Action		Fiscal Result	
End result:	Delete Captain and add a Detective slot		
	Change funding for SO Lieutenant. (418 to 618)	(\$14,183)	Savings
	Delete a Deputy slot and add a Traffic Sergeant to supervise the staff previously supervised by the Traffic Lieutenant	\$0	
		\$3221-6240	
		\$7943 - \$10962	Total Salary Savings

Savings to Buda	\$	5,900
Savings to Hays County	\$2043 - \$5062	
Total Savings	\$7943 - \$10962	

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: 11AM – Discussion and possible action on particular FY10 budget line items may follow as well as possible adoption of a proposed FY10 budget. Further possible action to vote on a proposed tax rate and schedule public hearings on the tax rate and the budget.

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

PREFERRED MEETING DATE REQUESTED: August 18, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY:

SPONSORED BY: SUMTER

SUMMARY:

